

October 18, 2024

VIA E-MAIL AND FEDERAL EXPRESS

The Honorable Daniel P. Driscoll
Clark County Prosecutor
50 E. Columbia Street, Suite 449
Springfield, Ohio 45502
ddriscoll@clarkcountyohio.gov

RE: *In re: Criminal Charges Against Donald J. Trump (Clark County Mun. Court, Case No. 24SPM100)*

Dear Mr. Driscoll:

We are attorneys with Free Speech For People, a national, non-partisan non-profit organization, with constitutional law expertise, dedicated to defending our democracy and our Constitution across the country. We write jointly with attorneys with Hughes Socol Piers Resnick & Dym, Ltd., a law firm committed to enforcing the U.S. Constitution and other civil rights laws through litigation.

We write to address the recent decision made by the court in *In re: Criminal Charges Against Donald J. Trump* (Clark County Mun. Court, Case No. 24SPM100), referring the R.C. 2935.09 Amended Affidavit of Guerline Jozef Charging Donald J. Trump and JD Vance With Criminal Acts (the “Affidavit”) to you for investigation and determination on whether to prosecute.¹

The Affidavit seeks criminal charges for Trump and Vance’s dangerous, insistent, and repeated public broadcast of inflammatory lies that members of Springfield, Ohio’s Haitian community are killing and eating their neighbor’s pets, including dogs and cats, and are also killing and eating wild geese. Trump and Vance’s knowing falsehoods launched an intended and predictably violent response against an already marginalized community, despite persistent discrediting from public officials. Springfield has endured at least 33 bomb threats, and the Haitian community has experienced a rash of threats and hostility. The Haitian Bridge Alliance, an

¹ For your reference, we have attached the October 4, 2024 decision as Exhibit A, and the Amended R.C. 2035.09(A) and (D) Affidavit of Guerline Jozef on Behalf of the Haitian Bridge Alliance Criminally Charging Donald J. Trump and James David (JD) Vance and accompanying Amended Bench Memorandum, as Exhibit B.

organization that serves the Springfield Haitian community has tracked Trump and Vance’s targeting of community members—and the disruption and danger it spurred—with grim vigilance. Through 156 paragraphs of detailed facts, the Affidavit (submitted by its Executive Director, Guerline Jozef) enumerates evidence toward establishing probable cause to arrest Trump and Vance for criminal offenses including Disrupting Public Services, Making False Alarms, Inducing Panic, Complicity, Telecommunication Harassment, and Aggravated Menacing. *See* Ex. A at 1-2.

The Court has directed your office to determine whether the evidence and causation necessary for probable cause exist. It also recognized that for probable cause to support prosecution, controlling law on the First Amendment cannot foreclose the arrests. Critically, it left that question open for your office to evaluate in conjunction with the evidence.

As advocates deeply familiar with First Amendment jurisprudence, we confirm that in the unique circumstances presented by this case, the First Amendment does *not* immunize Trump and Vance from arrest. We strongly support the Haitian Bridge Alliance’s legal analysis and its call for your office to promptly act to protect both the Haitian community and the City of Springfield. *See* Ex. B. at 9-18. We reach this conclusion, in part, because of information developed through our work tracking Donald Trump’s practice of utilizing misinformation to spur violence. That, combined with the robust evidence already aggregated by the Haitian Bridge Alliance and available to your office through investigation, urges rather than forecloses prosecution. Given the high stakes of this matter and personal safety of so many Springfield residents and others at risk, we urge you to consider the following.

The First Amendment Does Not Protect Trump and Vance From Prosecution

Trump and Vance Knowingly Repeated Dangerous False Statements

As the Haitian Bridge Alliance recognized, “The constitutional freedom of speech . . . does *not* immunize speech or writing used as an integral part of conduct in violation of a valid criminal statute.” *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949) (emphasis added). Courts repeatedly have made clear that “[w]hile the right of free speech entitles citizens to express their ideas, beliefs, and emotions, regardless of their popularity, it does not extend to the threatening of terror, inciting of riots, or verbalizing of false information that induces panic in a public place.” *Loless*, 31 Ohio App. 3d 5, 6 (10th Dist.1 986) (citing *Schenck v. United States* (1919), 249 U.S. 47). *See also United States v. Alvarez*, 567 U.S. 709, 735 (2012) (Breyer, J., concurring) (approvingly citing statutes that criminalize false speech likely to bring about harm); *Nollan v. California Coastal Comm’n*, 483 U.S. 825, 837 (1987) (“a ban on shouting fire can be a core exercise of the State’s police power to protect the public safety, and can thus meet even our stringent standards for regulation of speech”). Here, Trump and Vance made a calculated decision

to repeat racist falsehoods accusing a particular immigrant community in Springfield of purportedly intentional criminal and depraved behavior—again and again and again—knowing their calls would activate their supporters and others into disruptive and violent action. The First Amendment cannot immunize them from criminal consequences that stem from these dangerous and outrageous lies under Ohio law and statute.

Judge Schumaker’s concurrence noted that the Affidavit alone cannot conclusively establish that that Trump and Vance knew they were lying when they attacked Springfield’s Haitian residents for eating house pets, among other invectives. But probable cause has a low threshold: it exists “when the facts and circumstances known, which are reasonably trustworthy, are sufficient to warrant a prudent individual in believing another has committed or is committing an offense. *State v. Cavalier*, 2012-Ohio-1976, ¶ 31 (2nd Dist.) citing *Beck v. State of Ohio*, 379 U.S. 89, 91 (1964). The Affidavit, along with other evidence available to your office, provides *overwhelming* circumstantial evidence that Trump and Vance knew and understood they were repeating falsehoods.

Facts known even before your office’s investigation, which can be considered *collectively* by a jury or other fact-finder, include:

- The initial internet “report” stating that Springfield Haitians were eating house pets that went viral and prompted other posts, was discredited by its author who admitted she lied; subsequent internet posts were authored by known white supremacists who had picked up the original false and discredited post. Affidavit at ¶¶ 25-32;
- Trump has a well-documented, years-long history of lying. He paved his way to the presidency with falsehoods and once in office, stunned fact-checkers with the extent of his mistruths.² When he lost his bid for re-election, he rallied his base with lies about voter fraud, falsely claimed he won the presidency, and forcefully promoted the falsehoods until they culminated in the January 6, 2021 attack on the

² Glenn Kessler, *Trump made 30,573 false or misleading claims as president. Nearly half came in his final year.* Washington Post (Jan. 23, 2021), https://www.washingtonpost.com/politics/how-fact-checker-tracked-trump-claims/2021/01/23/ad04b69a-5c1d-11eb-a976-bad6431e03e2_story.html (Washington Post Fact-Checker Report on the Trump false claims database, nominated for inclusion in the Top Ten Works of Journalism of the Decade, documenting Trump’s escalating lying and recognizing “Trump made false claims about just about everything, big and small” and “one hallmark of Trump’s fibs was his willingness to constantly repeat the same claims, no matter how often they had been debunked”).

Capitol.³ In his current bid for the presidency, his mistruths have continued at a stunning pace, from falsehoods you yourself were called upon to debunk about the “dangerous criminality” of Springfield’s Haitian residents, to fabrications about his political opponents, to misrepresentations about easily verifiable scientific and financial facts.⁴ In sum, Trump has a known practice of using false information to promote his personal interests.

- Trump and Vance continued to promulgate these lies specifically targeting Springfield’s Haitian community after they knew that public officials including Ohio Governor Mike DeWine, Springfield Mayor Rob Rue, Springfield City Manager Bryan Heck, repeatedly and emphatically denied the existence of *any* credible reports;
- Despite Judge Schumaker’s interpretation of the statement and J.D. Vance’s insistence the “stories” were based on accounts from constituents, J.D. Vance characterized his and Trump’s repetition of the discredited statements as “create[ing] stories” to “creat[e] the American media’s focus on it.” Affidavit at ¶ 52.

³ *Anderson v. Griswold*, 2023 CO 63, ¶ 252, *cert. granted sub nom. Trump v. Anderson*, 144 S. Ct. 539 (2024), and *rev’d sub nom. Trump v. Anderson*, 601 U.S. 100, 144 S. Ct. 662 (2024), and *cert. dismissed sub nom. Colorado Republican State Cent. Comm. v. Anderson*, 144 S. Ct. 1085 (2024) (recognizing Trump’s claims of election fraud were falsehoods because “despite the facts that his advisors repeatedly advised him that there was no evidence of widespread voter fraud and that no evidence showed that he himself believed the election was wrought with fraud, President Trump ramped up his claims that the election was stolen from him and undertook efforts to prevent the certification of the election results”). The Supreme Court’s decision did not disturb the Colorado Supreme Court’s factual findings that Trump engaged in insurrection.

⁴See e.g. Omar Jimenez et al., *Springfield Haitians weigh their future as Trump threatens deportations*, CNN (Oct. 13, 2024), <https://www.cnn.com/2024/10/13/americas/springfield-haiti-election-whole-story-intl-latam/index.html>; Daniel Dale, *Fact check: Trump, on a lying spree, made at least 40 separate false claims in two Pennsylvania speeches*, CNN (Oct. 10, 2024) <https://www.cnn.com/2024/10/10/politics/fact-check-trump-pennsylvania-speeches/index.html>; Domenico Montanaro, *162 lies and distortions in a news conference. NPR fact-checks former President Trump*, NPR, (Aug. 11, 2024), <https://www.npr.org/2024/08/11/nx-s1-5070566/trump-news-conference>.

Taken together, Trump’s indisputable practice of public dishonesty and the context in which he and Vance issued their sensationalist falsehoods far surpasses the low probable-cause hurdle, providing grounds for prosecuting them under criminal statutes which Ohio courts have repeatedly upheld as valid. *See* Ex. B at 9-18 (cataloguing successful prosecutions under statutes despite First Amendment challenges). For example, in *State v. Loless*, 31 Ohio App. 3d 5, 507 N.E.2d 1140 (Ohio Ct. App. 1986), the Court of Appeals of Ohio rejected a First Amendment defense in upholding the conviction of a man who “did cause serious public serious alarm by disseminating a false report of an alleged crime which he knew to be false,” specifically calling in false warnings of damage to the structure of 22 Ohio bridges. *Id.* at 7. As the *Loless* court explained in rejecting the defendant’s facial and as-applied challenge to R.C. 2917.31(A) (inducing panic), “[t]he aim of the statute is not to abridge an individual’s right to communicate his thoughts, but to regulate harmful conduct that can find no protection of freedom of expression under the First Amendment.” *Id.* at 6. The court found that the aim of the statute was satisfied in the charge against the defendant, whose false warnings were not protected speech but rather unlawful conduct. *See id.* 7. The same analysis under the same statute must now be applied to Trump and Vance’s conduct.

Trump and Vance Repeated Dangerous Statements That Predictably Caused Security Threats

Because the evidence overwhelmingly establishes that Trump’s and Vance’s speech was knowingly false and fits squarely within the valid criminal statutes outlined in the Affidavit, that is the end of the First Amendment analysis. The knowing falsity of their outrageous statements distinguishes them from speech reflecting political ideas that warrants further First Amendment scrutiny. *See e.g. Counterman v. Colorado*, 600 U.S. 66, 81-82 (2023) (distinguishing true threats of violence, which lie outside the First Amendment’s protection, from “inciting” political speech or advocacy, which enjoys stronger protections because of its potential relationship to “strong protests against the government and prevailing social order”); *Alvarez*, 567 U.S. at 735 (false speech likely to cause harm not protected); *Loless*, 31 Ohio App.3d at 6 (recognizing “verbalizing of false information that induces panic in a public place” is categorically different than protected ideas, beliefs, or emotions). Strategically employing misinformation cannot be equated with legitimate political speech.

Yet even if Trump and Vance’s speech deserved the greater protection afforded to political advocacy merely because of their status as political candidates, Trump and Vance are still properly subject to prosecution even under the stringent standards set forth in *Brandenburg v. Ohio*, 395 U.S. 444 (1969), which applies to inflammatory speech advocating illegal action. *Brandenburg* recognizes that even otherwise-core political speech “lose[s] the cloak of the First Amendment’s protection” when it constitutes incitement. *Thompson v. Trump*, 590 F. Supp. 3d 46, 111 (D.D.C. 2022), *aff’d sub nom. Blassingame v. Trump*, 87 F.4th 1 (D.C. Cir. 2023). Here, setting aside the fact that Trump and Vance’s speech was knowingly false and predictably caused serious harm,

prosecutions would be consistent with the First Amendment under *Brandenburg* because the speech was “directed to inciting or producing imminent lawless action and likely to produce such action.” *Brandenburg*, 395 US. at 447.

In his concurrence evaluating the Affidavit, Judge Schumaker questioned probable cause as to causation, specifically whether the bomb threats and other harm were the natural and foreseeable consequences of Trump and Vance’s exhortations. Ex. A. at 16-17. The *Brandenburg* inquiry, while not identical, is similar: whether the imminent use of violence or lawless action is the likely result of the speech. Trump and Vance’s statements meet both tests.

The Affidavit lays out detailed support that Trump and Vance’s speech spurred a wave of bomb threats, disruptions, and harassment in Springfield. In some cases, Haitian community members’ experiences provide direct support for the criminal charges (e.g. Aggravated Menacing, Inducing Panic, Committing Telecommunications Harassment) and in other cases, circumstantial (e.g. Disrupting Public Services, Making False Alarms). They report hostile acts *directly tied* to Trump and Vance’s Haitian slurs. *See e.g.* Affidavit ¶¶ 9-14. Moreover, officials have confirmed that beyond the on-the-nose timing, several security threats directly referenced Haitian migrants.⁵ Taken together, the evidence demonstrates that the widespread threats were caused by Trump and Vance’s speech.⁶

Critically, Trump and Vance’s statements were not one-offs. They repeated them over, and over, and over. Trump and Vance saw the dangerous impact of their speech *yet continued to make the inciting statements*. *See e.g.* Affidavit ¶ 47 (after a wave of security threats, repeating false claims about Haitians migrants taking Springfield pets while stating “these people are the worst”). In other words, Trump and Vance witnessed their invectives cause harm, Ohio public officials told them that continuing to malign the Haitian community would continue to cause harm, and Trump and Vance, aware that the statements would have this effect, doubled down and kept doing it. *See*

⁵ *See e.g.* Alicia Lozano & Kevin Collier, *Bomb threat in Springfield spurs fear and closures after false anti-migrant claims*, NBC News (Sept. 12, 2024), <https://www.nbcnews.com/tech/security/bomb-threat-springfield-stokes-fear-false-claims-haitian-migrants-pets-rcna170856>; Rebecca Falconer, *FBI examining threats targeting Haitians at Springfield, Ohio, college*, Axios (Sept. 15, 2024), <https://www.axios.com/2024/09/16/fbi-springfield-ohio-threats-haitian-wittenberg-university>.

⁶ Judge Schumaker suggested that the causal chain may be broken because some of the bomb threats may have come from individuals outside of Springfield, and outside of the United States. Ex. A at 16-17. The question, however, is whether the harmful misconduct could be foreseen. Regardless of the source, based on the knowledge Trump and Vance had at the time of their speech, overwhelming evidence shows that it could.

e.g. Affidavit at ¶¶ 33-70. After 1 bomb threat—and certainly after 33—no reasonable person could claim security threats or other disruption were not a foreseeable result. Once it is an established fact that the speech has caused imminent lawless conduct, it cannot be reasonably argued that repeated speech is not likely to continue to do so. If Trump makes good on his promise to visit Springfield and continues to spew this inciting rhetoric, his criminal liability will expand further to include the harm that ensues.

As courts have repeatedly recognized, “both the content and the context of the speech are critical elements of First Amendment analysis.” *Thompson v. Trump*, 590 F. Supp. 3d 46, 112 (D.D.C. 2022), *aff’d sub nom. Blassingame v. Trump*, 87 F.4th 1 (D.C. Cir. 2023). Trump and Vance knew *from the outset* that their vitriol would lead to security threats. As recognized by the Colorado Supreme Court, Trump has a routine, deeply ingrained practice of communicating with his base using speech designed to incite lawless conduct in a manner that may not make it identifiable as such to the average person:

[Plaintiffs’ expert on far-right extremism] identified a pattern of calls for violence that [Trump’s] supporters responded to, and explained how that long experience allowed [President] Trump to know how his supporters responded to his calls for violence using a shared language that allowed him to maintain plausible deniability with the wider public.

Anderson 2023 CO 63, ¶ 252.

Moreover, as Trump himself proudly has exhorted, “his supporters ‘listen to [him] like no one else,’” *Id.* at ¶ 247. Throughout Trump’s presidency, his attempts to overturn the election, and his current campaign, Trump has created unique circumstances through which his speech must be assessed. Unlike “regular” hate speech by other individuals or groups, Trump’s well-honed utilization of practices like the one described above constitute funneled incitement speech, designed to provoke lawless action. In other words, the violence is a feature, not a bug.

Trump and Vance’s continuous use of their national platform to spread dangerous falsehoods that foreseeably cause widespread civic disruption against already marginalized communities falls squarely within the criminal charges your office has been asked to evaluate. The Haitian Bridge Alliance asks only that this office apply the pertinent criminal statutes to Trump and Vance as they have been applied to other defendants, and that both be held to the same standards as the other individuals who have been appropriately and successfully prosecuted under the criminal charges sought here. We hope that this office agrees that the law should be applied equally to all people. Trump and Vance’s positions of authority do not immunize them from the consequences that would fall—and have fallen—upon anyone else. We strongly support the Haitian Bridge Alliance and Jozef’s petition, believe that the requested criminal charges are

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Oct. 18, 2024

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supported by probable cause, and are justified by Trump and Vance's severe criminal misconduct. Thank you for your attention to this serious matter.

Sincerely,

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EXHIBIT A

FILED

24 OCT -4 PM 3:02

SHEILA S. ROBE, CLERK
MUNICIPAL COURT
BY *AW* DEPUTY

IN THE MUNICIPAL COURT OF CLARK COUNTY OHIO

IN THE MATTER OF:

CASE NO: 24SPM100

**AFFIDAVIT OF GUERLINE JOZEF
CHARGING DONALD J. TRUMP
AND JD VANCE WITH
CRIMINAL ACTS**

DECISION AND ORDER

.....
WILT, V.

This matter is before the Court on an Affidavit of Guerline Jozef charging Donald J. Trump and JD Vance with criminal acts pursuant to Revised Code §2935.09(D), filed September 24, 2024 and Amended Affidavit filed September 30, 2024. The purpose stated therein for the Affidavit was to criminally charge Donald J. Trump and James David Vance, to seek their prosecution, and ask that a judge “review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court.” Notably, the Affidavit in “PURPOSE OF THIS AFFIDAVIT” paragraph 5, did not request that the Court issue a warrant or summons to the accused persons. Because this is a serious matter of significant public interest, the Court has reviewed this case en banc, and has issued this Decision and Order on the issues posed.

The Amended Affidavit includes 30 pages of factual statements alleging criminal behavior on the part of the accused persons, Donald J. Trump and JD Vance. The crimes alleged are as follows:

- Disrupting Public Services under R.C. §2909.04(A) and (B), a 4th degree felony.
- Making False Alarms under R.C. §2917.32(A), a 1st degree misdemeanor.

- Inducing Panic under R.C. §2917.32(A), a 2nd, 3rd, 4th or 5th degree felony or 1st degree misdemeanor.
- Complicity under R.C. §2923.03(A), a 4th degree felony and a 1st degree misdemeanor.
- Telecommunication Harassment under R.C. §2917.21(A), a 1st degree misdemeanor.
- Aggravated Menacing under R.C. §2903.21(A), a 1st degree misdemeanor.
- Inducing Panic under Springfield City Ordinance 509.06, a 1st degree misdemeanor.
- Telecommunication Harassment under Springfield City Ordinance 537.08, a 1st degree misdemeanor.
- Complicity under Springfield City Ordinance 501.10, a 1st degree misdemeanor.

The Court has fully reviewed the Affidavit, Amended Affidavit, Bench Memorandum, Amended Bench Memorandum, flash drive of video clips referenced in the Affidavits, Supplemental Affidavit, relevant statutory and case law, including the decision from Cleveland Municipal Court *In Re: Affidavits relating to Timothy Loehmann, and Frank Garmback*, which was attached to the Bench Memorandum filed by counsel for the Affiant. The statute which empowers the Affiant to seek the requested relief states in pertinent part:

A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. A private citizen may file an affidavit charging the offense committed with the clerk of a court of record before or after the normal business hours of the reviewing officials if the clerk's office is open at those times. A clerk who receives an affidavit before or after the normal business hours of the reviewing officials shall forward it to a reviewing official when the reviewing official's normal business hours resume.

R.C. §2923.09(D).

The procedure for the Court to follow once such an Affidavit has been filed with the Court, requesting that a judge review the allegations, states:

(A) Upon the filing of an affidavit or complaint as provided by section 2935.09 of the Revised Code, if it charges the commission of a felony, such judge, clerk, or magistrate, unless the judge, clerk, or magistrate has reason to believe that it was not filed in good faith, or the claim is not meritorious, **shall** forthwith issue a warrant for the arrest of the person charged in the affidavit, and directed to a peace officer; otherwise the judge, clerk, or magistrate **shall** forthwith refer the matter to the prosecuting attorney or other attorney charged by law with prosecution for investigation prior to the issuance of warrant.

