In The

United States Court of Appeals for the Second Circuit

SCOTT HUMINSKI, PLAINTIFF - APPELLANT,

v. Docket No. 15-1454

STATE OF CONNECTICUT, ET AL, DEFENDANTS – APPELLEES.

MOTION FOR REHEARING EN BANC RE: LIFETIME POLICE ARREST THREAT TARGETING SPEECH (CONTACT) ABSENT DUE PROCESS and DEATH THREATS

NOW COMES, Scott Huminski ("Huminski"), and moves for rehearing *en banc* concerning Huminski's claims that perpetual lifetime police arrest threats targeting speech (no contact orders) absent notice, opportunity to be heard and judicial review violate Due Processs and the First\Amendment and that the claims related to the 3 death threats received by U.S. Mail were properly brought in the Court below and this Court (related to the 2 death threats targeting the instant appeal).

In particular, the perpetual lifetime email arrest threat from the Gilbert,AZ police spawned out of conspiracy between 3 police agencies stating,

> *"Detective Pete Trahan with Wilton Conn. Police Department has requested we inform you to stop contacting your brother Bruce. If you do not stop contacting Bruce you will be arrested."*

violates Due Proces as it is a summary punishment absent Due Process and it targets First Amendment expression. The lifetime arrest threat also violates the rules promulgated by the Arizona Supreme Court concerning restraining orders and injunctions against harassment. See District Court, MOTION TO SET FORTH FINDINGS and CONCLUSIONS OF LAW CONCERNING THE CONSTITUTIONAL ARIZONA INJUNCTION AGAINST HARASSMENT CONTRASTED WITH STREET COP SUA SPONTE SUMMARY LIFETIME ARREST THREATS , Exhibit "A". It is patently obvious that street cop lifetime

arrest threats are overbroad in duration. Lifetime punishments in America are reserved for heinous crimes. Even criminals receive notice, opportunity to be heard and judicial review prior to a lifetime punishment. Huminski has become a sub-American citizen who has lost all Due Process and First Amendment rights related to the lifetime perpetual arrest threats. The lifetime police arrest threats was issued to specifically defeat the constitutional protections set forth by the Supreme Court of Arizona attached hereto as Exhibit "A" (AZ Supreme Court ADMINISTRATIVE DIRECTIVE NOS. 2013-03, 2006-01). Apparently, the Gilbert, Arizona police do not agree with these procedures and prefer to email lifetime street cop sua sponte summary arrest threats as they involve much less paperwork and bypass the Due Process required by Arizona's highest court. The AZ procedures only last for one year and then need to be renewed by hearing before a judge to extend them, contrarily, email arrest threats are good for life and do not expire, they are very unconstitutional, but, are very quick and easy to issue mindlessly by police who care not to bother with Due Process or the First Amendment. For Arizona police bypassing the safeguards set forth by the AZ Supreme Court is the quick and dirty way to proceed when desiring to silence an individual for life.

Huminski's claims against the three death threats received by him in the U.S. Mail from defendant Town of Gilbert are properly brought in the district where the obstruction of justice, witness intimidation, witness tampering and associated torts are active, the USDC (Ct) and the two death threats issued against this appeal are properly addressed in the District Court and here. The first death threat received by Huminski states as follows:

> "Hello Scott,
>
> It's almost time for you to die.
>
> Did you think that I would let you get away with your bullshit and your lawsuits?
>
> … Enjoy your last few days on earth.

I'll be there real soon.

Officer Pillar"

Huminski's attempt to enjoin the death threats is not frivolous. Huminki is the recipient of death threats and lifetime arrest threats absent Due Process, yet, the panel finds Huminski guilty of burdening the courts with frivolous papers. As the record reveals, Justin M. Nelson is already dead related to these matters because of similar errors of the courts and law enforcement. It's time for the crime and deaths to stop.

Dated at Bonita Springs, Florida this 15TH day of September, 2015.

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CERTIFICATE OF SERVICE

NOW COMES, Scott Huminski ("Huminski"), and certifies that all papers enclosed herewith were served upon the following appellees by first class mail, prepaid all parties of record.

Dated at Bonita Springs, Florida this 15TH day of September, 2015.

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In The
United States District Court (Conn.)

SCOTT HUMINSKI, for himself and	)	
Those similarly situated,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 3:14-cv-01390-MPS
STATE OF CONNECTICUT, ET AL.	)	
DEFENDANTS.	)	

MOTION FOR ORDER TO SHOW CAUSE AS TO WHY DEFENDANTS SHOULD NOT BE HELD IN CRIMINAL CONTEMPT FOR OBSTRUCTION OF THESE PROCEEDINGS

NOW COMES, Scott Huminski ("Huminski"), and moves for an order to show cause as to why Defendants City of Norwalk, Town of Wilton, Town of Gilbert, Peter Trahan, Debra Hartin, Bruce Hume and Jeff Spahr (proposed defendant who advised Hume to maintain the conspiracy to obstruct this litigation when conferring with Hume concerning the sua sponte summary lifetime arrest threats) in criminal or civil contempt of this Court for maintaining arrest threats targeting this litigation with Obstruction of Justice, Witness Tampering and Witness Intimidation concerning Huminski's prosecution of this litigation.