(B) If the offense charged is a misdemeanor or violation of a municipal ordinance, such judge, clerk, or magistrate **may**:

(1) Issue a warrant for the arrest of such person, directed to any officer named in section 2935.03 of the Revised Code but in cases of ordinance violation only to a police officer or marshal or deputy marshal of the municipal corporation;

(2) Issue summons, to be served by a peace officer, bailiff, or court constable, commanding the person against whom the affidavit or complaint was filed to appear forthwith, or at a fixed time in the future, before such court or magistrate. Such summons shall be served in the same manner as in civil cases.

R.C. §2935.10(A)(B) (emphasis added).

Since the Affiant is empowered to request the Court review the matter, what the Court is to do upon its filing is the first step in the analysis. For allegations of felony behavior, the Court is to issue a warrant for the arrest of the accused person, unless the Court questions whether the Affidavit was filed in good faith or questions whether probable cause exists to support the charge. In the event the Court questions either good faith or probable cause, then the court **shall** refer the matter to the prosecutor for further investigation. R.C. §2935.10(A). As such, unless the Court issues a warrant for the accused's arrest, the Court **must** refer the matter to the prosecutor for investigation.

Where the offense is a misdemeanor, the Court **may** issue a warrant for the person's arrest or issue a summons commanding the person to appear before the Court. R.C. §2935.10(B)(1) and (2). At first blush, it would seem that the paragraph concerning misdemeanor charges leaves no room for the Court to even exercise its independent judgment concerning whether the allegations in the Affidavit state probable cause to find a criminal

offense has occurred. Such an interpretation would be misplaced for two reasons. First, the paragraph concerning charges of a felony has the mandatory language of “shall”. Thus, the Court is required to either issue a warrant or refer the matter to the prosecuting attorney. In the event of a misdemeanor, the language is permissive using the word “may”. Thus the Court has discretion to determine whether a warrant or summons is appropriate. Second, it is a fundamental tenant of constitutional law that no warrant can be issued without probable cause. Thus, at a bare minimum, probable cause must exist in order for a Court to issue a warrant or summons on a criminal charge. Even with a finding of probable cause, the permissive language of the statute permits the Court to decline to issue either a warrant or a summons on a misdemeanor charge.

Where a misdemeanor arises from the same conduct as alleged involving a felony the misdemeanor shall be prosecuted in conjunction with the felony in the Court of Common Pleas. Crim. R. 5(B)(1) and Crim R. 7(A).

The Court turns next to the question of whether the claim is meritorious. Stated another way, whether there is probable cause to support the allegations that a crime or crimes have occurred. Probable cause exists where the facts and circumstances are sufficient to warrant a prudent person to believe that the suspect has committed a criminal offense. *Beck v. Ohio*, 379 U.S. 89, 91 (1964). All of the conduct alleged in the Affidavit centers around the statements made by either Donald Trump or JD Vance. Freedom of speech is among our most precious and protected constitutional rights. It is enshrined in the 1st Amendment of the United States Constitution. Indeed, the United States and Ohio Supreme Courts have recognized the importance of speech, even when it stirs people to anger.

[A] principal function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates

dissatisfaction with conditions as they are, or even stirs people to anger.' [Citations omitted.] It would be odd indeed to conclude *both* that 'if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection,' [citation omitted] *and* that the Government may ban the expression of certain disagreeable ideas on the unsupported presumption that their very disagreeableness will provoke violence.

"Thus, we have not permitted the government to assume that every expression of a provocative idea will incite a riot, but have instead required careful consideration of the actual circumstances surrounding such expression, asking whether the expression 'is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.' *Brandenburg v. Ohio*, 395 U.S. 444, 447 [89 S.Ct. 1827, 1829, 23 L.Ed.2d 430, 434, 48 O.O.2d 320, 322] (1969) (reviewing circumstances surrounding rally and speeches by Ku Klux Klan)." *Johnson*, 491 U.S. at 408-409, 109 S.Ct. at 2542, 105 L.Ed.2d at 356-357.

State v. Lessin, 67 Ohio St. 3d 487, 492 (1993).

In this case, not only do the allegations raise the issue of speech, but complain of political speech. "Political speech is at the core of what the 1st Amendment is design to protect." *Morse v. Frederick*, 551 U.S. 393, 403 (2007), quoting *Virginia V. Black*, 538 U.S. 343, 365 (2003). In the widely cited case of *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the United States Supreme Court reinforced the vital interest in our democracy protecting speech critical of government and protecting political speech, in the following:

There is no question that speech critical of the exercise of the State's power lies at the very center of the First Amendment. Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people.

[Therefore], political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'

Id. at 339-340, quoting *F.E.C. v. WIS. Right To Life, Inc.*, 551 U.S. 449, 464 (2007).

Suffering and "enduring" speech that one does not like is part of the price of freedom. *Sorrell v. IMF Health Inc.*, 564 U.S. 552, 575 (2011). "Speech remains protected even when it may stir

people to action, move them to tears, or inflict great pain.” *Sorrell*, at 576. “[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). [T]he mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action.” *Brandenburg*, at 448. There is a significant “distinction between the statement of an idea which may prompt its hearers to take unlawful action and the advocacy where such action be taken”. *Yates v. United States*, 354 US 316, 321-322 (1961).

Although all speech does not have absolute constitutional protection, the strict scrutiny analysis of any criminalization of speech, requires thorough and extensive investigation before any charges would be pursued. Here, the 1st Amendment protection of the speech, and political nature of the speech the Affiant claims to constitute criminal behavior, factor into the Court’s analysis of the good faith nature of the allegations. The presidential election is less than 35 days away. The issue of immigration is contentious. Due to the proximity of the election, and the contentiousness concerning the immigration policies of both candidates, the Court cannot automatically presume the good faith nature of the Affidavits. That is not to say that the Affiant does not believe what she is alleging is true, but rather, whether the conclusions the Affiant reaches – that being that Donald Trump and JD Vance’s political speech constitute the alleged crimes - could be influenced by her personal experiences, as opposed to an objective analysis of the alleged speech, the constitutional protections afforded to that speech, the alleged conduct occurring within the community, and a claimed nexus between the speech and that conduct.

A nexus or causation between the accused persons' speech and the acts committed by other people, as alleged in the Affidavits, cannot be presumed.

"It is the very essence of our deep-rooted notions of criminal liability that guilt be personal and individual." Sayre, *Criminal Responsibility for the Acts of Another* (1930), 43 *Harv.L.Rev.* 689, 716. Generally, for a criminal defendant's conduct to be the proximate cause of a certain result, it must first be determined that the conduct was the cause in fact of the result, meaning that the result would not have occurred "but for" the conduct. Second, when the result varied from the harmed intended or hazarded, it must be determined that the result achieved was not so extraordinary or surprising that it would be simply unfair to hold the defendant criminally responsible for something so unforeseeable. LaFave & Scott, *Criminal Law* (1972), Section 35, 246.

State v. Lovelace, 137 Ohio App. 3d 206, 216 (1999).

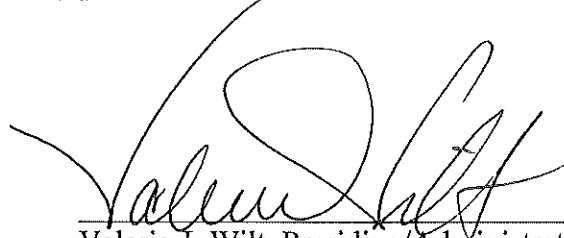
In this case the "conduct" referred to is speech. For probable cause to exist, it is not sufficient that Trump or Vance might have foreseen the acts by others that are alleged in the Affidavits. *Wagner v. Ohio State Univ. Med. Ctr.*, 188 Ohio App. 3d 65 ¶25 (2010), citing *Prosser & Keeton Law of Torts* (5 Ed. 1984). For probable cause to support prosecution, the totality of the circumstances must prove that the statements by Trump and Vance are not entitled to 1st Amendment protection, the statements are completely false, the statements are the direct and proximate cause of the alleged behavior of others, the alleged behavior of others was criminal, and that the criminal behavior should have been reasonably anticipated by Trump and Vance as imminent resulting from their speech. *Id.*; *Lindsay P. v. Towne Props. Asset Mgmt. Co.*, 2013-Ohio-4121, ¶21 (12th Dist. App.) The concurring opinion further elucidates the factual considerations in the Affidavit and materials submitted, which may bear on probable cause and good faith in this case. However, in writing this Decision, the majority of the panel did not believe it was the Court's place to further address probable cause or good faith, based on the Court's disposition of the case.

The judiciary and the prosecution have separate functions. Courts are not investigative bodies. It is appropriate for the Court to act in reliance on the prosecutor's investigations. *Nikooyi vs Affidavit of Crim. Complaint*, 2020-Ohio-192, ¶16 (11th Dist. App.). This is particularly true where the allegations are of a serious nature. *Id.* For the reasons set forth in the concurring opinion, with which the full panel agrees, the conclusion of whether the evidence and causation necessary for probable cause exists to commence a prosecution of the alleged offenses is best left in the investigatory hands of the prosecution. The prosecutor's determination on probable cause will render the good faith basis for the Affidavits moot.


The statutory scheme under which the Affidavit and Amended Affidavit are filed does not permit this Court to simply deny the request and dismiss the allegations as it relates to the felony charges. *State ex. Rel. Brown v. Jeffries*, 2012-Ohio-522 ¶10. (4th Dist. App.). Rather, because the Court questions the existence of probable cause and the good faith nature of the Affidavits, the Court is required to refer the felony charges to the appropriate prosecuting authority for further investigation. R.C. §2935.10(A). Therefore, this Court cannot dismiss the Affidavits and its requests in their entirety.

It is the opinion of this panel that the discretion afforded concerning the misdemeanor charges would permit the Court to dismiss the request on those misdemeanors. However, since misdemeanor charges may be filed in conjunction with felony charges arising out of the same facts or circumstances, it is appropriate to refer all alleged charges to the felony prosecutor for Clark County, Ohio, for further investigation and determination as to whether probable cause exists to file criminal charges as alleged against Donald J. Trump and JD Vance, with particular consideration to be given to the strong constitutional protections afforded to speech and political speech in particular.

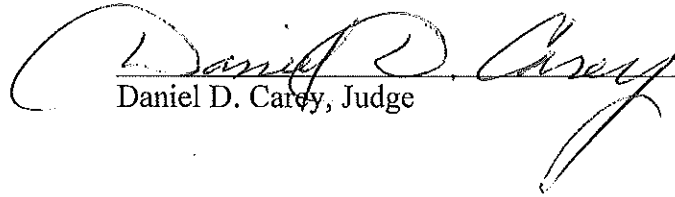
IT IS THEREFORE ORDERED that all matters set forth in the Affidavit filed September 24, 2024, are hereby referred to the Clark County Prosecuting Attorney for further investigation and determination whether any prosecution is warranted.



Valerie J. Wilt, Presiding/Administrating Judge



Stephen Schumaker, Judge



Daniel D. Carey, Judge

CONCURRING OPINION

SCHUMAKER, S.

The Court has reviewed all documents and items filed by the Attorneys for Guerline Jozef and the Haitian Bridge Alliance. I concur in full with the finding and Opinion of the Court of which I am a signatory. This opinion is to document further reasoning as to the decision of this Judge.

The Court concludes there is no necessity for a hearing in this matter. Counsel for the Affiant states in the Bench Memorandum that “Investigation is neither needed nor requested.” The Affiant has submitted extensive materials, a Bench Memorandum, an Amended Bench Memorandum and a Supplemental Bench Memorandum. The statute does not require a hearing and the Court has no obligation to set the case for hearing. *In Re Slayman*, Court of Appeals, Fifth Appellate District, Licking County, December 18, 2008, Case No. 08 CA 70; *State ex rel Brown v. Nusbaum*, 152 Ohio State 3d 284.

Ohio Revised Code §2935.10 and case law requires the Court to make two inquiries. The first is whether probable cause exists as to all elements of the alleged crimes and/or the claim is not meritorious. The second condition is “unless the Judge, clerk or magistrate has reason to believe that it was not filed in good faith.”

The Court notes that the Affidavit and request in this case is not filed by a lay person but by counsel. The filing is signed by one attorney but lists four different attorneys as representing the Parties requesting action by the Court. The first issue that will be addressed is the issue of probable cause.

The materials submitted make no specific allegation of venue in Clark County, Ohio. “While venue is not a material element of the offense charged, it is a fact that the state must prove beyond a reasonable doubt unless waived by a criminal defendant. *State v. Hampton*, 134 Ohio St.3d 447, 2012 – Ohio – 5688, 983 N.E.2d 324,; *State v. Birt*, 12th Dist. Butler No. CA2012 -02-031, 2013 – Ohio – 1379 as cited in *State v. Pearce*, Court of Appeals of Ohio, fifth Appellate District, Ashland County, October 30 2017, Date of Judgment Entry. Case No. 17-COA -013. While Affiant’s filing is not a criminal complaint it requests a complaint be filed on the basis of the allegations. Ohio Criminal Rule 3 requires a

complaint to include a “written statement of the essential facts.” The Affidavit of Ms. Jozef indicates “we have spoken” to immigrants in Springfield, Ohio. Paragraphs 9 through 13 allege different incidents and/or fears of Haitian individuals in Springfield. While the Court should not have to guess at the specific allegations of venue these averments could establish venue in Clark County, Ohio under some provisions of Ohio Revised Code §2901.12. These averments are hearsay. Ohio Criminal Rule 4 (A) (1) provides “The finding of probable cause may be based upon hearsay in whole or part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing there is a factual basis for the information furnished.”

The averments in paragraphs 9 through 13 allegedly were made to unnamed individuals working with the Haitian Bridge Alliance. The individuals who allegedly made the statements to the unnamed individuals from the Haitian Alliance are also not identified. The Court is asked to find that two layers of hearsay submitted by unnamed individuals have “a substantial basis for believing the source of the hearsay to be credible and for believing there is a factual basis for the information furnished.” This hearsay not only goes to the establishment of venue but also to elements of some or all of the crimes that the Affiant wishes the Court to “make independent findings of probable cause based on the facts presented – and issue warrants for Trump’s and Vance’s arrests.” (page 1 of Affiant’s Bench Memorandum). There is no information submitted to the Court that can be examined for the Court to find that the unnamed sources of these averments are “credible and for believing there is a factual basis for the information furnished.” Without such basis provided the Court cannot make the requisite findings required for the Court to consider the averments for the truth if the matter asserted in paragraphs 9 through 13.

Paragraphs 7, 8, 16, 17, 18, 50, 51, 57, 61, 69, 76, 79, 96, 97, 98, 100, 101, 107, 110, 111, 112, 116, 117, 119, 120, 122, and 133 allege that former President Trump and Senator Vance knowingly made false statements – primarily concerning dogs, cats and geese. The Affiant’s materials rely heavily on statements by Governor DeWine and local officials to attempt to establish probable cause of the false nature of the statements. The statements from the officials repeatedly indicate the following very similar

statements – “We wish to clarify that we have not been able to verify any credible reports” – “they’ve found no credible evidence” – “they have no evidence of that at all” – “no verifiable evidence or reports to show this was true” – “we just have no verifiable claim that this actually happened” and many similar statements. The Court acknowledges the difficulties of proving a negative. There is significant difference however, between stating that there are no verifiable reports that a statement is true and proof and/or probable cause that a statement is false. This Judge has tremendous respect for the officials making the above and similar statements but if any of the officials voiced the opinion that the statements at issue were false those statements are in the form of opinion. Ohio Evidence Rule 701 states:

“If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness’ testimony or the determination of the witness’ testimony or the determination of a fact in issue.”

There is nothing in the reported statements by the officials that, on the basis of the record before the court, would justify any opinion that the statements at issue are false – just that they cannot be verified as true.

The Affiant’s materials implicitly acknowledge that there were reports that led to the statements in issue. The Court is left to speculate from most of the Affiant’s materials as to why the reports were not verifiable and/or credible. Did police respond to the reports? If there was a response what was the elapsed time between the report and the arrival of officers to investigate the report? What are the articulable facts that would justify the opinion that the reports are false? The statements may be false. There appears to be no evidence outside of the acknowledged reports that the statements are true. The statements may be true but there is no factual basis for the Court to find that the statements are true or false based on the statements of the listed officials. Once again the Court should not be left to speculate. Probable cause is based on articulable facts – not speculation.

In addition to citing the statements by local officials, the Affiant relies heavily on an interview conducted on CNN with Senator Vance as evidence that Former President Trump and Senator Vance were purposely making false statements to the public. The following is paragraph 52 of the Affidavit.

“In the same interview, Vance admitted that he was just making harmful statements up: ”If I have to create stories so that the American media actually pays attention to the suffering of the American people then that’s what I’m going to do, Dana.””

The Affiant makes the same allegation in paragraph 7 (in bold black type) of her Affidavit.

The referred to interview is contained in what is labeled paragraph 49 on the flash drive submitted to the Court as an exhibit to the Affidavit. The interviewer also labels the statements as false. The Court has reviewed that recording numerous times. The Court sees nothing in the interview that is an admission by Senator Vance that he was “just making harmful statements up.” When asked about the evidence as to the statements Senator Vance replied “The evidence is the first hand accounts of my constituents who are telling me this happened.” When the interviewer questioned him about “creating stories” after the quote listed in paragraph 52 the Senator immediately replied: “Dana, it comes from first-hand accounts of my constituents. I say we are creating a story meaning we are creating the American media’s focus on it.” The interviewer later says “I have not accused you of anything.”

The Affiant’s averment in paragraph 52 is further shown to be inaccurate in Exhibit 58 which contains an interview of Senator Vance on the Face The Nation show. When the interviewer referred to these “false claims” the Senator responded as follows:

“I’ve heard about a dozen things from my constituents in Springfield, Ohio – ten of them are verifiable and confirmable – a couple of them we have direct first hand accounts – for example of migrants abducting geese at the local park and slaughtering them and eating them – Maybe all these constituents are lying to me – I would appreciate it if the American media would show up and did some real investigation rather than amplify the worst people in the world. Why is someone calling in a bomb threat?”

The Affiant also submitted paragraph/exhibit 61 on the flash drive. In response to a PBS show a member of the media asked a similar question. Senator Vance responded as follows:

“I’ve got residents of Springfield, Ohio who are coming to me with a dozen different problems – they have been talking about it for months and some years – the American media totally ignored them until they showed up to fact check what people were saying about pets. Why weren’t you in Springfield, Ohio 6 months ago talking about the housing crisis? Why weren’t the American media six months ago talking about skyrocketing rates of accidents – of car insurance. Why aren’t they talking about the rural healthcare problems because the hospitals have been over whelmed. Why aren’t they talking about the school system in a small town that now has 1,000 children who don’t even speak English. How are the American children going to get a good education when everyone is concentrating on the other kids – they are innocent children but that doesn’t mean there should be a thousand of them in every school. One story out there from multiple people – multiple, multiple people have come to my office – have said on video – they talk about the pet story and that’s all the American media wants to talk about and of course the American media goes into Springfield, Ohio – dives in harasses everybody who dares complain about the conditions in town – that’s not journalism – that’s not seeking the truth – that is bullying on an industrial scale.

.....Yesterday we got a call from a constituent in my office from a person very worried about a lot of the problems in Springfield and has direct eyewitness evidence bearing on a lot of them. The person said please do not share my name with anybody because the minute anyone in Springfield speaks out a dozen cameras show up at their front door and tries to destroy their lives.”

The above accounts and quotes were submitted by the Affiant in support of her claims that the statements in issue were false. Like the earlier averments discussed in [paragraphs 9 through 13] the above quotes are hearsay from unidentified individuals. They also cannot be considered for the truth of the matter asserted. They could however, be admitted as to the state of Senator Vance’s state of mind (*mens rea*) and depending on unknown circumstances perhaps for the same purpose as to the state of mind of former President Trump when the statements at issue were made. See *In re C.C.*, Court of Appeals of Ohio, Second Appellate District, Montgomery County, April 1, 2016 rendered C.A. Case No. 26864; See also *State v. Apanovitch*, Supreme Court of Ohio, October 7 1987, Decided No. 86-1746.

There is nothing in the submitted materials indicating officials, the media and/or Counsel for the Affiant are making any efforts to investigate the reports from the Senator’s constituents. Counsel actually states “Investigation is neither needed nor requested” (see page 3 of the Bench Memorandum). Those reports may be false – they may be credible and true. Senator Vance seems to believe the accounts are true from the submitted materials. The above materials, submitted by the Affiant negates probable cause as to the required *mens rea* of the requested charges. The Court is once again being called to speculate

and assume the reports are false. Probable cause is not established by speculation. *Mens rea* is determined by evidence including the facts and circumstances.

The alleged crimes that the Affiant and Counsel want former President Trump and Senator Vance to be arrested for require a knowing and/or knowingly or a reckless disregard *mens rea*. The Court considers the Affiant's averment in paragraph 52 and paragraph 7 to be inaccurate and misleading. The evidence submitted in the above listed paragraph/exhibits on the flash drive is, if anything, exculpatory as the exhibits tend to exonerate Former President Trump and Senator Vance of the requisite *mens rea* in the allegations. Once again the Court is left to speculate as to the exculpatory strength of the constituent accounts that are mentioned in the paragraph/exhibits. The evidence submitted by the Affiant tends to show that former President Trump and Senator Vance relied upon reports made to them by constituents. The Affiant bears the burden of production/proof to establish probable cause. The above listed evidence tends to negate probable cause as to the element of the *mens rea* required in the requested charges. *Mens rea* usually must be established by the facts and circumstances. The facts and circumstances as set forth in the materials do not, in the opinion of this Court, establish probable cause of the requisite *mens rea* for the requested charges. The submitted materials do not establish probable cause that the statements are false. The submitted materials also do not establish that the statements are true. Speculation does not establish probable cause.

The Affiant also claims "Trump's statements regarding the Springfield Haitian community have caused multiple bomb and other threats, closure and other disruptions." (paragraphs 86, 91, 92, 93, 94 and 95). Causation is also an element of a number of the requested charges. The Ohio Jury instructions defines CAUSE as follows: "Cause is an essential element of the offense. Cause is an act or failure to act that in a natural and continuous sequence directly produces the (death) (physical harm to (person) (property), and without which it would not have occurred....The defendant's responsibility is not limited to the immediate or most obvious result of the defendant's (act (failure to act). The defendant is also responsible for the natural and foreseeable (consequences) (results) that follow, in the ordinary course of events, from the (act) (failure to act)." Ohio Jury Instructions CR 417.23 Cause; natural consequences.

The materials indicate there were 33 bomb threats in the days following the debate where the former President made the statements at issue. The materials contain very little information as to the exact threats other than to label all of them as hoaxes. The Affiant seems to contend that due to the threats being in close proximity to the statements that probable cause as to causation is established. The materials submitted by the Affiant do contain some insight into the threats. Governor DeWine does have information concerning the investigation into the threats that he has made public. The Governor gave us the following information as contained in paragraph 47 of the flash drive submitted by the Affiant:

“...33 bomb threats – each one of which was responded to and found to be a hoax – 33 threats – 33 hoaxes.....We have people, unfortunately overseas, who are taking these actions. Some of them are coming from one particular country. We think this is one more opportunity to mess with the United States and they are continuing to do it so we cannot let the bad guys win. Our schools must remain open.”

The Governor later declined to identify what country the threats were coming from.

The Governor later gave some additional information in an interview conducted on the PBS News Hour (see flash drive exhibit 63).

“...Some of the bomb threats came from foreign countries – others came from in the United States. All of them have been hoaxes. None of them have panned out.....

.....Now look the people who are making these threats are the bad people – they are the wrong people. Some come from overseas who want to mess with the United States. We have some coming from within the United States from people who are sick - who think for some reason this is funny.”

The interviewer then interrupted the Governor and asked him if the statements stopped would the threats stop. The Governor replied that he could not predict what would happen.

The first inquiry the Court must make is whether “in a natural and continuous sequence would the threats have been made without the statements. The second inquiry is whether the threats are the natural and foreseeable result that would follow in the ordinary course of events. There are limits under the law to what the Court would refer to as the causal chain. The question is how far that chain extends when potentially inflammatory remarks are made and bad things follow. The only evidence before the Court is

that the threats were made from foreign countries and/or overseas who want to mess with the United States and some coming from the United States “from people who are sick.” There is nothing in the record to indicate the bomb threats were made by any local individuals. Is there probable cause to believe these threats were natural and foreseeable consequences by former President Trump and Senator Vance?

The Court notes the Governor indicated he could not predict what would happen if the statements stopped: The inquiry has some far reaching implications in political discourse in the United States and the implementation of criminal statutes. The inquiry could be made in a large number of situations. There were calls to hold President Biden responsible for his comment to “time to put Trump in a bullseye” when the attempted assassination occurred. There were calls to hold Senator Sanders responsible for comments made and one of his volunteer campaign staffers shot Congressman Scalise and other individuals at a Congressional softball practice. This Court strongly believes that President Biden and Senator Sanders did not cause those events. The Court also believes that time proximity alone cannot establish probable cause of legal causation in this case. There is nothing that is the “natural and foreseeable result that would follow in the ordinary course of events” when the threats that were made were from someone in a foreign country trying to “mess” with the United States and/or threats “coming from the United States ‘from people who are sick.’” If someone was waiting to “mess with the United States” there is nothing in the record to indicate the threats would not have been made at a date and time in the future. This does not appear to be a “natural and continuous sequence” that directly produced the bomb threats and without which they would not have occurred.

The Court finds there is no probable cause established as to causation of the bomb threats stemming from the statements at issue.

The Affiant and Bench Memorandum also requests former President Trump be charged with Aggravated Menacing (O.R.C. 2903.21 (A)) as a result of his statements that he would initiate deportations beginning with Springfield, Ohio. (see page 16, subsection (e) of the Amended Bench Memorandum and paragraph 146 of the Affidavit). The materials submitted on the flash drive contains a significant amount of information centered around the Temporary Protective Status Program.

It is the understanding of the Court that Temporary Protected Status is a temporary immigration status that allows foreign nationals to live and work in the United States for a limited time. According to the U.S. Citizenship and Immigration Services website the “Department of Homeland Security has extended through August 3, 2025, the validity of certain Employment Authorization Documents (EADS) issued to Temporary Protected Status (TPS) beneficiaries under the designation of Haiti.” It is also the Court’s understanding that the Secretary of the Department of Homeland Security, in consultation with agencies like the State Department designates the TPS time periods. The designation can be extended, re-designated or terminated by the above members of the Executive Branch of the United States. The Departments administering the Temporary Protective Status Program are under the direction/jurisdiction of the President of the United States.

The Affiant claims Former President Trump cannot order the deportation of legally admitted immigrants. The problem with Affiant’s position is that the status is temporary. The Department of Homeland Security at this point has extended the Temporary Protected Status of individuals from Haiti until August 3, 2025 (see Agency’s website). The evidence indicates the comments by President Trump are an indication of what he intends to do if he is elected to the Office of President of the United States of America. It appears that the President of the United States could order individuals from Haiti who are here under Temporary Protected Status as implemented under current guidelines to leave the United States or be deported after August 3, 2025. It also appears that, if elected he would have the authority to extend, re-designate or terminate the program at his discretion. If he decided to do any of the above he would be acting in his official capacity as President of the United States. The United States Supreme Court has re-affirmed the President of the United States has absolute immunity for any official acts that involve the core duties of the Office of President.

The statements at issue concerning deportation appear to be statements of intent as to how former President Trump intends to exercise his discretion on an immigration matter if he is elected to another term as President.

The crime of Aggravated Menacing requires that” the offender will cause serious physical harm to the person or property of the other person.” Once again the affiant does not specify an individual victim. Deportation could be quite distressful to an individual who wishes to stay in the United States but does not rise to the level of serious physical harm as defined in Ohio Revised Code Section 2901.01 (A) (5). The vague allegation contained in the Affidavit does not rise to the level of probable cause that a violation of the Aggravated Menacing statute has occurred.

The Court finds that, based on the information provided in the Amended Bench Memorandum and the Affidavit that probable cause DOES NOT EXIST and/or is not meritorious as to the charges that the Affiant is requesting to be filed against former President Trump and Senator Vance.

The Court will now turn its attention to the question of whether the Court has reason to believe that the action was not filed in good faith. The Court has a number of concerns regarding the filing of this action.

This action is filed within sixty days of the Presidential election. The question always arises in such cases as to whether filings are filed in a manner to affect an election without giving the accused sufficient opportunity to defend the action before an election occurs. There was a significant amount of material submitted to review in this case. It took many hours to adequately review and consider the points made.

The original Bench Memorandum asks the Court to “forthwith issue warrants for Trump’s and Vance’s arrests.” It goes on to state “This should be done before Trump fulfills his threat to visit Springfield.....so that he may be arrested upon arrival for his criminal acts.” It should be the goal of Counsel that this action is evaluated thoroughly and that a fair resolution be obtained. It should not be to influence where a Presidential and/or Vice Presidential candidate chooses to campaign. It should not be to stage an event where a Presidential and/or Vice Presidential candidate can be arrested if they arrive in Clark County, Ohio.

The language used to advocate for the action is troubling to the Court. It is noted that she interprets former President Trump’s announcement that he will visit Springfield as a “threat.” The Court

does not interpret the announcement, which I saw in the materials as a “threat.” The Bench Memorandum and Affidavit constantly refer to the statements in issue as “lies”, As noted in the Court’s decision the evidence produced does not even establish probable cause that the statements are false much less “lies”.

The Court is also concerned about Counsel’s statements concerning the Prosecuting Attorneys that serve this community. There is nothing in the filing that indicates Counsel has even spoken to a local Prosecutor about his concerns and apparently has no knowledge as to what, if any investigation they may or may not have done in the matters of concern. The Affiant’s Bench Memorandum states:

...”prosecuting attorneys must make a public and transparent decision about whether they stand for the rule of law – or whether they will, by their complete inaction, further coddle Trump and Vance and afford them special treatment that no one else who had wreaked such havoc would be afforded.” (page 6 Amended Bench Memorandum).

The Affidavit goes on in paragraph 156:

“It is our hope and expectation that neither the judiciary nor prosecutors in Springfield will treat Trump and Vance as being above the law. We know if anyone else had wreaked the kind of havoc Trump and Vance have wreaked in Springfield, they would have been prosecuted by now.”

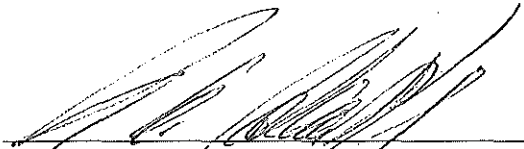
This case revolves around what have been characterized as false and inflammatory comments by former President Trump and Senator Vance. The comments about the Prosecuting Attorneys have nothing to do with the issues that were submitted to the Court for determination. The Court finds it interesting that Counsel would make what the Court would consider to be false and inflammatory comments about the Prosecuting Attorneys who serve Clark County, Ohio. The above statements by Counsel and the Affiant could however, make for interesting quotes in the media.

The Court, as noted in this decision, is particularly concerned about Counsel and the Affiant’s statements that Senator Vance admitted “just making harmful statements up.” The Court considers this to be a significant mischaracterization of the evidence submitted to the Court.

This action is filed by four Counsel. The Court has pointed out what the Court believes to be glaring deficiencies in the requested charges. Counsel states "Further investigation is neither needed nor requested." The Court respectfully could not disagree more.

The Court finds, pursuant to Ohio Revised Code §2935.10 (A) that this Judge "has reason to believe that it (the requested action) was not filed in good faith". The Court also finds, pursuant to Ohio Revised Code §2935.10 (A), that the claim is "not meritorious". Both findings are for the reasons set forth in this concurring opinion.

Having made the above findings, Ohio Revised Code §2935.10 leaves this Court with only one option. The Court hereby refers the matter to the Clark County Prosecuting Attorney for investigation.



Stephen Schumaker, Judge

EXHIBIT B

IN THE CLARK COUNTY MUNICIPAL COURT

In re: Criminal Charges Against Donald J. Trump and James David ("JD") Vance	Matter No. 24SPM100 Judge (<i>En banc</i>)
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AMENDED BENCH MEMORANDUM IN SUPPORT OF THE ATTACHED AMENDED R.C. 2935.09(A) AND (D) AFFIDAVIT OF GUERLINE JOZEF ON BEHALF OF THE HAITIAN BRIDGE ALLIANCE CRIMINALLY CHARGING DONALD J. TRUMP AND JAMES DAVID (JD) VANCE.

Guerline Jozef, on behalf of the Haitian Bridge Alliance, Inc., respectfully offers this amended bench memorandum in support of the attached amended affidavit under R.C. 2935.09(A) and (D). (The amended affidavit adds a charge of inducing panic and includes a few additional facts supporting that charge. This amended memorandum reflects these additions and adds law addressing Trump's and Vance's anticipated, ineffective First Amendment defense to the amended affidavit's charges.) The amended affidavit—which is properly submitted under the plain language of the statute to a *judge* of this Court for review and not the prosecutor's office—charges Donald J. Trump and James David (JD) Vance with the following criminal offenses:

- R.C. 2909.04(A) and (B) (Disrupting Public Services),
- R.C. 2917.32(A) (Making False Alarms),
- R.C. 2917.31(A) (Inducing Panic),
- R.C. 2923.03(A) (Complicity),
- R.C. 2917.21(A) (Telecommunications Harassment),
- R.C. 2903.21(A) (Aggravated Menacing) (as to Trump only),
- S.C.O. § 509.06 (Inducing Panic),
- S.C.O. § 537.08 (Telecommunications Harassment),

SHEILA E. NOE, CLERK
MUNICIPAL COURT
BY  DEPUTY

24 SEP 30 PM 3: 52

FILED

- [S.C.O. § 501.10](#) (Complicity).

The Haitian Bridge Alliance and Ms. Jozef respectfully request that this Court make independent findings of probable cause based on the facts presented—and issue warrants for Trump’s and Vance’s arrests.

1. **R.C. 2935.09 authorizes private citizens to file criminal charges and requires this Court to issue arrest warrants if the charges, as is the case here, are supported by probable cause and filed in good faith.**

R.C. 2935.09(D) authorizes a private citizen to file an affidavit charging criminal offenses.

R.C. 2935.09 (Person having knowledge of offense to file affidavit—official review before complaint filed) provides, in relevant part:

- (A) As used in this section, “reviewing official” means a **judge of a court of record**, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate.
- (B) In all cases not provided by sections 2935.02 to 2935.08 of the Revised Code, in order to **cause the arrest or prosecution of a person charged with committing an offense in this state**, a peace officer or a **private citizen having knowledge of the facts** shall comply with this section.

- (D) **A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court** or before the magistrate. A private citizen may file an affidavit charging the offense committed with the clerk of a court of record before or after the normal business hours of the reviewing officials if the clerk's office is open at those times. A clerk who receives an affidavit before or after the normal business hours of the reviewing officials shall forward it to a reviewing official when the reviewing official’s normal business hours resume.

(Emphasis added.)

When the R.C. 2935.09(D) affidavit charges a felony, as the amended affidavit does here, R.C. 2935.10(A) (Filing of affidavit or complaint procedure) commands as follows:

- (A) Upon the filing of an affidavit or complaint as provided by section 2935.09 of the Revised Code, if it charges the commission of a felony, such judge, clerk, or magistrate, unless the judge, clerk, or magistrate has reason to believe that it was not filed in good faith, or the claim is not meritorious, shall forthwith issue a warrant for the arrest of the person charged in the affidavit, and directed to a peace officer; otherwise the judge, clerk, or magistrate shall forthwith refer the matter to the prosecuting attorney or other attorney charged by law with prosecution for investigation prior to the issuance of warrant.

In short, unless the judge has reason to believe the charge was not filed in good faith, or the claim is not meritorious (that is, lacks probable cause), the court must forthwith “issue a warrant for the arrest of the person charged” that’s “directed to a peace officer.” *Accord State v. Fraley*, 2020-Ohio-3763, ¶ 13 (12th Dist.).

Even if prosecutors disregard a probable-cause finding and discontinue a prosecution—which they shouldn’t here—R.C. 2935.09 establishes a process through which a “private citizen” may “cause an arrest or prosecution” against a person known to have committed a crime. To accomplish this purpose, a civilian may simply “file an affidavit charging the offense committed” with a judge. R.C. 2935.09(A) and (D). From there, “R.C. 2935.10 governs the procedure” that must be followed. *State ex rel. Boylen v. Harmon*, 2006-Ohio-7, ¶ 10.

The statutes plainly state the procedure. If a citizen files an affidavit charging a felony, the reviewing judge “must issue a warrant for the arrest of the person charged” unless there is reason to believe the charge lacks merit or was filed in bad faith. *Boylen* at ¶ 7; R.C. 2935.10(A). And that warrant must be “directed to a peace officer.” R.C. 2935.10(A). “[O]therwise,” a judge is required to “refer the matter to the prosecuting attorney” if there are concerns that the filing is not in good faith for if further investigation is required. *Id.*

Sometimes a court’s statutory authority can be misunderstood. For example, in *In re: Affidavits Relating to Timothy Loebmann & Frank Garmbach, et al.* at 4, 7–8 (attached to the

accompanying Affidavit of Guerline Jozef), the Cleveland Municipal Court properly understood the judge's role in making a probable-cause determination within a citizen-initiated criminal proceeding under R.C. 2935.09(D) and 2935.10, and found probable cause. But the court's attention was diverted by a superficial conflict between Crim.R. 4(A) and R.C. 2935.10, both of which address the issuance of warrants. The court wrongly concluded that the judge's role is merely advisory.

The Supreme Court of Ohio has rejected that analysis:

There is no conflict here between R.C. 2935.10 and Crim.R. 4(A). Crim.R. 4(A) applies when affidavits are filed with a valid criminal complaint under Crim.R. 3. R.C. 2935.10 governs the procedure when only affidavits have been filed under R.C. 2935.09.

Boylen, 2006-Ohio-7, at ¶ 10.

Likewise, in *State ex rel. Brown v. Nusbaum*, 2017-Ohio-9141, at paragraph 12, the Court held:

A trial court's obligations with regard to citizen affidavits are defined by R.C. 2935.09 and 2935.10. R.C. 2935.09(D) authorizes a private citizen "who seeks to cause an arrest or prosecution" to "file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney." We read this section *in pari materia* with R.C. 2935.10, which "prescribes the procedure to be followed once a citizen files a criminal complaint" under R.C. 2935.09. *State ex rel. Bunting v. Styer*, 147 Ohio St.3d 462, 2016-Ohio-5781, 67 N.E.3d 755, ¶ 15. If the citizen affidavit charges a felony, R.C. 2935.10 directs a judge who is reviewing the affidavit to do one of two things: (1) "issue a warrant for the arrest of the person charged in the affidavit" or (2) "refer the matter to the prosecuting attorney * * * for investigation prior to the issuance of [a] warrant" *if* the judge "has reason to believe that [the affidavit] was not filed in good faith, or the claim is not meritorious." R.C. 2935.10(A); *see State ex rel. Boylen v. Harmon*, 107 Ohio St.3d 370, 2006-Ohio-7, 839 N.E.2d 934, ¶ 7.

(Emphasis added.) The conditional "if," quoted from the statute, means that the court cannot find probable cause and yet decline to issue an arrest warrant.

Because issuance of a warrant is required whether affidavits have been filed under R.C. 2935.09 or a criminal complaint has been filed under Crim.R. 3 and probable cause exists, there is no reasoned justification *not* to issue a warrant here based solely on the legal status of the individuals asking for it or the absence of a criminal complaint.

Indeed, if a citizen cannot cause a warrant to issue by filing such an affidavit, that would raise the question of how a “peace officer who seeks to cause an arrest or prosecution” can also accomplish the same thing through a judicial officer without the help of a prosecutor using the same statutory scheme. R.C. 2935.09(C); *see* R.C. 2935.10(A) (requiring a court to act upon “the filing of an affidavit or complaint as provided by section 2935.09 of the Revised Code” (which includes peace-officer affidavits) without conditioning that requirement on the identity of the individual filing the affidavit).

As this Court knows, Ohio’s police officers regularly rely on that mechanism to charge suspected criminals and acquire warrants for their arrest. Because R.C. 2935.10(A) does not distinguish between an affidavit filed by a peace officer under R.C. 2935.09(C) and one filed by a private citizen as permitted by R.C. 2935.09(D), this Court should respond the same way in either case by issuing a warrant if probable cause exists.

Regardless of a prosecutor’s discretion to choose the State’s course in any given citizen-initiated case, R.C. 2935.10(A) directs a judge to act by issuing a warrant for arrest and directing it to a police officer. After all, only a “a neutral and detached magistrate” has the power to consider the available evidence and issue an arrest warrant carrying the force of law. *Johnson v. United States*, 333 U.S. 10, 14 (1947). Under constitutional principles, the decision about whether a person suspected of a crime should be arrested “cannot” be “judged by the officer engaged in the often competitive enterprise of ferreting out crime.” *Id.* So, within that fundamental legal framework, an application of R.C. 2935.10(A) serves as a legislative directive that a judge, if satisfied that a citizen has established probable cause to believe a felony was committed, “shall forthwith issue” an arrest warrant. That is a substantive bestowing of jurisdictional authority, not a mere procedural mechanism of the Ohio Rules of Criminal Procedure. *See e.g. State v. Jefferson*, 1999 WL 959189, *3 (2nd Dist.) (holding that where statutory substantive law provides judicial authority to issue a

warrant, that authority cannot be abridged, enlarged, or modified by the Criminal Rules); *State v. Brooks*, 2022-Ohio-2478, ¶ 10 (“[L]aws affecting rights, which may be protected by procedure, are substantive in nature.”); *Havel v. Villa St. Joseph*, 2012-Ohio-552, ¶ 5 (holding that where the legislature creates a statutory right to judicial action (such as bifurcation of trial), the right is “substantive law that prevails over a procedural rule.”).

2. This Court should affirm that there is probable cause based on the facts presented in the affidavit and issue arrest warrants because the statutes require it and because prosecutors have not acted.

Although the facts presented in the affidavit are open and notorious for the world to see, local prosecuting attorneys have not yet acted to protect the community and hold Trump and Vance accountable for the harm they have caused. Since the charges were originally filed on September 24, prosecutors have *still* not acted—even though Ms. Jozef and our firm have prepared the probable-cause affidavit and collected the facts there reported.