Although given dozens of opportunities to withdraw, rescind or narrowly-tailored the arrest threats that threaten Huminski with arrest for contact (service) of defendants in this matter, the defendants stand firm upon the arrest threats that obstruct, manipulate and interfere with this litigation.

Aside from the aforementioned conduct and the conduct included in the record being a constitutional tort, the defendants' conduct is in criminal violation of 18 U.S.C. §§ 241,242 (conspiracy against rights, violation of rights under color of law).

Memorandum of Law

Scott Huminski ("Huminski") petitions and moves the Court to invoke its authority to initiate criminal contempt proceedings, and issue an order requiring the aforementioned defendants (collectively the "Contemnors") to show cause why they should not be held in criminal or civil contempt of this Court pursuant to 18 U.S.C. § 401 and F.R.Crim.P 42. Mr.

Spahr is an admitted member of this Court providing further jurisdiction to this Court pursuant to its inherent supervisory and disciplinary powers.

Contempt of Court is defined by Blacks Law Dictionary 288 (5th ed. 1979) as "[A]ny act which is calculated to embarrass, hinder, or obstruct the court in administration of justice, or which is calculated to lessen its authority or its dignity. Committed by a person who does any act in willful contravention of its authority of dignity, or tending to impede or frustrate the administration of justice, or by one who being under the court's authority or dignity, or tending to impede or frustrate the administration of justice,…"

The distinction between civil and criminal contempt is set forth in *United States v. Wendy*, 575 F.2d 1025, 1030 n.13 (2d Cir. 1978). According to the *Wendy* case, "[t]he traditional distinction between civil an criminal contempt has been the difference between refusing to do what has been ordered (civil) and doing what has been prohibited (criminal)." *Wendy*, 575 F.2d at 1030 n.13. The conduct involved in this matter is prohibited. Criminal contempt is a vehicle for punishing after the harm has been done. *See Id.* at 1030 n.13; *Intern Distrib. Centers, Inc. v. Walsh Trucking Co.*, 62 B.R. 723, 727-28 (S.D.N.Y. 1986). This case presents the unique scenario whereby the harm constitutes past and future harm.

This Court has authority to institute criminal contempt proceedings, find Contemnors in contempt, and punish them for their misconduct. A proceeding for criminal contempt can be commenced by the government — on its own initiative or on the relation of an individual who need not have an interest in the enforcement of a violated order — or by the court on its own motion. *See*Fed. R. Crim. P. 42(b). Criminal, and perhaps civil, contempt is applicable here because the wrongs have already been committed, they are open-ended, they will obstruct future litigation in the Second Circuit and Huminski seeks a contempt order that would be punitive, remedial and corrective. *See, e.g., International Union, UMWA v. Bagwell*, 512 U.S. 821, 827 (1994); *United States v. Nunez*, 801 F.2d 1260, 1263 n.2 (11th Cir. 1986). The court's authority to render punishment for the contumacious conduct in this case is beyond dispute:

> That the power to punish for contempts is in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. The courts

> of the United States, when called into existence and vested with jurisdiction over any subject, at once became possessed of the power.

Michaelson v. United States ex rel. Chicago, St. P., & O Ry. Co., 266 U.S. 42, 65-66 (1924).

18 U.S.C. § 401 provides: A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as-- (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; (2) Misbehavior of any of its officers in their official transactions; (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command. 18 U.S.C. § 401 (2000).

The United States Supreme Court has ruled that federal courts have authority under 18 U.S.C. § 401 to punish criminal contempt of their authority. *See, e.g., In re Michael*, 326 U.S. 224, 227 (1945). Indeed, most federal courts recognize this authority as an inherent attribute of judicial office. *See, e.g., Michaelson*, 266 U.S. at 65-66 (1924); *accord International Union, UMWA v. Bagwell*, 512 U.S. at 831 (courts have embraced inherent contempt authority as power "necessary to the exercise of all others") (quoting *United States v. Hudson*, 7 Cranch 32, 34 (1812)); *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 793 (1987).

Conduct in the “presence” of the court, for purposes of Rule 42(b) is conduct that disrupts court proceedings or demonstrates significant disrespect for the court. See, e.g., *United States v. Martin-Trigona*, 759 F.2d 1017, 1024-26 (2d Cir. 1985). Summary contempt power is generally limited to cases in which "immediate corrective steps are needed to restore order and maintain the dignity and authority of the court," *Johnson v. Mississippi*, 403 U.S. 212, 214 (1971), and in which there is an "open, serious threat to orderly procedure," *Harris v. United States*, 382 U.S. 162, 165 (1965). Continuing, the Supreme Court has stated that Rule 42(a)'s summary contempt procedures are appropriate only for a "narrow category" of offenses "where instant action is necessary to protect the judicial institution itself." *Harris v. United States*, 382 U.S. 162, 165, 167 (1965).

Huminski moves that this Court enter an Order to Show Cause ordering Contemnors to appear before this Court to show cause, if they have any, why they should not be adjudged in

contempt of this honorable Court for obstruction of justice, witness tampering and witness intimidation and other illegal conduct targeting the plaintiff. The Court must take swift and firm action to protect and uphold our cherished system of justice.

Dated at Bonita Springs, Florida this 19th day of December, 2014.

--/s/-- scott huminski

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Certificate of Service

Huminski has transmitted copies, prepaid, of the aforementioned papers to counsel of record on 12/19/2014.

--/s/-- scott huminski

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