Thus, the Haitian Bridge Alliance and Ms. Jozef request that this Court independently find probable cause based on the facts presented and issue arrest warrants for both Trump and Vance. Probable cause having already been determined by this Court, prosecuting attorneys must make a public and transparent decision about whether they stand for the rule of law—or whether they will, by their complete inaction, further coddle Trump and Vance and afford them special treatment that no one else who had wreaked such havoc would be afforded.

3. The probable-cause standard is a low threshold, and the affidavit charging Trump and Vance meets it.

A trial court may issue an arrest warrant or summons under R.C. 2935.10(B) upon a finding of probable cause. Affidavits under R.C. 2935.09(D) are governed by Crim.R. 4, which provides for an independent determination of probable cause by a judge, magistrate, clerk of court, or officer of the court designated by the judge. *State v. Moss*, 2003-Ohio-6053, ¶ 18 (5th Dist.).

The effect is that while the Court can issue an arrest warrant based on the affidavit, it cannot *reject* the complaint without affording the complainant a hearing for the Court to independently determine probable cause, even when the prosecutor disagrees. *See id* at ¶¶ 15, 17, 18, 22.

Crim.R. 4 also contains a lesser hearsay standard, which allows for a finding of probable cause based on hearsay evidence, in whole or in part, when there is a substantial basis for believing both that the hearsay source is credible and that there is a factual basis for the information furnished. Most if not all the evidence presented in the affidavit is not hearsay. The evidence includes videorecorded admissions or written statements, threats, and actions by Trump and Vance themselves, along with government statements by Governor Mike DeWine, Springfield Mayor Robert Rue, and others about the falsity of Trump's and Vance's statements. To the extent there is any hearsay, it comes from reliable and reputable sources. The facts are essentially indisputable.

The Haitian Bridge Alliance asks this Court to find probable cause that criminal charges are warranted for the violated statutes because of the harmful lies repeatedly spewed by Donald J. Trump and JD Vance and their impact on the community. Probable cause exists when the facts and circumstances known, which are reasonably trustworthy, are sufficient to warrant a prudent individual in believing another has committed or is committing an offense. *State v. Cavalier*, 2012-Ohio-1976, ¶ 31 (2nd Dist.) *citing Beck v. State of Ohio*, 379 U.S. 89, 91 (1964).

This is not a high bar. Probable cause is a lower threshold than “by a preponderance of the evidence” because it does not require the precision or high level of certainty needed for a preponderance of the evidence. *See Kaley v. U.S.*, 571 U.S. 320, 338 (2014), *Gerstein v. Pugh*, 420 U.S. 103, 121 (1975). Probable cause relies on a reasonable belief, which is less stringent than proof that something is more likely true than not, as the preponderance-of-the-evidence standard requires. *See State v. Reniff*, 2001-Ohio-4353, ¶ 50 (8th Dist.) (O'Donnell, J. dissenting). And, of course, probable

cause is a far less stringent standard than beyond a reasonable doubt, the standard required for criminal convictions.

The evidence about Trump's and Vance's misconduct recounted in the attached affidavit meets this low threshold. And if anyone else had done what they have done, to the devastating effect experienced in Springfield, police and prosecutors would have filed charges by now. Trump and Vance have knowingly spread a false and dangerous narrative by claiming that Springfield, Ohio's Haitian community is criminally killing and eating neighbors' dogs and cats and killing and eating geese. They accused Springfield's Haitians of bearing deadly disease. They repeated such lies during the presidential debate, at campaign rallies, during interviews on national television, and on social media.

The direct impact on Springfield, Ohio of Trump's and Vance's unrelenting lies cannot be overstated. During the last two weeks, Springfield has received 33 bomb threats. Many public institutions have been forced to evacuate, and vital local resources have been diverted to investigate the barrage of threats to the community. As detailed in the attached, incorporated affidavit, the Haitian Bridge Alliance seeks arrest warrants for Trump and Vance because they

- **disrupted public services** in violation of R.C. 2909.04(A) and 2909.04(B) by causing widespread bomb and other threats that have resulted in massive disruptions to the public services in Springfield, Ohio.
- **made false alarms** in violation of R.C. 2917.32(A) by knowingly causing alarm in the Springfield, Ohio community by continuing to repeat lies that state and local officials have said are false.
- **induced panic** in violation of R.C. 2917.31(A) and S.C.O. § 509.06 by causing serious public inconvenience or alarm by continuing to repeat lies that state and local officials have said are false.
- **committed telecommunications harassment** in violation of R.C. 2917.21(A) and S.C.O. § 537.08 by spreading claims they know to be false during the presidential debate, campaign rallies, nationally televised interviews, and social media.

- **committed aggravating menacing** in violation R.C. 2917.21(A) by knowingly making intimidating statements with the intent to abuse, threaten, or harass the recipients.
- (as to Trump only) **committed aggravated menacing** in violation of R.C. 2903.21(A) by Trump’s knowingly causing members of the Springfield, Ohio Haitian community to believe they would be subject to serious physical harm from him to their person or property, with his threat to forcibly deport them to Venezuela, a land they have never known.
- **violated the complicity** statute, R.C. 2923.03(A) and ordinance, S.C.O. § 501.10, by conspiring with one another and spreading vicious lies and, in Trump’s case, the threat that also caused innocent parties to be parties to their various crimes.

Regarding the 2014 police killing of 12-year-old Tamir Rice, the Cleveland Municipal Court found probable cause to support criminal charges in *In re: Affidavits Relating to Timothy Loehmann & Frank Garmback*. A copy of the Cleveland Municipal Court’s order finding probable cause based on the then-affiants’ R.C. 2935.09 affidavit is attached after Guerline Jozef’s affidavit as supporting authority for the municipal court’s authority to make a probable-cause determination, although, as discussed above, that court should have complied with the General Assembly’s express empowerment of the Court with substantive jurisdiction to, and direction to, issue an arrest warrant.

4. Invoking the First Amendment would not protect Trump and Vance from their criminal misconduct.

Like those who falsely shout “fire!” in a crowded theater, Trump and Vance do not color within the lines of the First Amendment. *Schenk v. United States*, 249 U.S. 47, 52 (1918). They commit criminal acts. This was no accident. Trump’s and Vance’s criminal conduct was both directed to and *likely to produce* the effects seen in Springfield. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Not only were bomb threats, evacuations, and chaos the likely outcomes of their actions, the results played out in real time for Trump and Vance to see. Trump and Vance had every opportunity to remedy the situation. Trump or Vance could have acted at any time to quell the disaster they caused in Springfield, but to them the effects of their conduct were, as Trump said, not “real problems.”

(¶ 62).

Although political speech is generally afforded the highest level of constitutional protection (see, e.g., *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 915 (1982)), the criminal charges against Trump and Vance address conduct the First Amendment does not protect. *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949) (“The constitutional freedom of speech and press does not immunize speech or writing used as an integral part of conduct in violation of a valid criminal statute.”).

The following Ohio criminal cases rejecting First Amendment defenses illustrate the point.

a. Trump and Vance cannot use free speech as an excuse to *induce panic*.

R.C. 2917.31(A) (Inducing Panic) provides, in relevant part:

(A) No person shall cause the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by doing any of the following:

- (1) Initiating or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that such report or warning is false;**
- (2) Threatening to commit any offense of violence;**
- (3) Committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.**

(emphases added).

In *State v. Loless*, the defendant, Loless, was criminally charged with inducing panic under R.C. 2917.31 for spreading false reports to local Columbus television stations and newspapers of sabotage done to local bridges. 31 Ohio App.3d 5, 6 (10th Dist.1986). The trial court rejected defendant’s purported First Amendment defense, holding the statute was constitutional on its face and as applied to Loless.

The appeals court affirmed, finding the statute is neither impermissibly vague nor overbroad as applied to Loless’s speech: “The right of free speech is not without limits. Speech is not an absolute above and beyond the control of the legislature. Statements alone may have the effect of

force and fall outside First Amendment protection.” *Loless* at 6. The appeals court emphasized that “[w]hile the right of free speech entitles citizens to express their ideas, beliefs, and emotions, regardless of their popularity, it does not extend to the threatening of terror, inciting of riots, or *verbalizing of false information that induces panic in a public place.*” *Loless* at 6 (emphasis added).

Trump and Vance are not charged for their repugnant ideas or beliefs, but for their criminal acts and their effects. Just as in *Loless*, Trump and Vance initiated and circulated reports and warned of alleged and impending crimes and other catastrophes, knowing that the reports and warnings are false. *R.C. 2917.31(A)(1)*. Both committed this—and the other offenses charged—with reckless disregard of the likelihood that their commission will cause serious public inconvenience or alarm. *R.C. 2917.31(A)(3)*. Trump threatened lawless deportation (requiring violence) of immigrants here lawfully. *R.C. 2917.31(A)(2)*. Trump and Vance induced panic in the community.

Just as in *Loless*, the speech went further than a simple airing of grievances and crossed into threats to public order and safety. Just as in *Loless*, they “*verbaliz[ed] false information that induce[d] panic in a public place.*” Trump and Vance not only knew their statements are false, they knew the power of their words from their privileged platforms. Even after seeing the bomb threats, facility evacuations and closures, and chaos resulting from their falsehoods in the Springfield community—and knowing the governor and mayor were saying what they were saying is false and asking that falsehoods stop (Mayor Rue: “We need help, not hate.”)—they persistently and relentlessly doubled, tripled, and quadrupled down on their false claims and inducement of panic. They placed inducing panic through these false claims above the safety of the Springfield community.

Their conduct falls within the bounds of the statute, and squarely outside of First Amendment protection.

b. Trump and Vance cannot use free speech as an excuse to *make false alarms*.

R.C. 2917.32(A)(1) (Making False Alarms) provides that

(A) No person shall do any of the following:

- (1) **Initiate or circulate a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that the report or warning is false and likely to cause public inconvenience or alarm...**

(emphases added).

Although false statements do not inherently lack First Amendment protection, the context can create a compelling interest in government regulation. *United States v. Alvarez*, 567 U.S. 709, 721–22 (2012). In *City of Centerville v. Knab*, the defendant was charged under R.C. 2917.32(A) (making false alarms) for making a false report to law enforcement of an active shooter in his residence and that a person had been shot. 2019-Ohio-1903, ¶¶ 17–20 (2nd Dist.). The trial court convicted Knab of the offense.

The appeals court affirmed, holding that Knab’s actual knowledge of the falsity of his statements made them criminal when communicated as a false report to law enforcement. The context of the false statement—being a false report to law enforcement—allowed the criminal conduct to be proscribed. The statute’s legislative history centers context within the analysis, as the drafters noted “a false alarm *made with the knowledge it is likely to cause public inconvenience or alarm* is an offense under this section *regardless of to whom it is made*.” OHIO LEGIS. SERV. COMM’N, R.C. 2917.32 (1973). They illustrated this point by adding that “circulating a false report that the dam has broken may be an offense, even though the report is not made to a police or fire department.” This is consistent with the *Loles* decision discussed above in the context of inducing panic, in which the convicted defendant circulated false reports to the media. Just like Trump and Vance.

Trump’s and Vance’s case is like *Knab*. In *Knab*, the defendant’s mother repeatedly told him no one was in the house with a gun. No eyewitnesses reported seeing any armed assailants in the

home. No firearms were discovered in the home. And no bullet holes, blood, or injured victims were discovered. It was a verifiably false report that the court concluded Knab knew was false and reported anyway.

The same is true of Trump and Vance. They circulated through media their false reports of the dam breaking—Haitian immigrants killing and eating Springfield pets—with full knowledge the claims were false. Knowing the power of their words over people, they knew that such inflammatory false statements would cause alarm; they were already witnessing the alarm unfold in Springfield while continuing to make their claims. These false statements, in this context, enjoy no First Amendment protection. These are statements that the state can rightly criminalize in the interest of public safety and peace, just as the General Assembly did in adopting R.C. 2917.32.

c. Trump and Vance cannot use free speech as an excuse to *disrupt public service*.

R.C. 2909.04 (Disrupting Public Services) provides, in relevant part, as follows (it should be read with the relevant parts of the Complicity statute, R.C. 2923.03(A):

- (A) **No person, purposely by any means** or knowingly by damaging or tampering with any property, shall do any of the following:
- (1) **Interrupt or impair television, radio, telephone, telegraph, or other mass communications service; police, fire, or other public service communications; radar, loran, radio, or other electronic aids to air or marine navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications;**
 - (2) **Interrupt or impair public transportation, including without limitation school bus transportation, or water supply, gas, power, or other utility service to the public;**
 - (3) **Substantially impair the ability of law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.**
- (B) **No person shall knowingly use any computer, computer system, computer network, telecommunications device, or other electronic device or system or the internet so as to disrupt, interrupt, or impair the functions of any police, fire, educational, commercial, or governmental operations.**

(emphases added).

The State’s compelling interest in protecting public safety and order allows for the legislature to regulate conduct that interferes with vital public services like police, fire, and government functioning. The reasoning in the caselaw applied to the statutes discussed above applies with equal force here. Just as with making false alarms and inducing panic, the speech at issue goes beyond simple rhetoric and becomes integral to a criminal act. The *Knab* court acknowledged that the context of the speech, whether to cause panic in the streets or make a false report to law enforcement, is key to whether First Amendment protections apply. As the *Loless* court stated, otherwise-protected speech coupled with criminal purpose may “have the effect of force to fall outside First Amendment protection.” The disrupting-public-services statute’s drafters made it clear that the manner of doing so doesn’t matter; it’s the *purpose* that matters. OHIO LEGIS. SERV. COMM’N, R.C. 2909.04 (1973) (“[t]o be a violation of this section, the interference must either be purposeful, *regardless of the means employed*, or must involve knowingly damaging or tampering with property.”) (emphasis added).

Here, the purpose, the context, and the severe disruption are readily apparent. Trump and Vance engaged in a purposeful pattern of conduct to impede public services in Springfield. Despite seeing that Springfield was suffering from repeated bomb threats, evacuations, hospital lockdowns, necessity of state-trooper deployment, and closures of government buildings, they continued to double, triple, and quadruple down on their false claims. City officials appealed to Trump and Vance repeatedly, saying “we need help, not hate,” to no avail. Trump’s and Vance’s refusals to stop, despite serious chaos they were inflicting and the governor’s and mayor’s pleas, highlights their criminal purpose in spreading these lies. The chaos caused *was* the purpose, and the First Amendment affords no protection for that campaign of criminal conduct.

d. Trump and Vance cannot use free speech as an excuse to *engage in telecommunications harassment.*

In *Plunderbund v. DeWine*, a group of political bloggers sued the Ohio attorney general, challenging the constitutionality of portions of R.C. 2917.21 (telecommunications harassment) on First Amendment grounds. The District Court dismissed the matter, recognizing minimal risk of chilling protected expression when R.C. 2917.21's purpose is to stop "criminal conduct, not the expression of offensive speech." *Plunderbund Media, L.L.C. v. DeWine*, 312 F.Supp.3d 654, 666 (N.D. Ohio 2018).

Telecommunications for a legitimate lawful purpose are not prohibited, just those communications made to abuse, harass, and threaten others. The 6th Circuit affirmed the dismissal, differentiating criminalizing political expression from criminalizing communications made with the specific intent to abuse, harass, and threaten. *Plunderbund Media, L.L.C. v. DeWine*, 753 Fed.Appx. 362, 369 (6th Cir. 2018). This approach is consistent with how Ohio courts have construed harassment within the statute's meaning. *See e.g. State v. Ellison*, 178 Ohio App.3d 734, 737 (1st Dist. 2008) (declining to apply R.C. 2917.21 where there was insufficient evidence that the accused "intended to alarm or to cause substantial emotional distress to the recipient.>").

Trump's and Vance's relentless and persistent communications were not just hateful, they were calculated to stir alarm and emotional distress in the community. They perpetuated abuse and harassment of Springfield's Haitian community (and the community at large), crossing from political speech to criminal conduct, with the necessary intent for which Ohio courts look. What separates the legitimate protected speech from the criminal act is the intent. Trump and Vance exceeded the boundaries of political rhetoric when they knowingly took salacious rumors about crimes supposedly committed by Haitians—claims they knew are false—and amplified them to a national audience to cause further trouble. They were confronted with both the falsity of their claims and the devastating impacts on the Springfield community, yet chose to keep going anyway. Their actions were not

calculated to create a dialogue about immigration issues in Ohio, but to specifically target and demonize Haitians in Springfield in a way that threatened community safety and security for the entire community. The First Amendment does not protect these actions. Trump and Vance intended to harass Haitians in Springfield and the entire community as a result. Just because it serves their political agenda to harass Haitian immigrants does not make the act of telecommunications harassment any less criminal.

e. Trump cannot use free speech as an excuse to *engage in aggravated menacing*.

In *City of Dayton v. Dunnigan*, the defendant was charged with aggravated menacing after threatening workers at an abortion clinic while protesting there. 103 Ohio App.3d 67 (2nd Dist. 1995). The trial court convicted Dunnigan, holding that his inability to immediately carry out the threats was an immaterial defense. On appeal, the appeals court affirmed judgment, holding that threats that intimidate or cause fear or apprehension in the recipient do not receive First Amendment protection. The court noted that “[i]t makes no difference, furthermore, that Dunnigan was exercising his constitutionally protected right to protest abortions at the time he made the threats.” *Dunnigan* at 71. Threats, regardless of when they are made, fall outside of the First Amendment.

Just like in *Dunnigan*, Trump engaged in otherwise constitutionally protected speech at the time he made his threats against the Haitian community. The underlying political speech is target of neither the statute nor the particular charges against Trump. They target they action of making others believe the perpetrator will cause serious physical harm to their person or property. Such threats are not protected by the First Amendment.

Trump threatened that he would conduct mass deportations of Springfield’s Haitian immigrants, who are lawfully residing in this country, to Venezuela—a land they have never known. That is a lawless threat of force. As in *Dunnigan*, it does not matter that Trump currently lacks the

power to carry out those threats. What matters is the message sent to the Haitian people in Springfield: you will be forced from your homes and sent to a county you've never known.

The First Amendment doesn't protect that type of physical threat.

f. Trump and Vance cannot use free speech as an excuse to be *complicit*.

Speech integral to criminal conduct is among the categories of speech long recognized by the U.S. Supreme Court as falling outside of the First Amendment. In *Giboney*, union organizers were sued by a supply company after picketing to pressure the company into supplying products only to union retailers, a practice that would have been against state law. *Giboney*, 336 U.S. at 491–93. On appeal, the U.S. Supreme Court affirmed judgment for the supply company, declining to view the picketing union members' actions in isolation. While engaged in otherwise protected speech, picketing, they were engaged in “a single and integrated course of conduct, which was in violation of Missouri's valid law.” *Giboney*, 336 U.S. at 498. The unlawful conduct of soliciting and causing others to break the law does not become less criminal whether communicated privately or at a lectern.

Trump and Vance are complicit in recruiting others, conspiring with and aiding and abetting one another, and in causing others to commit offenses against the Springfield Haitian community. The speech they used to cause others to commit those offenses is speech integral to criminal conduct. Just as in *Giboney*, Trump and Vance engaged in a campaign of lies to solicit, procure, and cause others to further their harms against Haitian immigrants in Springfield. Trump and Vance framed Springfield's Haitian community as disease-ridden, murderous, and an imminent threat to their neighbors' persons and property. They knew these remarks were likely to cause harassment of Haitians in Springfield, and that their false claims would lead others to cause massive disruptions to Springfield's public services. That is exactly what occurred. Both men knew what they were doing and persisted even as chaos ensued. Their conduct resulted in over 33 bomb threats and threats against city officials and individuals, some overtly expressing the same vitriol Trump and Vance were

engaged in spreading. Hospitals were locked down. Schools, colleges, and government buildings were evacuated and closed. Parents and children were filled with fear and their lives were disrupted. The First Amendment does not shield their criminal conduct just because they used their lectern to perpetrate it.

5. Conclusion.

Committing criminal acts in the context of political speech does not launder the criminality from the act. There is a compelling state interest in preserving order and public safety. This is served by ensuring wrongdoers like Trump and Vance, who cause false alarms, incite panic, make threats, and harass members of the community, and knowingly and purposely cause others to do so, are punished. The criminal statutes charged here seek to do just that.

Trump and Vance could not have reasonably thought their claims were true. At every turn, fact-checkers, press, the governor, the mayor, the city manager, Springfield residents, and others told Trump and Vance that their claims were baseless. Trump's and Vance's deliberate ignorance does not excuse their criminal conduct. A defendant is criminally liable when he "deliberately close[s] his eyes to what would otherwise have been obvious." *See, e.g., State v. Wiseman*, No. 2023 CA 00004, 2023-Ohio-4263, at ¶ 15 (Nov. 27, 2023 5th Dist. Fairfield). Trump and Vance are equally culpable whether they had "positive knowledge or deliberate ignorance." *Id.*

Thus, the Haitian Bridge Alliance and Guerline Jozef charge Donald J. Trump and JD Vance of crimes against the people of Ohio. They support their criminal charges with the attached affidavit. They ask this Court to treat Trump and Vance the same way anyone else would be treated for the crimes committed, and, as R.C. 2935.10(A) expressly requires, *forthwith* issue warrants for Trump's and Vance's arrests.

This should be done before Trump fulfills his threat to visit Springfield—despite Mayor Rob Rue's request that he not do so—so that he may be arrested upon arrival for his criminal acts.

Dated September 30, 2024

Respectfully submitted,



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IN THE CLARK COUNTY MUNICIPAL COURT

In re: Criminal Charges Against Donald J. Trump and James David (“JD”) Vance	Case No. 24SPM100 Judge _____
AMENDED AFFIDAVIT OF GUERLINE JOZEF CHARGING DONALD J. TRUMP AND JD VANCE WITH CRIMINAL ACTS	

I, Guerline Jozef, being duly sworn according to law, testify as follows on behalf of the Haitian Bridge Alliance, Inc.:

1. I am a private citizen over the age of 18. I have personal knowledge of and am competent to testify regarding the matters discussed below.
2. I am the co-founder and executive director of the Haitian Bridge Alliance, Inc., a national, grassroots, nonprofit community organization that advocates for fair and humane immigration policies and provides migrants and immigrants with humanitarian, legal, and social services, with a particular focus on Black people, the Haitian community, women and girls, LGBTQIA+ individuals, and survivors of torture and other human-rights abuses.
3. We focus on the issues unique to Black migrants and build solidarity and collective movement toward policy change. We collaborate with Black migrant communities throughout the United States, progressive coalitions fighting anti-Blackness and advocate locally, nationally, and internationally for fair and just immigration policies.
4. Haitian Bridge Alliance launched a pilot project in 2024 that connected recent Haitian immigrants to labor-union apprenticeship programs in Ohio. We provided language, technical, and social support to apprenticeship applicants so they could successfully complete the programs. Our staff built and maintained strong relationships with the apprenticeship graduates and continued to support them as they were placed in jobs. Several of the Haitian immigrants we supported relocated to live and work in Springfield, Ohio, and all are legally employed there. Since Trump and Vance’s false and malevolent comments against Haitians started in September 2024, our staff maintained close contact with the Haitian immigrant workers and built relationships with other community members in Springfield to help them navigate the resulting backlash.

PURPOSE OF THIS AFFIDAVIT

5. This affidavit criminally charges Donald J. Trump and James David (JD) Vance under [R.C. 2935.09\(D\)](#). We seek their arrest and prosecution and ask that a reviewing official under R.C. 2935.09(A), in particular, a judge, “review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court.”

6. Over the last two weeks, both Trump and Vance led an effort to vilify and threaten the Haitian community in Springfield, Ohio. Together, they spread and amplified the debunked claim that Haitians immigrants in Springfield are eating cats, dogs, and wildlife.
7. **We do not have to guess at the motivation behind these actions; Vance has publicly admitted that he and Trump “have to create stories” for media attention.**
8. These lies have had devastating results. Thirty-three bomb threats across Springfield within the last two weeks. Hospitals, schools, universities, and government offices were all evacuated after receiving racially charged threats. Springfield government officials and their families received threats. Trump and Vance’s lies have harmed the Springfield community, and their lies have violated criminal law.
9. All the Haitian immigrants and community members to whom we have spoken have told us that, before Trump’s and Vance’s comments, they found people in Springfield to be welcoming, nice, and helpful. But since the comments earlier this month, Haitians are receiving hostile comments and feel like they are constantly being watched by people at work and in their neighborhoods.
10. One Haitian man said that on or around September 12, 2024, while he was walking in downtown Springfield to City Hall, a white man driving by in a car yelled at him, “Trump is coming for you.” He was frightened and did not know if the driver yelling at him was armed or would attack him.
11. Several of the Haitian workers we support have complained that their colleagues at work repeatedly ask them whether they are cat-eaters. They feel uncomfortable and unsafe at work because, with their language difficulties and not yet being fully fluent in English, they cannot judge how their colleagues feel about them and whether they are at risk of being fired or physically harmed.
12. Many of the people we have spoken to left Haiti because they suffered politically motivated violence and persecution, and they have reported feeling scared for their physical safety all the time because of Trump and Vance’s comments. They are terrified that, if Trump and Vance win the elections, they will be harassed even more and even become victims of violence.
13. Some have reported feeling so scared that they do not feel like going to work because they do not know what could happen to them at work or on their way to work. Others have said they do not want to be out at night for fear of what could happen to them. They do not want to talk to people as they would have, like by asking for directions on the street, because they do not know whom they can trust or who may want to harm them. We have learned that the stress and unpredictability is so high that Haitians are quitting their jobs and leaving Ohio for good.
14. And we are familiar with a September 21, 2024 incident involving someone who threatened a Springfield Haitian family—a man and his three children—with a gun in the garage in their own home, telling them to shut up. He has been charged. And they fear retaliation.

SUMMARY OF TRUMP'S AND VANCE'S LEGAL VIOLATIONS

15. Ohio law provides courts with avenues to hold Trump and Vance accountable for their illegal actions. The following affidavit details the facts outlining Trump's and Vance's violations of four Ohio statutes and two parallel Springfield codified ordinances.
16. Trump and Vance are major public figures whose words have tremendous power. And they know that. By spreading vicious rumors about Springfield's Haitian community killing and eating cats, dogs, and geese, and bearing disease, Trump and Vance are complicit in harming innocent people. And they are also causing innocent parties across the media, state, and country to perpetuate the false claims, in violation of R.C. 2923.03 (**Complicity**) and Springfield Codified Ordinance (S.C.O.) § 501.10 (**Complicity**).
17. The chaos caused by Trump's and Vance's false allegations have led to the massive disruption of public services in Springfield in violation of R.C. 2909.04 (**Disrupting Public Services**). As Trump and Vance continue to spread their lies, the Springfield community has experienced widespread bomb threats, schools have been evacuated and closed, and hospitals have been locked down. Since Trump and Vance began their campaign of lies, Springfield public services have been diverted to investigating these threats and the community has been left in distress and disarray from Trump and Vance's self-serving misinformation.
18. Despite multiple state officials publicly stating that there is no truth to their claims, Trump and Vance continue to spread statements about Springfield's Haitian community they know are false. Trump and Vance intentionally made both their statements about migrants abducting and consuming family pets, and their claims that legal migrants are illegal and spreading disease, to cause alarm in the Springfield community and violate R.C. 2917.32 (**Making False Alarms**).
19. The panic that spread from Trump and Vance's knowingly false claims caused serious public inconvenience and alarm to Springfield residents, in violation of R.C. 2917.31 (**Inducing Panic**). When the economic impact on Springfield (discussed below) is tallied, Trump and Vance's violation only increases in severity, with R.C. 2917.31(C)(4) establishing increasing felony enhancements for economic harm of \$1,000 (fifth degree), \$7,500 (fourth degree), and \$150,000 (third degree). Also, when a perpetrator inducing panic causes a school or higher-educational institution to be evacuated, this is a second-degree felony.
20. By repeatedly spreading claims they know to be false on their various social media, televised interviews, campaign rallies, and the presidential debate, Trump and Vance engaged in telecommunications harassment in violation of both R.C. 2917.21 and S.C.O. § 537.08 (both criminalizing **Telecommunications Harassment**).
21. Ohioans have been harmed by Trump and Vance's hate and fearmongering. Trump and Vance may act like they are above the law. But they are not. Their conduct was committed in no official capacity and is protected by no immunity.

22. Ohio law should be enforced to hold Trump and Vance accountable—just like any other person who wreaked the kind of havoc they have.

FACTS

23. The city of Springfield, Ohio has a population of roughly 60,000 residents, with about 15,000 Haitian immigrants living and working there. Employment opportunities with local automotive machining and vegetable packing plants have drawn many immigrants to Springfield.

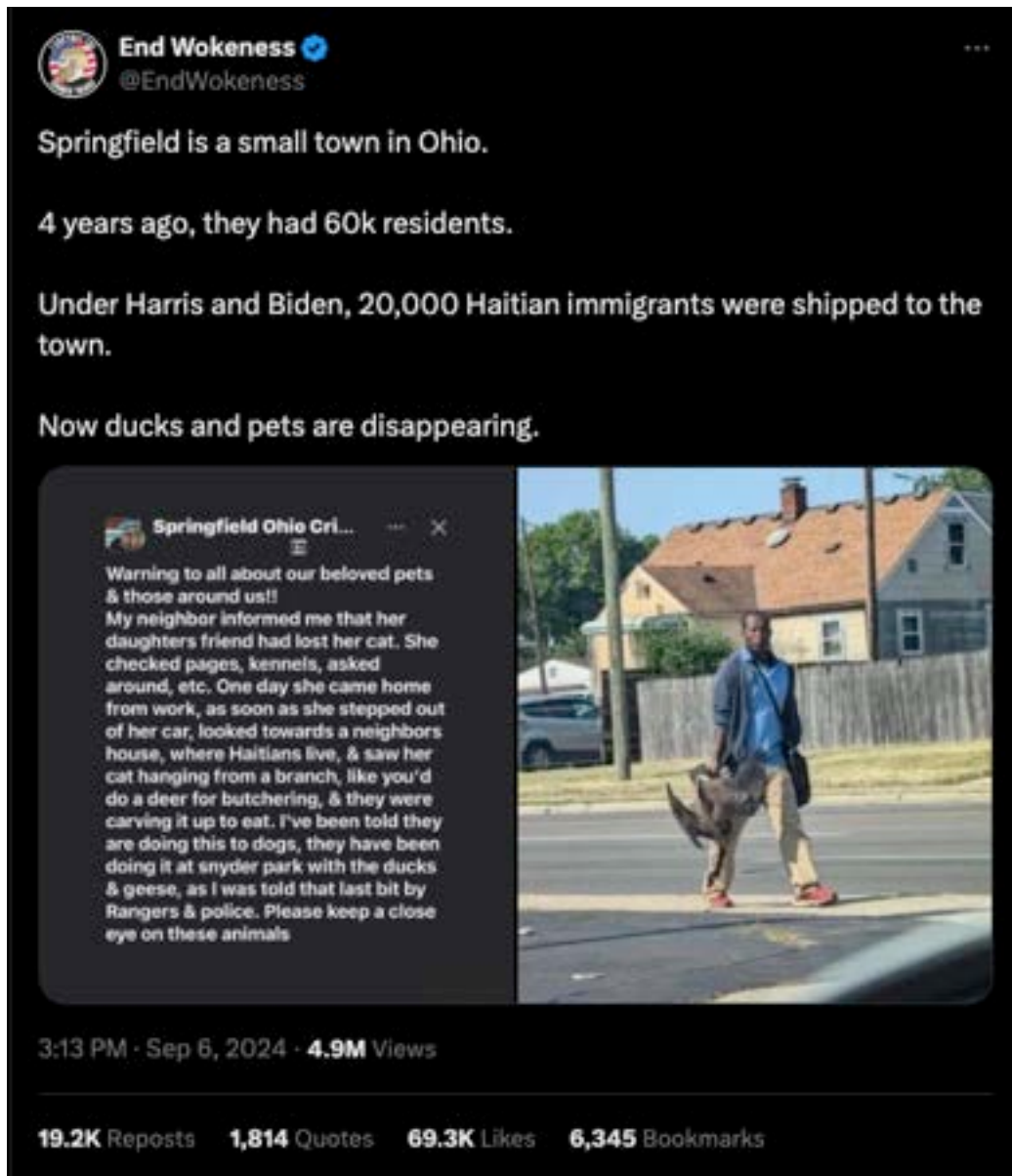
PBS News Hour, *Ohio city with Haitian migrant influx thrust into political spotlight*, YOUTUBE (Sept. 9, 2024), <https://www.youtube.com/watch?v=FA80DOcJnu8&t=6s> (interviewing several Haitian immigrants on why they moved to Springfield).¹

24. In early August 2024, users on the far-right social-media platform Gab began a rumor that Haitian immigrants in Springfield were eating local pets. The earliest mention of this allegation is a comment by a user under screen name “bri ory.” The comment stated “once haitians [*sic*] swarm into a town animals start to disappear,” and was left under a photo of the neo-Nazi group “Blood Tribe” marching through Springfield protesting Haitian migrants and waving Swastika flags.

Huo Jingnan & Jasmine Garsd, *JD Vance spreads debunked claim about Haitian immigrants eating pets*, NAT’L PUB. RADIO (Sept. 10, 2024), <https://www.npr.org/2024/09/10/nx-s1-5107320/jd-vance-springfield-ohio-haitians-pets> (discussing the origins of the claim that Vance circulated).

25. On September 6, 2024, the X—formerly Twitter—account “@EndWokeness” posted a screenshot of a Facebook post alleging Haitian individuals in Springfield, Ohio, were seen butchering and eating a cat. Especially since Elon Musk took over the company, X is widely reputed to be a welcoming platform for right-wing, white-supremacist disinformation.

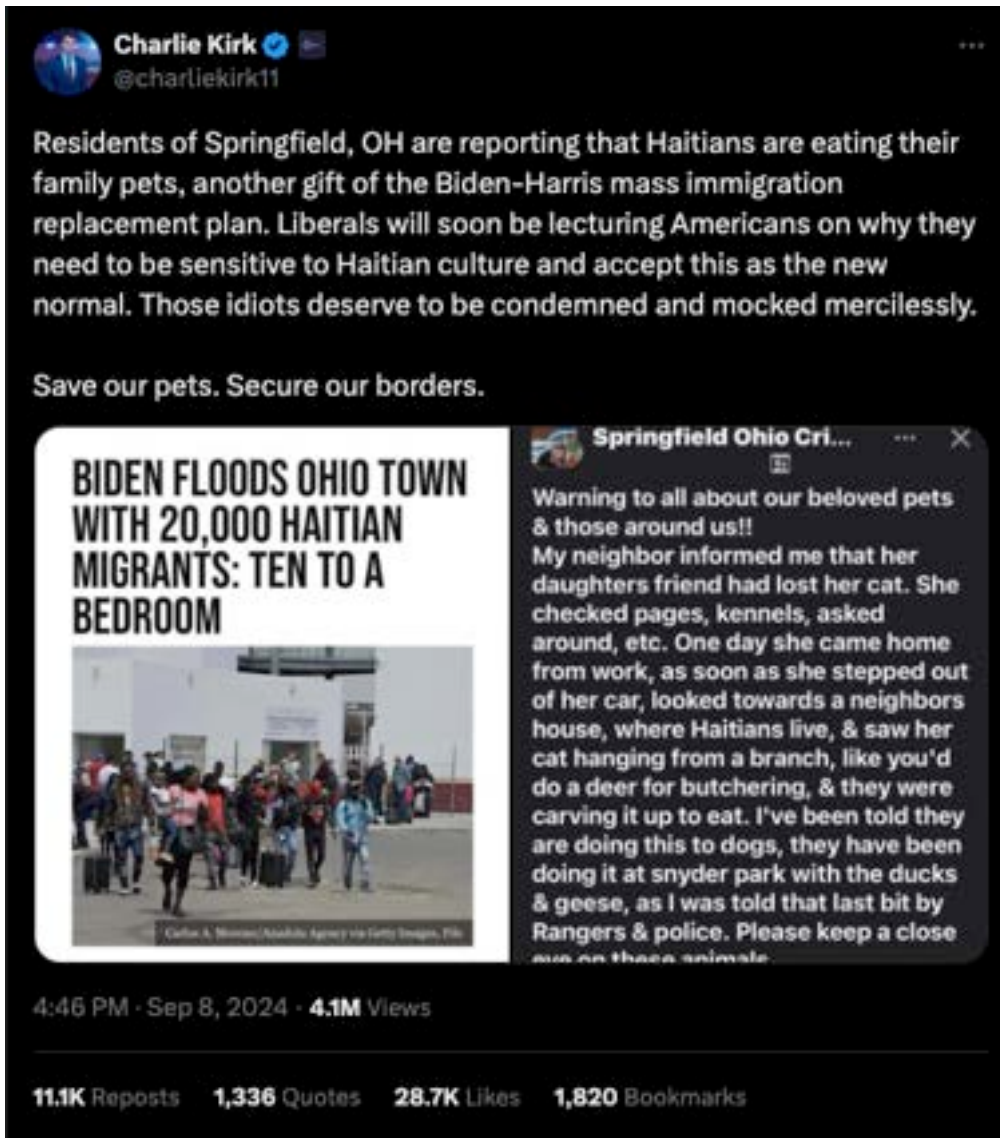
¹ All videos to which this affidavit refers will be lodged with the Court on a flash drive.



@EndWokeness, X (Sept. 6, 2024, 3:13 AM),
<https://x.com/EndWokeness/status/1832134984557113706>.

26. The September 6, 2024, post further alleged Haitians in Springfield were similarly butchering and eating dogs, ducks, and geese. *Id.*
27. And this post was accompanied by a photograph of a random Black man carrying what looks like a dead goose. *Id.*
28. As of September 16, 2024, the September 6, 2024 post received over 4.9 million views. This includes more than 19,200 reposts and 69,200 likes. *Id.*
29. On September 8, 2024, white-extremist commentator Charlie Kirk posted on his X account, @CharlieKirk11, the same September 6, 2024 Facebook post accompanied by a screenshot

of a news article titled “Biden Floods Ohio Town With 20,000 Haitian Migrants: Ten To A Bedroom.”



@CharlieKirk11, X (Sept. 8, 2024, 4:46 PM),
<https://x.com/charliekirk11/status/1832883283199471676>.

30. Along with the two screenshots, Charlie Kirk’s September 8, 2024 post stated

Residents of Springfield, OH are reporting that Haitians are eating their family pets, another gift of the Biden-Harris mass immigration replacement plan. Liberals will soon be lecturing Americans on why they need to be sensitive to Haitian culture and accept this as the new normal. Those idiots deserve to be condemned and mocked mercilessly. Save our pets. Secure our border.

@CharlieKirk11, X (Sept. 8, 2024, 4:46 PM),
<https://x.com/charliekirk11/status/1832883283199471676>.

As of September 16, 2024, this post had received over 4 million views, including more than 11,100 thousand reposts and 28,700 likes. *Id.*

31. The Facebook post shared on September 6 and September 8, 2024 was originally made by a Springfield resident named Erika Lee. Lee admitted on September 14, 2024 that she had no firsthand knowledge of the claim she had posted, and that she heard the claim from a neighbor who in turn heard it from an acquaintance.

Alicia Victoria Lozano, *'It just exploded': Springfield woman claims she never meant to spark false rumors about Haitians*, NBC NEWS (Sept. 13, 2024), <https://www.nbcnews.com/news/us-news/-just-exploded-springfield-woman-says-never-meant-spark-rumors-haitian-rcna171099> (quoting Erika Lee and her comments about the allegations).

32. The picture included in Charlie Kirk's September 8, 2024 post was of a man removing two dead geese from a road in Columbus, OH. The photo originated from a July Reddit post in the Columbus community. There is no evidence from the photo that the man depicted is an immigrant, Haitian, or had plans to eat the geese.

@Itsmeyourellooking4x, REDDIT (July 28, 2024 12:32 PM),
https://www.reddit.com/r/Columbus/comments/1eebh9o/things_you_see_while_driving_in_cbus (directing to the original post of the photo in the Columbus Reddit community page).

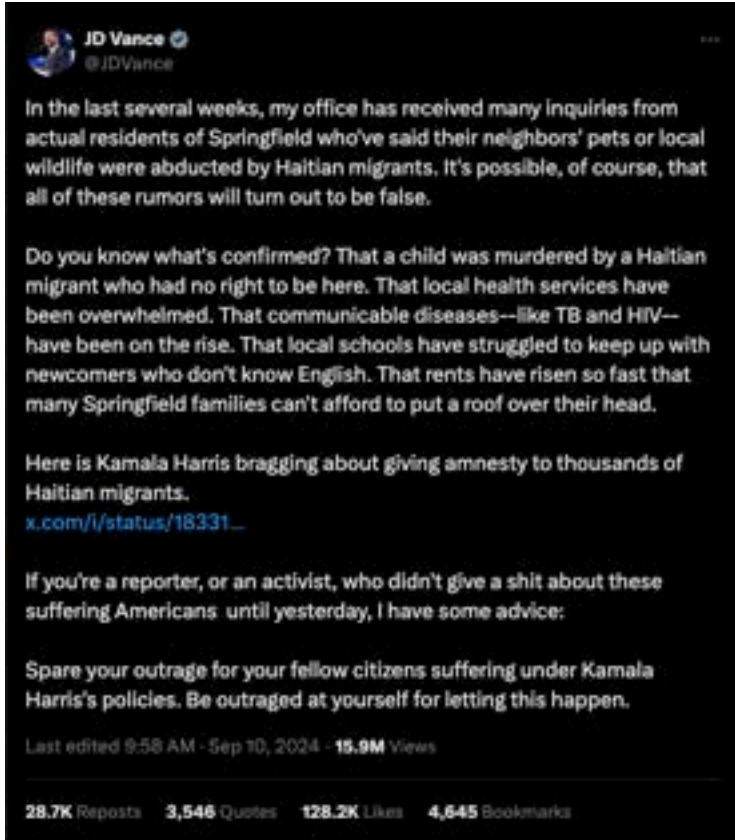
33. On September 9, 2024, Vance amplified the claims of Haitians harming animals in Springfield, posting on his X account, @JDVance, "Months ago, I raised the issue of Haitian illegal immigrants draining social services and generally causing chaos all over Springfield, Ohio. Reports now show that people have had their pets abducted and eaten by people who shouldn't be in this country. Where is our border czar?"



@JDVance, X (Sept. 9, 2024, 10:22 AM),
<https://x.com/JDVance/status/1833148904864465117>.

34. On September 10, 2024, Vance posted again on his X account:

In the last several weeks, my office has received many inquiries from actual residents of Springfield who've said their neighbors' pets or local wildlife were abducted by Haitian migrants. It's possible, of course, that all of these rumors will turn out to be false. Do you know what's confirmed? That a child was murdered by a Haitian migrant who had no right to be here. That local health services have been overwhelmed. That communicable diseases--like TB and HIV--have been on the rise. That local schools have struggled to keep up with newcomers who don't know English. That rents have risen so fast that many Springfield families can't afford to put a roof over their head.



@JDVance, X (Sept. 10, 2024, 9:58 AM),
<https://x.com/JDVance/status/1833505359513661762>.

35. As of September 16, 2024, Vance’s September 10, 2024 post had received over 15.9 million views, including more than 28,700 reposts and 128,100 likes. *Id.*
36. Vance knew better than to fan the flames of Trump’s rhetoric. In an October 9, 2016 post on X, he said, “Trump makes people I care about afraid. Immigrants, Muslims, etc. Because of this I find him reprehensible. God wants better of us[.]”:



37. In the aftermath of Vance’s X posts, Springfield’s mayor, Rob Rue, Trump and Vance’s fellow Republican, held a press conference on September 10, 2024, during which he stated,

We wish to clarify that we have not been able to verify any credible reports or specific claims of pets being harmed, injured or abused by individuals

within the immigrant community. The news story regarding a cat being killed or consumed did not originate in Springfield. It actually involved a Canton woman who was arrested for animal cruelty last month.



WSYX ABC 6, *Springfield mayor reacts to social media rumors about what migrants are doing in the city*, YOUTUBE (Sept. 10, 2024), <https://www.youtube.com/watch?v=KiA8vH9g-TI> (containing interview in which Mayor Rue says the above quoted material).

38. On the evening of September 10, 2024, Trump participated in the ABC presidential debate. Before the debate, Donald Trump shared AI generated images on his “Truth Social” account @realDonaldTrump (1) depicting him in a plane full of cats and ducks, and (2) cats in military style apparel, wearing MAGA hats, and carrying firearms.

@realDonaldTrump, TRUTH SOCIAL (Sept. 10, 2024 5:19 PM), <https://truthsocial.com/@realDonaldTrump/posts/113115343607314633>.

@realDonaldTrump, TRUTH SOCIAL (Sept. 10, 2024 5:34 PM), <https://truthsocial.com/@realDonaldTrump/posts/113115402842391067>.

39. During the September 10 presidential debate, Trump claimed immigrants in Springfield were eating pets, leading to the following exchange with Moderator David Muir:

David Muir:

I just want to clarify here, you bring up Springfield, Ohio. And ABC News did reach out to the city manager there. He told us, “There have been no credible reports of specific claims of pets being harmed, injured, or abused by individuals within the immigrant community”—

Trump: —Well, I’ve—

Muir: —All of this, —

Trump: —seen people on television.

Muir: —Let me just say here, this is the—

Trump: —The people on television—

Muir: —This is a clar...—

Trump: —say my dog was taken and...used for food, so maybe he said that and maybe that’s a good—

Muir: —Yeah.

Trump: —thing to say for a city manager.

Muir: I’m not taking this from television, —

Trump: —But the people on television—

Muir: —I’m taking it from the city manager.

Trump: —saying their dog was eaten by the people that went there.

Muir: Again, the Springfield city manager says there’s no evidence of that...—

Trump: —We’ll find out.

PBS News Hour, *WATCH: Trump amplifies false racist rumor against Ohio’s Haitian immigrants in debate*, YOUTUBE (Sept. 11, 2024), <https://www.youtube.com/watch?v=YcquMgQ-2yo> (containing video of the exchange between Trump and Muir as described above).

40. Shortly after 1:00 AM on September 11, 2024, Trump made three posts in quick succession to his Truth Social account:
- (1) a screen recording of a video with the title “BREAKING: An Ohio woman has allegedly killed and eaten a cat in front of shocked neighbors,”
 - (2) screenshots of a document labeled as be a “Clark County Communication’s (*sic*) Center Call Detail Report” with highlighted portions detailing “2 males 2 females All Haitians,” “4 geese stolen,” and “RP said he could tell they were Haitian because he was within

earshot to hear them speaking Haitian Creole . . .,” and

- (3) a link to a September 10 news article published by extremist website The Federalist entitled “EXCLUSIVE: Police Audio, Report Confirm Haitian Goose-Hunting In Ohio: ‘They All Had Geese In Their Hands’”

@realDonaldTrump, TRUTH SOCIAL (Sept. 11, 2024 1:01 AM),
<https://truthsocial.com/@realDonaldTrump/posts/113117159823478251>;
@realDonaldTrump, TRUTH SOCIAL (Sept. 11, 2024 1:02 AM),
<https://truthsocial.com/@realDonaldTrump/posts/113117163559759397>;
@realDonaldTrump, TRUTH SOCIAL (Sept. 11, 2024 1:34 AM),
<https://truthsocial.com/@realDonaldTrump/posts/113117289655247410>.

41. Later that day, Springfield City Manager Bryan Heck stated the following in a press conference shared to the official “City of Springfield, Ohio – Government” Facebook page: “It is disappointing that some of the narrative surrounding our city has been skewed by misinformation circulating on social media and further amplified by political rhetoric in the current highly charged presidential election cycle.”

City of Springfield, Ohio – Government, FACEBOOK (Sept. 11, 2024 9:43 AM),
<https://www.facebook.com/CityofSpringfieldOH/videos/1268955547433175/>
(directing to the press-conference video referenced above).

42. Ohio Governor Mike DeWine, Trump and Vance’s fellow Republican and their supporter, also debunked the claims on September 11, 2024, stating, “I think we should take the word of the city manager and the mayor that they’ve found no credible evidence of that story of Haitians eating pets.”

WSYX ABC 6, *Ohio governor reacts to Trump’s Springfield claims*, YOUTUBE (Sept. 11, 2024), <https://www.youtube.com/watch?v=LNwsbh1Een0&t=2s> (directing to video of the interview with Governor DeWine where he makes this quote).

43. In the morning of September 12, 2024, following the comments from Vance and Trump, the official “City of Springfield, Ohio – Government” Facebook page posted:

CITY HALL IS CLOSED TODAY

Due to a bomb threat that was issued to multiple facilities throughout Springfield today, City Hall is closed today.

City of Springfield received a bomb threat that has prompted an immediate response from local and regional law enforcement. As a precautionary measure, the building has been evacuated, and authorities are currently conducting a thorough investigation. Our primary concern is the safety and well-being of our employees and residents. We are working to address this situation as swiftly as possible.

City officials were alerted to this threat via an email message this morning at 8:24 am. The email was sent to multiple agencies and media outlets.

We ask the community to avoid the area surrounding City Hall vicinity while the investigation is ongoing and to report any suspicious activity to the Springfield Police Division. We appreciate your patience and cooperation as we work through this matter.



City of Springfield, Ohio – Government, FACEBOOK (Sept. 12, 2024 7:41 AM), <https://www.facebook.com/CityofSpringfieldOH/posts/pfbid02Tk6jL5vB9ZtpVJLRdMUfpKyp7yL8Vj2yaDMnVhvXrQEvH5nXj3wiz94y87PPxRmql>.

44. Similarly, the official Clark County, Ohio Facebook page posted a notice that all Clark County office buildings would be closed to the public due to “threats made to other local government entities.”

Clark County, Ohio, FACEBOOK (Sept. 12, 2024 8:46 AM), <https://www.facebook.com/clarkcountyohio/posts/pfbid0afLiQ5upcHfRoxFL9TgpCtPMUpiic7MRwx5bSHPVGyZYE63LELuutQiHgoChhW4l>.

45. On September 12, 2024, Springfield Mayor Rob Rue reported the City’s conclusion about the reason for these closures during an interview when asked about the nature of the threats received:

There was enough negative language towards immigrants, towards Haitian folks that would bring enough concern. And then when it followed up with the threat at the end of a bomb threat that, you know, like I said, it was pretty much, it was just the beginning of the conclusion that they’re going to threaten to harm people.

WSYX ABC 6, *Springfield, Ohio, mayor discusses bomb threat, viral rumors about immigrants*, YOUTUBE (Sept. 12, 2024), <https://www.youtube.com/watch?v=2naIpn4yDyU&t=4s> (Mayor Rue interview audio).

46. Later that day, during in an interview with CBS News, Governor DeWine said of the rumors of Haitian immigrants eating pets that “This is something that came up on the internet, the internet can be quite crazy sometimes, and look, the mayor of Springfield says no, there is no truth in that, they have no evidence of that at all.”

Face the Nation, *Ohio Gov. Mike DeWine addresses false claims about Haitian immigrants eating pets*, YOUTUBE (Sept. 12, 2024), <https://www.youtube.com/watch?v=FQIqfH2kFIg> (Governor DeWine interview video).

47. On the evening of September 12, 2024, Trump held a campaign rally in Tucson, Arizona. Even though responsible public officials (indeed his fellow Republicans) had refuted his statements, Trump claimed that:

[R]ecordings of 9-1-1 calls even show residents are reporting that the migrants are walking off with the town’s geese. They’re taking the geese. You know where the geese are in the park, in the lake, and even walking off with their pets. My dogs been taken. My dogs been stolen. This can only happen—these people are the worst . . .

Forbes Breaking News, *NEW: Trump Again Claims Haitian Migrants Are Taking Pets of Residents in Springfield, Ohio*, YOUTUBE (Sept. 12, 2024), <https://www.youtube.com/watch?v=-eHIMrBLp2g> (rally video).

48. On September 13, 2024, the city received additional bomb threats and active-shooter threats, leading to the lockdown, closure, or both of three Springfield schools, two local universities, and several major area hospitals over the next several days. The language of the threats was at times specifically targeting Haitian members of the community.

Springfield City School District, FACEBOOK (Sept. 13, 2024 11:01 AM), <https://www.facebook.com/springfieldcityschooldistrict/posts/pfbid0YLQJPmERnHSpQPPA5LtUHRqq8EZ3fhHZVJjaqsEZepePe8BMMm7ESNDWzAoiaHivl> (Springfield City School District’s social-media statement announcing the school evacuations).

Wittenberg University, FACEBOOK (Sept. 14, 2024 6:09 PM), <https://www.facebook.com/wittenberguniversity/posts/pfbid02sjL5VHKkgjFETWuNA3b3ThLw1XABeYgyF8bF8Duv71LK3FLyTosD5ZLaRk171Epnl> (Wittenberg University’s social-media statement announcing campus closure).

Clark State College, FACEBOOK (Sept. 13, 2024 6:27 AM), <https://www.facebook.com/clarkstate/posts/pfbid0A9Xy6nf41L3C5siP6WiyZJ7z2mnuCZ93wCGjgdSEa1EdqiBK4vDgenvStz5NoYEbl> (Clark State College’s social-media statement announcing campus closure).

Mercy Health – Springfield, FACEBOOK (Sept. 14, 2024 10:05 AM), <https://www.facebook.com/mercyhealthspringfield/posts/pfbid0EXfctPvcKUV1fnUN5HjEPN4CUZu5mAjrev1ZPHerpJreE7HKvebNhaVbZY7BFAl> (directing to Mercy Health’s social-media statement announcing lockdown at Springfield Regional Medical Center).

49. By the end of the week, Springfield had been subject to at least 33 separate bomb threats, confirmed by Governor DeWine in a press briefing.

WTOL11, *WATCH: Gov. Mike DeWine speaks in Springfield, Ohio*, YOUTUBE (Sept. 16, 2024) https://www.youtube.com/watch?v=BZhkD_QzRWY (video of Governor DeWine’s press briefing in which he reports “[w]e have received at least 33 separate bomb threats.”).

50. On September 15, 2024, Vance gave an interview to CBS News where he was questioned about his comments alleging that Haitian immigrants were eating pets. During the interview, Vance dismissed concerns about his falsehoods with the remark, “You’re never going to get this stuff perfect.”

Face the Nation, *JD Vance defends amplifying false claims about immigrants*, YOUTUBE (Sept. 15, 2024), <https://www.youtube.com/watch?v=oBCSCrhnfu0> (Vance video).

51. On September 15, 2024, Vance gave an interview to CNN where he was questioned about his comments alleging that Haitian immigrants were eating pets. CNN reporter Dana Bash told Vance, “[t]he Clark County Sheriff and the Ohio Department of Natural Resources reviewed 11 months of 9-1-1 calls. They only identified two instances of people alleging Haitians were taking geese out of parks. They found zero evidence to substantiate those claims.”

CNN, *JD Vance reacts to Springfield father saying he politicized his son’s death (Part 2/2)*, YOUTUBE (Sept. 15, 2024), <https://www.youtube.com/watch?v=si1Tbz1kbzw> (Video of Bash interview of Vance).

52. In the same interview, Vance admitted that he was just making harmful statements up: **“If I have to create stories so that the American media actually pays attention to the suffering of the American people then that’s what I’m going to do, Dana.”** *Id.*

53. Trump and Vance knew their comments were false from the start. A staffer for Vance called Springfield City Manager Bryan Heck to ask him if there were any truth to the claims. Heck told them no, that there was **“no verifiable evidence or reports to show this was true.”** Heck “told them **these claims were baseless.**”

Kris Maher, *et al.*, *How the Trump Campaign Ran With Rumors About Pet-Eating Migrants – After Being Told They Weren’t True*, WALL ST. J. (Sept. 18, 2024), <https://www.wsj.com/us-news/springfield-ohio-pet-eating-claims-haitian-migrants-04598d48> (verifying Heck’s first-hand account).

54. On September 15, 2024, Governor DeWine made the following statements during an interview with ABC News:

Martha Raddatz: Here's a question I never thought I would have to ask but do you see any evidence as Governor of the state that Haitian immigrants are eating pets?

Governor DeWine: No, absolutely not. That's what the mayor said, that's what the chief of police has said. I think it's unfortunate that this came up. Let me tell you what we do know though, we know the Haitians in Springfield are legal, they came to Springfield to work.

ABC News, *'Simply not true' that Haitian migrants are eating pets in Ohio: Gov. DeWine*, YOUTUBE (Sept. 15, 2024) <https://www.youtube.com/watch?v=C-kFtYtwL68> (video of this exchange).

55. On September 15, 2024, in a CNN interview, Springfield Mayor Rob Rue said, "We've had three consecutive days of threats, not only to myself, personally, to my family, but as well as the other commissioners and some other officials."

56. Later in the interview Mayor Rue reaffirmed that pets were not being eaten in Springfield:

Dana Bash: Do you have any confirmed reports of Haitian migrants eating dogs and cats?

Mayor Rue: We do not. And I think you highlighted earlier on one of your interviews that, you know, we—the sheriff's department—did go back through the last 11 months and we just have no verifiable claim that this actually happened.

CNN, *Springfield mayor responds to JD Vance's claims about Haitian immigrants*, YOUTUBE (Sept. 15, 2024), <https://www.youtube.com/watch?v=39voRIZciVI&t=189s> (video of this exchange).

57. In a North Carolina campaign rally on September 18, 2024, Vance insisted of the Haitian immigrants in Springfield, who are here under a special legal visa status, "I'm still going to call them illegal aliens."

Fox News, *JD Vance delivers remarks at a campaign rally. Raleigh, NC*, YOUTUBE (Sept. 18, 2024), <https://www.youtube.com/watch?v=IGngl8UINBg> (directing to video of the rally where Vance made this vow).

58. Trump has repeatedly threatened that, if elected, he would carry out mass deportations of Haitians in Springfield (which requires the threat of physical force), despite their legal status. He has vowed to deport Springfield's Haitians to Venezuela.

The Columbus Dispatch, *After debate, Trump promises migrant deportations from Springfield, Ohio and Aurora, Colorado*, YouTube (Sept. 13, 2024), <https://www.youtube.com/watch?v=COPuQhc-Lgo&t=7s> (capturing Trump saying “[W]e will do large deportations from Springfield, Ohio—large deportations. We’re going to get these people out. We’re bringing them back to Venezuela.”).

59. Trump has a history of false and dangerous claims about Haitian immigrants. In 2021 he decried Haitians as “probably hav[ing] AIDS” and claimed that allowing them into the United States is “like a death wish for our country.”

Stuti Mishra, *Anger as Trump says Haiti immigrants are likely spreading Aids to the US: ‘One-trick sociopath,’* THE INDEPENDENT, <https://www.the-independent.com/news/world/americas/us-politics/trump-haiti-migrants-aids-texas-b1934588.html> (Oct. 8, 2021 4:50 PM) (includes audio of Trump).

60. Vance has similarly threatened the safety and reputation of our community, implying on national television that Haitians in Springfield are murderers with venereal diseases.

CBS News, *JD Vance stands by spreading false claims about Haitian immigrants*, YouTube (Sept. 16, 2024), <https://www.youtube.com/watch?v=oBCSCrhnfu0> (Vance saying “[T]hanks to [Kamala Harris’] open border there is a rise in HIV in Springfield, Ohio. Thanks to her open border murders are up 81% in Springfield, Ohio.”).

61. County health officials in Springfield have disproven Trump and Vance’s claims, finding that rates of sexually transmitted diseases in the county are at their lowest rate in nearly a decade.

Kris Maher, *et al.*, *How the Trump Campaign Ran With Rumors About Pet-Eating Migrants – After Being Told They Weren’t True*, WALL ST. J. (Sept. 18, 2024), <https://www.wsj.com/us-news/springfield-ohio-pet-eating-claims-haitian-migrants-04598d48> (containing the information and statistics from the county health department).

62. Trump was asked why, given the many bomb threats in Springfield, he continues to spread the false story that Haitians in Springfield are eating pets. He didn’t care. He failed to call for an end to the threats and dismissed the bomb threats as a problem: “The real threat is what is happening at our border. Because you have thousands of people being killed by illegal migrants coming in—and also dying . . . Those are your real problems, not the problem you’re talking about.”

ABC News, *Live - Former President Trump addresses media at Trump National Golf Club in Los Angeles, CA*, YouTube (Sept. 13, 2024), <https://www.youtube.com/watch?v=9uEnTSov0bA> (video of Trump).

63. During a rally on September 17, Vance denied responsibility to fact-check his claims about Haitian immigrants in this exchange with a reporter,

Reporter: A woman who is behind a Facebook post about the Haitian migrants in Springfield has now apologized for spreading false rumors. You

say you have a responsibility to share what your constituents tell you, don't you have a responsibility to fact check them first?

JD Vance: I think the media has a responsibility to fact-check the residents of Springfield, not lie about them.

PBS Newshour, *WATCH LIVE: Vance addresses campaign rally in Eau Claire, WI*, YouTube (Sept. 17, 2024), <https://www.youtube.com/watch?v=G3YsnBHg83I&t=1051s> (video of Vance's rally).

64. The harm inflicted on the Springfield community is not just limited to the terror, confusion, and division Trump and Vance sowed. Springfield has also suffered severe economic harm. Law-enforcement resources and taxpayer dollars have gone toward addressing the chaos Trump and Vance caused, instead of Springfield's daily needs. Trump and Vance disrupted parents' work schedules as their children's schools were evacuated and closed. Universities have been forced to cancel classes, go remote, or close campuses. Springfield's annual CultureFest, a 20-year tradition, was cancelled due to the "recent threats and safety concerns."

PBS Newshour, *How life in Springfield has been disrupted by lies about its Haitian community*, YouTube (Sept. 17, 2024), <https://www.youtube.com/watch?v=7J0RNKiz20Y> (video of City Manager Heck and Springfield residents describing the impact on the community, including the cancelling of CultureFest).

65. Events like CultureFest require months of careful planning, fundraising, and coordination by dedicated community members. In 2023 alone, the Springfield Foundation granted over \$60,000 to city art-and-culture programs by, including funding to the 2023 CultureFest, Community funding, support, and the corresponding economic revenue for the city are now wasted because of Trump and Vance's fearmongering in the community.

Springfield Foundation, *Spring 2023 Newsletter* (Spring 2023), <https://www.springfieldfoundation.org/news-events/print.html#:~:text=2023%20Spring%20Newsletter> (accessed Sept. 26, 2024) (list of grants highlighted by the Springfield Foundation in 2023).

Russel Florence Jr., *Springfield arts project stalls because of Haitian immigration claims*, DAYTON DAILY NEWS (Sept. 20, 2024), <https://www.daytondailynews.com/lifestyles/springfield-arts-project-stalls-because-of-haitian-immigration-claims/4ALVJYFYI5HX3ADGVF45WD7CYA/> (reporting on events and projects cancelled due to the lies of Trump and Vance).

66. Despite their harm to the Springfield community, Trump and Vance appear determined to inflict more. On September 19, 2024, Trump announced he is coming to Springfield. Mayor Rue, speaking alongside Governor DeWine, asked him not to come, saying "should he choose to change his plans, it would convey a significant message of peace to the city of Springfield." But no such message of peace has yet to come from Trump.

NBC4 Columbus, *Springfield, Ohio, Mayor Rob Rue asks Donald Trump to reconsider revisit*, YOUTUBE (Sept. 19, 2024), <https://www.youtube.com/watch?v=1iR-WEV7yuI> (video of Mayor Rue's comments on Trump's potential visit).

67. Governor DeWine has similarly appealed to Trump and Vance to stop the lies, saying “I’ve said [the statements] were wrong. The mayor has said they were wrong. And frankly, they need to stop.”

PBS Newshour, *Gov. DeWine urges Trump and Vance to end ‘very hurtful’ comments about Haitian migrants*, YouTube (Sept. 17, 2024), <https://www.youtube.com/watch?v=BDX7y9HvbnA&t=4s> (video of DeWine).

68. In his September 20 op-ed in the *New York Times*, the governor similarly called out the misinformation Trump and Vance have spread, writing “[Haitians] are here legally. They are here to work” and “I am saddened by how [Trump and Vance] and others continue to repeat claims that lack evidence and disparage the legal migrants living in Springfield. This rhetoric **hurts the city and its people, and it hurts those who have spent their lives here.**” (emphasis added)

Mike DeWine, *I’m the Governor of Ohio. I Don’t Recognize the Springfield That Trump and Vance Describe*, N.Y. TIMES (Sept. 20, 2024), <https://www.nytimes.com/2024/09/20/opinion/springfield-haitian-migrants-ohio.html>.

69. As of September 22, 2024, Springfield remains in disarray. Mayor Rue reports, “There are threats against my family. Emails, phone calls. They say they don’t want me around, I’m going to die, I’m a traitor, ‘We’re watching your family.’ All these things that you never want to hear.”

Mattathias Schwartz, *He Makes Less Than \$15,000 and Is Trying to Hold Springfield, Ohio, Together*, N.Y. TIMES (Sept. 21, 2024), <https://www.nytimes.com/2024/09/21/us/rob-rue-springfield-ohio-mayor-trump.html>.

70. And the city has issued a proclamation granting the mayor emergency powers to address safety concerns in the city. State troopers have been stationed in every city school on the Governor’s orders. Federal officers and sniffer dogs from the Bureau of Alcohol, Tobacco and Firearms continue to sweep the city. The city of Springfield continues to suffer. Trump and Vance are to blame.

Dayton 24/7 News, Facebook (Sept. 19, 2024 3:00 PM), <https://www.facebook.com/dayton247now/videos/1060607142339702/> (video of press conference by Mayor Rue and Governor DeWine in which they discuss both the emergency measures and state-trooper placement).

TRUMP AND VANCE HAVE VIOLATED OHIO AND SPRINGFIELD CRIMINAL LAW

71. As detailed below, Trump and Vance’s actions violated the following Ohio Revised Code criminal statutes:

- [Section 2923.03](#) – Complicity
- [Section 2909.04](#) – Disrupting Public Services
- [Section 2917.32](#) – Making False Alarms
- [Section 2917.31](#) – Inducing Panic
- [Section 2917.21](#) – Telecommunications Harassment (also incorporating Aggravating Menacing as to Trump only, [R.C. 2903.21\(A\)](#)).

72. And Trump and Vance’s actions also violated these parallel, identical criminal laws of the Codified Ordinances of Springfield, Ohio:

- [Section 501.10](#) – Complicity
- [Section 509.06](#) – Inducing Panic
- [Section 537.08](#) – Telecommunications Harassment

73. At every turn, Trump and Vance were told by fact-checkers, press, officials, Springfield residents, and more that their claims were baseless. They could not have reasonably thought their claims were true because deliberate ignorance does not excuse criminal conduct. A defendant is criminally liable when he “deliberately close[s] his eyes to what would otherwise have been obvious.” *See, e.g., State v. Wiseman*, No. 2023 CA 00004, 2023-Ohio-4263, at ¶ 15 (Nov. 27, 2023 5th Dist. Fairfield). Trump and Vance are just as culpable, regardless of if they had “positive knowledge or deliberate ignorance.” *Id.*

74. Trump and Vance orchestrated a campaign of lies. They spread a false narrative that Haitians in Springfield are a danger. And that Haitians carry HIV, are causing the Springfield murder rate to skyrocket, and are eating family pets. By spreading these lies, and refusing to condemn the violent threats, they invite and encourage their supporters to join in. By spreading these lies, they knowingly encourage others to amplify their message and the corresponding harm. Trump and Vance caused others to join their crimes against the Haitian community, and that makes them complicit under Ohio law for the tragic results. Ohio criminal law provides a remedy.

75. People violate R.C. 2923.03(A) (Complicity) when they act with the kind of culpability required for the commission of an offense and do any of the following:

- **“Solicit or procure another to commit the offense”;**
- **“Aid or abet another in committing the offense”;**
- **“Conspire with another to commit the offense** in violation of Section 2923.01 of the Revised Code”;
- **“Cause an innocent or irresponsible person to commit the offense.”**

(emphases added).

76. Trump knew the power of his words. He implicitly solicited and procured others to commit offenses. Through his actions, he conspired with his running-mate Vance. And he caused otherwise innocent or irresponsible people, including his supporters and those making threats, to commit the offense of telecommunications harassment when he knowingly made false and salacious comments about the Springfield Haitian community during the

September 10 debate, through his September 11 Truth Social posts, and during his September 12, 2024 rally.

77. Trump's statements caused a multitude of his supporters to amplify, repeat, and disseminate claims he knew were false and served only to abuse, harass, threaten, or intimidate. This violates R.C. 2923.03(A)(4).
78. Vance, too, knew the power of his and Trump's words. Indeed, on October 9, 2016, and other occasions, he had previously condemned Trump for stoking anti-immigrant xenophobia: "Trump makes people I care about afraid. Immigrants, Muslims, etc. Because of this I find him reprehensible. God wants better of us[.]"
79. Vance implicitly solicited and procured others to commit offenses. Through his actions, he conspired with Trump. And he caused otherwise innocent or irresponsible people to commit the offense of telecommunications harassment when he knowingly made false and salacious comments about the Springfield Haitian community during his September 15, 2024 interview, through his September 9 and 10 social-media posts on X, and through his comments at September 17 and 18 rallies.
80. Vance's statements caused a multitude of his and Trump's supporters to amplify, repeat, and disseminate claims he knew were false. This served only to abuse, harass, threaten, or intimidate. And this violates R.C. 2923.03(A)(4).
81. Vance and Trump conspired with one another to commit the offenses charged in this affidavit.
82. S.C.O. § 501.10 (Complicity) mirrors R.C. 2923.03. As shown above, Vance violated both.
83. Trump and Vance falsely claim Haitians are a danger to Springfield. Now, many in Springfield face actual harm from threats that have even resulted in closures and lockdowns of government buildings, hospitals, schools, and colleges. Police and fire services are investigating bomb threats rather than focusing on the daily services for which Springfield needs them. Trump and Vance caused a massive disruption to a community and city that deserved better. Ohio and Springfield criminal law provides remedies for the people of Springfield harmed by Trump and Vance's lies directed at the city's Haitian residents.
84. R.C. 2909.04(A) (**Disrupting Public Services**) provides that:
 - (A) No person, purposely by any means or knowingly by damaging or tampering with any property, shall do any of the following:
 - (1) Interrupt or impair television, radio, telephone, telegraph, or other mass communications service; **police, fire, or other public service communications**; radar, loran, radio, or other electronic aids to air or marine navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications;

- (2) Interrupt or impair public transportation, including without limitation **school bus transportation**, or water supply, gas, power, or other utility service to the public;
- (3) Substantially impair the ability of **law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel** to respond to an emergency or to protect and preserve any person or property from serious physical harm.

(emphases added).

85. R.C. 2909.04(B) (**Disrupting Public Services**) further provides that:

- (B) No person shall knowingly use any computer, computer system, computer network, telecommunications device, or other electronic device or system **or the internet so as to dispute, interrupt, or impair the functions of any police, fire, educational, commercial, or government operations.**

(emphasis added).

86. Trump's statements regarding the Springfield Haitian community have caused multiple bomb and other threats, closures, and other disruptions.

87. Trump's statements have interrupted and impaired police and public-service communications, as resources have been diverted to securing the city, and responding to and investigating multiple bomb and other threats. This violates R.C. 2909.04(A)(1).

88. Trump's statements have also led to the interruption of school-bus transportation within Springfield, Ohio as multiple school buildings were evacuated and schools were closed in response to bomb and other threats. This violates R.C. 2909.04(A)(2).

89. And Trump's statements have led to the shutdown and evacuation of multiple hospitals in Springfield over bomb threats. This has led to the impairment of Springfield's law-enforcement, firefighter, rescue, emergency-medical, and emergency-facility personnel in their ability to respond to emergencies, protect, or preserve any person or property from serious harm. That the State of Ohio has had to assign state troopers to every school and other facilities in the city proves that city law enforcement alone could not address the firestorm Trump's lies created. This violates R.C. 2909.04(A)(3).

90. Trump knowingly used telecommunications devices to disseminate false claims about the Springfield Haitian community. Those claims have disrupted, interrupted, and impaired the functions of police, fire, educations, commercial, and governmental operations in Springfield and the state of Ohio. This includes the continuing disruptions shown by Mayor Rue's proclamation of emergency powers to handle the unrest. This violates R.C 2909.04(B).

91. Vance's persistent false statements about the Springfield Haitian community have caused multiple bomb threats and other disruptions.

92. Vance's statements have interrupted and impaired police and public-service communications, as resources have been diverted to securing the city, and responding to and investigating multiple bomb threats. This violates R.C. 2909.04(A)(1).
93. Vance's statements have led to the interruption of school-bus transportation within Springfield, Ohio as multiple school buildings were evacuated and closed in response to bomb threats. This violates R.C. 2909.04(A)(2).
94. Vance's statements have led to the shutdown and evacuation of multiple hospitals in Springfield due to bomb threats. This has led to the impairment of Springfield's law-enforcement, firefighter, rescue, emergency-medical, and emergency-facility personnel in their ability to respond to emergencies, protect, or preserve any person or property from serious harm. That the state of Ohio has had to assign state troopers to every school in the city shows that city law enforcement alone could not address the firestorm Vance's lies created. This violates R.C. 2909.04(A)(3).
95. Vance knowingly used telecommunications devices to create false claims about the Springfield Haitian community. Those claims have disrupted, interrupted, and impaired the functions of police, fire, educations, commercial, and governmental operations in Springfield. This includes the continuing disruptions, shown by Mayor Rue's proclamation of emergency powers to handle the unrest. This violates R.C. 2909.04(B).
96. Trump and Vance falsely told a national audience that Haitians in Springfield were carrying out crimes against their community. Their messages to Springfield were that Haitian neighbors are stealing their property and pets, and killing the pets. Creating this sort of false alarm is dangerous both to the wrongfully accused Haitians in Springfield, but also to all Springfield residents who were falsely made to fear for their pets' safety. Ohio law provides a remedy for those harmed when people like Trump and Vance cry wolf.
97. People violate R.C. 2917.32(A)(1) (**Making False Alarms**) when they "[i]nitiate or circulate a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that the report or warning is false and likely to cause public inconvenience or alarm."
98. Closely related, but distinct, a violation of R.C. 2917.31 (**Inducing Panic**) occurs where a person "cause[s] serious public inconvenience or alarm, by . . . [i]nitiated or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that such report or warning is false."
99. Where economic harm has been inflicted, as is true here, violations of R.C. 2917.31 elevate to felonies. Harm greater than \$1,000 corresponds to a fifth-degree felony, \$7,500 corresponds to a fourth-degree felony, and \$150,000 results in a third-degree felony. R.C. 2914.31(B)(4).
100. And inducing panic in a way that involves schools or higher-education institutions is a second-degree felony. R.C. 2914.31(B)(5).

101. Economic harm under R.C. 2917.31 is construed broadly, covering all direct, incidental, and consequential harm. This includes the results of the conduct in the form of (i) lost wages, salaries, and other compensation (ii) the cost of the lost wages, salaries, and compensation to employees prevented from working, and (iii) the overhead costs incurred for the time businesses were forced to shut down. R.C. 2914.31(E)(1).
102. Trump and Vance's actions caused large-scale economic harm to the Springfield community, from the cancelling of CultureFest to lost productivity in schools, colleges, and government, to parents' work schedules being disrupted from school evacuations. The total economic harm they inflicted upon Springfield exceeds the threshold to qualify as a second-degree felony.
103. Trump initiated and circulated warnings of alleged and impending crime and catastrophe. Trump falsely warned and circulated to a national audience that Springfield's Haitians were engaged in crimes related to the theft and consumption of cats and dogs.
104. Before Trump's comments during the September 10 debate, Mayor Rob Rue had already debunked the claim that members of the Springfield Haitian community were eating cats and dogs. And City Manager Bryan Heck had already told Vance's inquiring staff on September 9 that the claims were "baseless." But Trump made the claims anyway.
105. During the September 10, 2024 debate, moderator David Muir told Trump that there were no credible reports of Haitians eating dogs and cats in Springfield and that the city's manager stated there was no evidence of such claims.
106. Despite evidence of the claims' falsehood, Trump repeated the allegations about the Springfield Haitian community at the September 10 debate, on September 11 at Truth Social, and during a September 12 rally.
107. Trump knew the allegations made during the September 10 debate and afterward were both false and—based on his knowledge of the disruptive power of his words as on January 6, 2021—were likely to cause public inconvenience and alarm. Indeed, he knew because his and Vance's words were already causing public inconvenience and alarm, as expressed by the mayor and the governor.
108. This conduct violates R.C. 2917.32(A)(1).
109. Trump initiated and circulated a false warning of alleged and impending crime through his September 11 Truth Social posts. Trump warned and circulated to his large social-media audience that the Springfield Haitian community was engaged in crimes of theft and consumption of cats and dogs.
110. Trump knew about the preceding evidence about the falsity of his claims and that the claims were likely to cause public inconvenience and alarm. Indeed, he knew because his and Vance's words were already causing public inconvenience and alarm, as noted by the mayor and the governor.
111. This violates R.C. 2917.32(A)(1).

112. Trump initiated and circulated a warning of impending crime—that Haitians in Springfield are eating dogs, cats, and geese—through the comments at his September 12, 2024 rally.
113. Along with their initial statements, Mayor Rue and Governor Mike DeWine further refuted the allegations that Haitians are eating dogs, cats, or geese in Springfield before Trump spoke at his rally on the evening of September 12, 2024.
114. Despite the preceding evidence, Trump claimed during his September 12 rally that Haitians were stealing dogs, cats, and geese in Springfield.
115. Before Trump’s September 12 rally, Springfield’s City Hall was evacuated because of at least one bomb threat on the building.
116. Trump knew his statements about Springfield’s Haitian community were false and likely to cause a public inconvenience and alarm. He knew because his and Vance’s words were already causing public inconvenience and alarm, as expressed by the mayor and the governor.
117. Trump’s actions violate R.C. 2917.32(A)(1).
118. Trump’s statements were not just *likely* to cause public inconvenience and alarm, they actively did cause those effects in the community. Trump’s false alarm of Haitians harming pets in Springfield led to serious public inconvenience in the numerous closures of public buildings. His claims also led to serious alarm in the Springfield Haitian community, causing disruption, distress, and fear for many individuals.
119. Trump’s actions violate R.C. 2917.31(A)(1).
120. S.C.O. § 509.06 (Inducing Panic) mirrors R.C. 2917.31. As shown above, Trump violated both.
121. Vance initiated and circulated a warning of impending crime—that Haitians in Springfield are eating dogs, cats, and geese—through his September 9, 2024 post on X.
122. Vance knew his claims here false. City Manager Heck had already told his staffer, inquiring as Vance’s agents, that the claims were “baseless.”
123. Vance acknowledged on September 15, 2024 that he and Trump “have to create stories” regarding the allegations that Haitians are eating pets in Springfield.
124. Vance knew his statements were false and likely to cause public inconvenience and alarm. He knew because his and Trump’s words were already causing public inconvenience and alarm, as expressed by both the governor and mayor.
125. Vance’s actions violate R.C. 2917.32(A)(1).

126. Vance initiated and circulated a warning of impending crime—that Haitians in Springfield are eating dogs, cats, and geese—through his September 10 post on X.
127. In his September 10, 2024 post, Vance admitted that “it is possible, of course, that all of these rumors turn out to be false.” But he didn’t care.
128. Vance admitted on September 15, 2024 that he and Trump “have to create stories” regarding the allegations that Haitians are eating pets in Springfield.
129. Despite knowing the statements were false and likely to cause public inconvenience and alarm, Vance continued to amplify the “rumor” that Haitians in Springfield are eating pets.
130. So Vance violated R.C. 2917.32(A)(1).
131. Vance initiated and circulated a warning of impending crime—that Haitians in Springfield are eating dogs, cats, and geese—through his comments during the televised interview on September 15, 2024.
132. Before the interview, Vance had all the preceding evidence of the falsity of his statements before circulating them on national television on September 15, 2024.
133. Before the interview, multiple schools, hospitals, and government buildings in Springfield had been evacuated or locked down because of bomb threats.
134. Vance knew his statements were false and likely to cause public inconvenience and alarm.
135. So Vance violated R.C. 2917.32(A)(1).
136. Vance’s false claims had their logical effect: they created serious public inconvenience and alarm. They directly led to the closure of multiple schools, hospital, and government buildings over fear to public safety. Vance knew his claims were false, spread them anyway, and caused significant fear and distress to the Springfield community.
137. So Vance violated R.C. 2917.31(A)(1).
138. S.C.O. § 509.06 (Inducing Panic) mirrors R.C. 2917.31. As shown above, Vance violated both.
139. As major party candidates, Trump and Vance direct a national spotlight. They do this through television appearances, broadcasted rallies, press briefings, and social media. These methods are how they communicate with their supporters across the country. Taken as a whole, these are their “telecommunications.” Trump and Vance weaponized their telecommunications to threaten and harm Haitian immigrants in Springfield. That is what Ohio law and Springfield’s own municipal code call “telecommunications harassment.”
140. Under R.C. 2917.21(A), a person is guilty of telecommunications harassment when they:

- (A) Knowingly make or cause to be made a telecommunication... to another, if the caller does any of the following:
- (1) Makes the telecommunication with purpose to **harass, intimidate, or abuse** any person at the premises to which the telecommunication is made, whether or not actual communication takes place between the caller and a recipient;
 - ***
 - (3) During the telecommunication, violates Section 2903.21 [Aggravated Menacing] of the Revised Code;
 - ***
 - (6) Knowingly makes any comment, request, suggestion, or proposal to the recipient of the telecommunication that is **threatening, intimidating, menacing**, coercive, or obscene with the intent to abuse, threaten, or harass the recipient;
 - ...
 - (9) Knowingly makes any false statement concerning the death, injury, illness, disfigurement, **reputation, indecent conduct, or criminal conduct** of the recipient of the telecommunication or family or household member of the recipient with purpose to abuse, threaten, intimidate, or harass the recipient;
 - (10) **Knowingly incites another person through a telecommunication or other means to harass or participate in the harassment of a person.**

(Emphases added.)

141. R.C. 2917.21(B) (second prong of Telecommunications Harassment) further mandates that,

- (1) No person shall make or cause to be made a telecommunication..., with purpose to *abuse, threaten, or harass* another person.
- (2) **No person shall knowingly post a text or audio statement or an image on an internet web site or web page for the purpose of abusing, threatening, or harassing another person.**

(emphasis added).

142. Trump knowingly made and caused to be made telecommunications through:

- His false claim broadcast during the September 10, 2024 ABC News debate that Haitians in Springfield, Ohio are eating cats and dogs.
 - His false claims in the September 11, 2024 Truth Social posts continuing his allegations that Haitians in Springfield, Ohio are eating cats, dogs, and geese.
 - His claims during his September 12, 2024 rally that police 9-1-1 calls show Haitians in Springfield, Ohio are capturing, eating, and otherwise abusing dogs and geese.
143. As the January 6, 2021 riot he inflamed involving the U.S. Capitol demonstrates, Trump has a history of inciting violence with his inflammatory rhetoric and false statements. *See, e.g.*, H.R. Rep. No. 117-663, at 109 (2022) (citing January 6th commission report outlining Donald Trump’s actions in inciting a violent mob to storm the United State capitol). He *knows* the national and local impact of his statements about Springfield’s Haitian population.
144. As is apparent from his unwillingness to roll back his comments as chaos in Springfield unfolded, Trump made the telecommunications with the purpose of harassing, intimidating, or abusing members of the Haitian community. The telecommunications were received at the premises of members of Springfield’s Haitian community. This violates R.C. 2917.21(A)(1).
145. R.C. 2903.21(A) (Aggravated Menacing), which one prong of the Telecommunications Harassment statute references, provides in relevant part:
- No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person’s unborn, or a member of the other person’s immediate family. . . .
146. Trump committed aggravated menacing. He caused Haitian migrants to believe that he, Trump, would cause harm to Haitian migrants with his threats of seizing and deporting *legal* migrants to a country, Venezuela, they have never known. Combined with the complicity statute, R.C. 2923.03(A)(1) and (4), he also knew his inflammatory remarks were soliciting and procuring others and causing otherwise innocent persons to make bomb threats to Haitian migrants, public officials, and other community members. By violating R.C. 2903.21(A) through his telecommunications, Trump has violated R.C. 2917.21(A)(3).
147. Through his telecommunications, Trump knowingly made comments to recipients within Springfield’s Haitian community. Those comments were intimidating, and made with the intent to abuse, threaten, or harass the recipients. This violates § 2917.21(A)(6).
148. Through his telecommunications, Trump knowingly made false statements concerning the reputation, indecent conduct, and criminal conduct of the Springfield Haitian community who received those telecommunications. These false statements were made with the purpose to abuse threaten, intimidate, or harass the recipients. This violates R.C. 2917.21(A)(9).
149. Through his telecommunications, Trump knowingly incited others to harass the Springfield Haitian community, whether through telecommunications or other means of harassment. This violates R.C. 2917.21(A)(10).

150. Vance knowingly made a telecommunication through:
- His September 9, 2024, post on X alleging that members of the Springfield Haitian community are eating family pets.
 - His September 10, 2024, post of X alleging that members of the Springfield Haitian community are eating family pets, while acknowledging the allegations as “rumors.”
 - His September 15, 2024, claims during a televised interview where he repeated the allegations that Haitians are eating family pets in Springfield and admitted that he “[has] to create stories.”
151. Vance made and caused to be made telecommunications with the purpose of harassing, intimidating, or abusing members of the Haitian community. The telecommunications were received at the premises of members of Springfield’s Haitian community. This violates § 2917.21(A)(1).
152. Through his telecommunications, Vance knowingly made comments to recipients within Springfield’s Haitian community. Those comments were intimidating and were made with the intent to abuse, threaten, or harass the recipients. This violates § 2917.21(A)(6).
153. Through his telecommunications, Vance knowingly made false statements concerning the reputation, indecent conduct, and criminal conduct of the Springfield Haitian Community who received those telecommunications. These false statements were made with the purpose to abuse, threaten, intimidate, or harass the recipients. This violates R.C. 2917.21(A)(9).
154. Through his telecommunications, Vance knowingly incited others to harass the Springfield Haitian community, whether through telecommunications or other means of harassment. This violates R.C. 2917.21(A)(10).
155. S.C.O. § 537.08 (Telecommunications Harassment) mirrors R.C. 2917.21 and applies with equal force to Trump’s and Vance’s misconduct. So Trump and Vance also violated S.C.O. § 537.08.
156. It is our hope and expectation that neither the judiciary nor prosecutors in Springfield view or will treat Trump and Vance as being above the law. We know that if anyone else had wreaked the kind of havoc Trump and Vance have wreaked in Springfield, they would have been prosecuted by now.

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I affirm the above to be true to the best of my knowledge under penalty of perjury.



Guertine Jozef
Co-Founder and Executive Director
Haitian Bridge Alliance, Inc.

Sworn to and subscribed before me this 06 day of September, 2024.

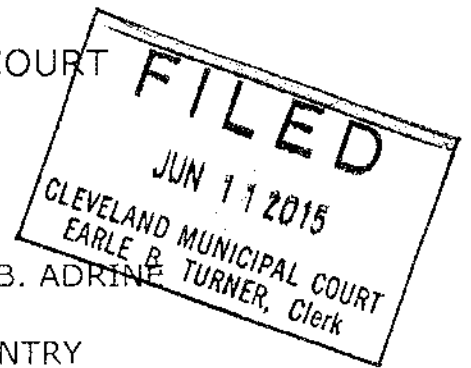


Notary Public, State of District of Columbia

My commission expires: 07/14/2029



IN THE CLEVELAND MUNICIPAL COURT
CLEVELAND, OHIO



IN RE:)
)
AFFIDAVITS RELATING TO) JUDGE RONALD B. ADRINE
TIMOTHY LOEHMANN &)
FRANK GARMBACK) JUDGMENT ENTRY

On June 9, 2015, Dr. Jawanza Colvin, Mr. Bakari Kiwana, Mr. Edward Little, Jr., Ms. Julia Shearson, Ms. Rachelle Smith, Dr. R.A. Vernon, Dr. Rhonda Williams and Mr. Joseph Worthy, jointly and severally, filed with the Cleveland Municipal Court affidavits accusing Cleveland Police Patrol Officers Timothy Loehmann and Frank Garmback with crimes arising from the shooting death of 12 year-old Tamir Rice on November 22, 2014, within the City of Cleveland.

Each of the affiants alleged, in separate parts of their respective affidavits, that each of the accused, by their actions, committed the following violations of the law during the events that resulted in Tamir's death:

1. Aggravated Murder, in violation of R.C. 2903.01
2. Murder, in violation of R.C. 2903.02
3. Involuntary Manslaughter, in violation of R.C. 2903.04(B)
4. Reckless Homicide, in violation of R.C. 2903.041
5. Negligent Homicide, in violation of R.C. 2903.05
6. Dereliction of Duty, in violation of R.C. 2921.44

Generally, the initiation of criminal proceedings in the State of Ohio is the preserve of the prosecuting authority within a given jurisdiction. However, state law does provide an avenue for a private citizen having knowledge of facts to initiate the criminal process.

R.C. 2935.09 provides private citizens the ability to bring forward accusations by affidavit to cause an arrest or prosecution. As relevant to the situation now before this bench, that section reads in pertinent part:

"(A) As used in this section, "reviewing official" means a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate.

(D) A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine **if** a complaint should be filed by the **prosecuting attorney or attorney charged by law with the prosecution of offenses** in the court or before the magistrate....”

“Knowledge of the facts,” within the meaning of the R.C. 2935.09, clearly indicates a legislative intent to restrict and define the type of knowledge which a private citizen must possess before being authorized to sign an affidavit. *South Euclid v. Clapacs* (1966), 213 N.E.2d 828. The phrase “knowledge of the facts” has a rather definite meaning in criminal law. In the general parlance of the court room, it means firsthand knowledge acquired by a witness through the utilization of one of his five senses (sight, hearing, smell, taste and touch), that is to say that the witness has perceived the event, incident, or thing about which he is testifying by seeing, hearing, smelling, tasting or touching it. True enough, the word “knowledge” sometimes encompasses information which has been acquired from others. However, when the phrase “of the facts” is added to describe the type of “knowledge” required, it would seem that the entire phrase “knowledge of the facts” was intended to mean factual or firsthand knowledge acquired through the use of one of the five senses. *South Euclid v. Clapacs* (1966), 213 N.E.2d 82.

In each of the affidavits filed with the court in this matter, the affiants related that they had the opportunity to view the surveillance video taken at the time of the complained of event. They each reported that they relied upon their review of the surveillance video to provide them with, “knowledge of the subsequent events from one or more of [their] five natural senses.” Finally, every affiant indicated that they had attached a copy of the video relied upon, in two forms, to their affidavit.

The video in question in this case is notorious and hard to watch. After viewing it several times, this court is still thunderstruck by how quickly this event turned deadly. The relevant portion covers 18 seconds immediately preceding the point where Tamir Rice suffers the wound, doubles-up and falls to the ground. On the video, the Zone Car containing Patrol Officers Loehmann and Garmback is still in the process of stopping when Rice is shot.

Following the shooting, four additional minutes pass, during which neither officer approaches Tamir as he lies wounded on the ground. At close to four minutes, a young lady, who news reports have since identified as Tamir’s

sister arrives on the scene and is restrained from going to her brother's side. Nearly eight minutes go by before paramedics arrive at the location. During that same time, approximately six other members of the Cleveland Division of Police join the first two and appear on the video.

It is difficult to discern, because of the quality of the tape, what, if any, first aid anyone renders to Rice during these eight minutes. Nearly fourteen minutes ultimately expire between the time that Tamir is shot and the time that he is removed from the park.

The video depicts Rice approaching the Zone Car just as it pulls into the park but it does not appear to show him making any furtive movement prior to, or at, the moment he is shot. Again, because of the quality of the video, the young man's arms are barely visible, but they do not appear to be raised or out-stretched. In the moments immediately before, and as the Zone Car approaches, the video does not display the toy gun in Tamir's hands. There appears to be little if any time reflected on the video for Rice to react or respond to any verbal or audible commands given from Loehmann and Garmback from their Zone Car between the time that they first arrived and the time that Rice was shot. Literally, the entire encounter is over in an instant.

Beyond the videos presented as exhibits, each affidavit sets forth the statutory language of each offense alleged. It is unquestionably sufficient to charge felony crimes in the words of the statutes. Crim.R. 7(B) states in part:

The indictment * * * shall contain a statement that the accused has committed some public offense therein specified. Such statement may be made in ordinary and concise language without any technical averments or any allegations not essential to be proved. It may be in the words of the applicable section of the statute as long as the words of that statute charge an offense, or in any words sufficient to give the accused notice of all the elements of the offense with which he is charged. *State v. White-Barnes*, 1992 WL 368844 (Ohio App. 4 Dist.).

Logically speaking, affidavits filed that allege misdemeanor violations should not be subject to stricter standards of scrutiny than indictments charging felonies. *State v. White-Barnes*, 1992 WL 368844 (Ohio App. 4 Dist.). Therefore, it is permissible for those, too, to be framed in statutory language.

None of the affidavits in this matter provide any other factual basis to justify their requests for the issuance of the respective complaints. In order for this

court to be in the position to adequately assess the validity of the accusations found therein, those affidavits must be reviewed to determine if they present, at minimum, the three requirements essential for issuance of a criminal complaint: 1) they must set forth a written statement of facts that constitute the essential elements of the offense charged. The essential elements of a given offense are those facts that must be proven to obtain a conviction, 2) they must state the numerical designations of the Revised Code Sections allegedly violated, and 3) they must be made under oath before a person authorized to administer oaths. *State v. Jones* (2011) 2011 WL 4553117, *State v. Patterson* (1988), 1998 Ohio Lexis 2289.

Upon completion of this review, the court finds that each of the documents before it meets these minimum requirements.

According to the statute, once the reviewing official is presented the affidavits called for by R.C. 2935.09, the official is required to make a determination as to the appropriate actions needed to substantiate or debunk the allegations contained in each document.

At the beginning of this review, this court is mindful that despite any conclusions it draws from the evidence found in the affidavits, its role here is advisory in nature. The actual issuance of misdemeanor complaints by the City of Cleveland, following the court's review, may be based upon the court's determination that such charges should issue. That decision is completely within the discretion of the City's prosecuting authority.

The City Prosecutor may also decide to issue felony complaints in the Cleveland Municipal Court based upon his acceptance of the court's determination that there is probable cause to believe certain accusations found in the affidavits posited against these Patrol Officers. However, those felony charges and perhaps some, or all, of the misdemeanor charges must ultimately be delivered to the Cuyahoga County Prosecuting Attorney and, will then be subject to **his** discretion, and resolved in the Cuyahoga County Court of Common Pleas.

Resort to this statutory process does not provide an "end around" either the City or the County Prosecutor. The statute provides this court the ability to review affidavits filed by private citizens for sufficiency and good faith. It utilizes the standard of probable cause, the lowest standard of proof required in any criminal proceeding for the conduct of that review. That statutory schema does not, however, provide the court the ability to require that its determination be substituted for the discretion of either the City or the County Prosecuting authorities.

In *State ex rel. Boylen v. Harmon*, 107 Ohio St.3d 370, 2006–Ohio–7, 839 N.E.2d 934, ¶6 (per curiam), the Supreme Court of Ohio determined that the procedure calling for a probable cause hearing under Crim.R. 4(A) was applicable where affidavits are filed **with a valid criminal complaint** under Crim.R. 3. It concluded that Crim.R. 4(A) **does not apply** where no complaints and (as here) **only affidavits** are filed under R.C. 2935.09. *Boylen*, supra, at ¶ ¶ 9 & 10.

In point of fact, close examination of the applicable statutes and criminal rules reveals that the trial court does not have the option of unilaterally issuing a warrant on its own initiative in these private citizen initiated cases.

Prior Version of R.C. 2935.09

R.C. 2935.09 provides for the initiation of a criminal action by a “peace officer” or “private citizen.” The statute was revised in 2006.

The prior version stated:

“In all cases not provided by sections 2935.02 to 2935.08, inclusive, of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer, or a private citizen having knowledge of the facts, shall file with the judge or clerk of a court of record, or with a magistrate, an affidavit charging the offense committed, or shall file such affidavit with the prosecuting attorney or attorney charged by law with the prosecution of offenses in court or before such magistrate, for the purpose of having a complaint filed by such prosecuting or other authorized attorney.”

In *State v. Jones*, 2011 WL 4553117 (Ct. App. 11th Dist. Portage County 2011) the court, interpreting (the prior version) of R.C. 2935.09, explained the statute as follows:

“ * * * [A] police officer or a private citizen may employ either of two methods ‘in order to cause the arrest or prosecution of a person charged with committing an offense[.]’ First, the complainant may allege that an offense has been committed by filing an affidavit with a judge, clerk of court of record, or magistrate. Second, the complainant may file such an affidavit with a prosecuting attorney. * * *. In the former scenario, the affidavit is the charging instrument and, in effect, becomes the complaint. Under the latter scenario, the prosecuting attorney files a formal complaint and attaches the affidavit thereto.” Patterson at *8, citing 2 Katz & Giannelli, *Criminal Law* (1996) 2-3, Section 35.3.

Under the prior version of the statute, there were two ways that a prosecution could be initiated by a private citizen; the first method was by the filing of an affidavit with a judge or clerk of a court of record, and the second was by filing an affidavit with the prosecuting attorney who, in turn, would file a complaint. *State v. McNeese* (Oct. 23, 1995), 12 th Dist. No. CA93-12-108, 1995 Ohio App. LEXIS 4665, *14, 1995 WL 617589 citing *State v. Maynard* (1964), 1 Ohio St.2d 57, 58-59, 203 N.E.2d 332.

Current Version of R.C. 2935.09

The General Assembly amended R.C. 2935.09, effective June 30, 2006. Am.H.B. No. 214, 151 Ohio Laws, Part III, 5973. The current version of the statute states, in pertinent part:

“(A) As used in this section, ‘reviewing official’ means a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate.

(B) In all cases not provided by sections 2935.02 to 2935.08 of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer or a private citizen having knowledge of the facts shall comply with this section.

(C) A peace officer who seeks to cause an arrest or prosecution under this section may file with a reviewing official or the clerk of a court of record an affidavit charging the offense committed.

(D) A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. * * * ”

A comparison of the two versions shows that, under the amended statute, the ability of a private citizen to “cause prosecution” by filing an affidavit is now limited. Under the prior version, either a peace officer or a private citizen may file an affidavit with the judge or a clerk of court to commence prosecution. *State v. Hooper* (1971), 25 Ohio St.2d 59, 61, 267 N.E.2d 285. Under the current version of the statute, a “peace officer” may still “cause prosecution” by filing an affidavit with a “reviewing official” (i.e., a judge or a prosecutor) or the clerk of a court. R.C. 2935.09(C). However, a private citizen, to “cause prosecution,” now must file an affidavit with a “reviewing official” for **the purpose of review** to determine **if** a complaint should be **filed by the prosecutor**. R.C. 2935.09(D).

Regarding the ability of a private citizen to initiate the criminal process, R.C. 2935.09 sets forth the "what." R.C. 2935.10 sets forth the "how." The Ohio Supreme Court has consistently held that R.C. 2935.09 does not mandate prosecution of all offenses charged by affidavit. *State ex rel. Boylen v. Harmon*, 107 Ohio St.3d 370, 2006-Ohio-7, 839 N.E.2d 934, ¶ 6 (per curiam). R.C. 2935.09 " 'must be read *in pari materia* with R.C. 2935.10, which prescribes the subsequent procedure to be followed.' " *Id.*

Under R.C. 2935.10 (A) in those cases where the charge that the private citizen seeks to have initiated is a felony, the statute provides that upon a finding of probable cause, the reviewing official shall issue a warrant for the arrest of the person charged in the affidavit, unless the hearing official finds that the affidavit "was not filed in good faith." The language used, "shall," is mandatory, and would seem to suggest no discretion in the trial court, once a determination of both probable cause and good faith is made.

However, the statute's mandatory requirement that the trial court issue a warrant solely based upon the existence of the facts contained in an affidavit puts the statute at odds with the provisions of Crim.R. 4 (A). Crim.R. 4 (A)(1) governs criminal warrant, summons and arrest procedures. It reads, as relevant to this discussion:

(A) Issuance

- (1) *Upon complaint.* If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

Such conflicts between statutes and the Supreme Court of Ohio's Rules of Court are subject to a provision of the Ohio State Constitution. Article IV, Section 5 (B) of the Ohio Constitution provides, *in pari materia*, that, "All laws in conflict with such rules shall be no longer in effect after such rules have taken effect." Therefore, the warrant provision of R.C. 2935.10 (A) is superseded by Crim.R. 4(A)(1). The rule requires that there be a complaint, (or a complaint accompanied by an affidavit or affidavits) filed with the court

before a warrant may issue, and is now the only legitimate vehicle by which a felony warrant can result.

Therefore, pursuant to obligation imposed upon this court by R.C. 2935.09 with regard to review of the affidavits presented, the court determines the following:

1. Identical accusations concerning six criminal violations are made by all of the affiants against each of the accused in the various affidavits filed with the court. For purposes of disposition, the identical criminal charges made against each accused by each affiant are consolidated according to the respective criminal charges. All affidavits alleging allegations of a specific criminal violation are consolidated into one allegation and disposed of accordingly based upon the court's review of the conduct of each accused.
2. As such, the court further finds that all of the affidavits presented were executed in good faith.
3. With regards to the accusation of Aggravated Murder, in violation of R.C. 2903.01, against the accused, FRANK GARMBACK, the court finds that the accusation lacks probable cause.
4. With regard to the accusation of Aggravated Murder, in violation of R.C. 2903.01, against the accused, TIMOTHY LOEHMANN, the court finds the accusation lacks probable cause.
5. With regard to the accusation of Murder, in violation of R.C. 2903.02, against the accused, FRANK GARMBACK, the court finds the accusation lacks probable cause.
6. With regard to the accusation of Murder, in violation of R.C. 2903.02, against the accused, TIMOTHY LOEHMANN, the court finds that probable cause exists for the accusation.
7. With regard to the accusation of Involuntary Manslaughter, in violation of R.C. 2903.04(B), against the accused, FRANK GARMBACK, the court finds the accusation lacks probable cause.
8. With regard to the accusation of Involuntary Manslaughter, in violation of R.C. 2903.04(B), against the accused, TIMOTHY LOEHMANN, the court finds that probable cause exists for the accusation.

9. With regard to the accusation of Reckless Homicide, in violation of R.C. 2903.041, against the accused, FRANK GARMBACK, the court finds the accusation lacks probable cause.

10. With regard to the accusation of Reckless Homicide, in violation of R.C. 2903.041, against the accused, TIMOTHY LOEHMANN, the court finds that probable cause exists for the accusation.

11. With regard to the accusation of Negligent Homicide, in violation of R.C. 2903.05, against the accused, FRANK GARMBACK, the court finds that probable cause exists for the accusation.

12. With regard to the accusation of Negligent Homicide, in violation of R.C. 2903.05, against the accused, TIMOTHY LOEHMANN, the court finds that probable cause exists for the accusation.

13. With regard to the accusation of Dereliction of Duty, in violation of R.C. 2921.44, against the accused, FRANK GARMBACK, the court finds that probable cause exists for the accusation.

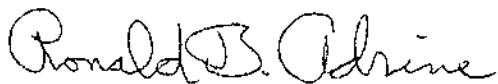
14. With regard to the accusation of Dereliction of Duty, in violation of R.C. 2921.44, against the accused, TIMOTHY LOEHMANN, the court finds that probable cause exists for the accusation.

Having completed its review of all of the affidavits in this matter, pursuant to the requirements of R.C. 2935.09, this court determines that complaints should be filed by the Prosecutor of the City of Cleveland and/or the Cuyahoga County Prosecutor, in re: the accusations levied in the said affidavits against the accused, Frank Garmback, in re: Negligent Homicide and Dereliction of Duty. This determination shall be communicated and forwarded to both prosecutors' offices immediately contemporaneous with its announcement.

Having completed its review of all of the affidavits in this matter, pursuant to the requirements of R.C. 2935.09, this court also determines that complaints should be filed by the Prosecutor of the City of Cleveland and/or the Cuyahoga County Prosecutor, in re: the accusations levied in the said affidavits against the accused Timothy Loehmann, for Murder, Involuntary Manslaughter, Reckless Homicide, Negligent Homicide and Dereliction of Duty. This determination shall be communicated and forwarded to both prosecutors' offices immediately contemporaneous with its announcement.

To reach these determinations, this court applies the standard of probable cause, i.e., more than a mere suspicion but less than the quantum of evidence required for conviction. The prosecutors, however, are ethically required to decide whether, applying the highest standard of proof required by law, to wit: beyond a reasonable doubt, it is more likely than not that a reasonable trier of fact will hold the individuals accused in these affidavits accountable for these, or any other crimes that might be alleged. This court reaches its conclusions consistent with the facts in evidence and the standard of proof that applies at this time.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Ronald B. Adrine". The signature is written in black ink and is positioned above a horizontal line.

Judge Ronald B. Adrine