

IN THE SUPREME COURT
FOR THE COMMONWEALTH OF PENNSYLVANIA
MIDDLE DISTRICT

No. 45 MM 2024 (Sealed)

ETHAN WENTWORTH & RUSTY HERR

Applicants/Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE, ET AL.,

Respondents.

PETITIONERS' APPLICATION & MOTION FOR EMERGENCY RELIEF
UNDER 210 PA. CODE § 3307; 210 PA. CODE § 3309;
42 Pa. C.S. § 502; 42 Pa. C.S. § 721; 42 Pa. C.S.A. § 726

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- Alice Beck Dubow (Hon.) et al., *The Pennsylvania Restitution Benchbook 2020* (Administrative Office of Pennsylvania Courts), <https://www.pacourts.us/Storage/media/pdfs/20210526/234952-file-11360.pdf>..... 14,19-20
- Clarke D. Forsythe, *Historical Origins of Broad Federal Habeas Review Reconsidered*, 70 *Notre Dame L. Rev.* 1079-80 (1995), available at <http://scholarship.law.nd.edu/ndlr/vol70/iss5/2>.....8
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TO THE HONORABLE, THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT, COME NOW Petitioners, Ethan Wentworth and Rusty Herr, and aver as follows:

I. INTRODUCTION

Two men sit in a Pennsylvania prison illegally. They have never been charged with a crime. They have never been made parties to any suit. They have never had a trial. The government and lower court concede there is no basis for criminal contempt. Yet, the court ordered them imprisoned for 30 days. The lower court pretends, like the government, that orders of imprisonment are “civil contempt” even when the individuals imprisoned have no means to end their imprisonment. This patently unconstitutional and illegal imprisonment must come to an end, and it is the duty of this court to end it.

This violates clear precedent in Pennsylvania: “the court must impose conditions on the sentence so as to permit the contemnor to purge himself; he must be allowed to carry the keys to the jail in his pocket.” *Grubb v. Grubb*, 473 A.2d 1060, 1062 (1984). Anyone “sentenced to a determined term of imprisonment or a fixed fine, which he is powerless to escape by purging himself of his contempt, is entitled to the essential procedural safeguards that attend criminal proceedings generally.” *Id.* It is undisputed that no such safeguards were provided for here.

Immediate remedy is necessary, and immediate release is required.

II. JURISDICTION

This application and motion for emergency relief and prayer that this Court issue an immediate writ of habeas corpus is filed pursuant to the Judicial Code 42 Pa. C.S. §§ 502,¹ 721, and 726, and the Pennsylvania Rules of Appellate Procedure 3307 and 3309. This application seeks to restore the constitutional rights of these petitioners under the Pennsylvania Constitution as well as the Constitution of the United States of America, as well as their rights under the Pennsylvania Rules of Court Procedure.

Accordingly, this application and petition or motion are brought under the same jurisdictional basis as the Petitioner-Applicants' original filing of April 26, 2024,² pursuant to the Court's power to grant emergency relief under the same jurisdictional powers and its authority to grant emergency relief, mandamus, stay, or supersedeas under its plenary King's Bench Power and Original Jurisdiction. See 42 Pa. C.S. §§ 502, 721, and 726; Section 1 of the Schedule to the Judiciary Article of the Constitution of Pennsylvania;³ and 210

¹ Schwab, Michael K., *Long Live the King: The Supreme Court of Pennsylvania's King's Bench Powers*, 65 Vill. L. Rev. 677 (2020).

² Filing in this docket 45 MM 2024 entitled "Application For Leave To File Original Process In The Supreme Court And For Petition For Writ Of Habeas Corpus Under 210 Pa. Code § 3307 And 42 Pa. C.S. § 721(1) And For Extraordinary Relief Under 210 Pa. Code § 3309 And 42 Pa. C.S. § 726" (dated April 26, 2024).

³ 1 Pa. Const. art. V, §1. Article V, section 1 states: "The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme

Pa. Code §§ 3307 and 3309 (Pennsylvania Rules of Appellate Procedure). The same jurisdictional basis and corresponding inherent and plenary powers of this Court provide this Court the jurisdictional basis and constitutional duty to accept this Application and Motion for emergency relief.

Further, Counsel for Mr. Wentworth and Mr. Herr file this Application and Motion because the Petitioner-Applicants are provided no other remedy to a current and continued violation of Pennsylvania's Constitution and law as well as the Constitution of the United States by the Commonwealth Court. They continue to be unlawfully imprisoned, such that the petitioners must be afforded this Court's immediate, emergency exercise of original jurisdiction under the bases previously listed.⁴ The specific exercise of emergency relief prayed for herein is (1) in accepting this Application for Immediate Relief and (2) in Granting this Motion for Immediate Writ To Issue and thereby afford emergency relief from unlawful commitment to prison. Thus, Mr. Wentworth and Mr. Herr hereby pray that this Court invoke immediate relief and/or pray for such alternative relief or action by the court as may be appropriate.⁵

Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system.”

⁴ This application and motion is also filed and provided in compliance with 210 Pa. Code § 123 (Applications for Relief) at the direction of the Prothonotary of the Supreme Court of Pennsylvania (Middle District).

⁵ Alternatively, should this Court find it more applicable, Petitioners seek to obtain

Importantly, Petitioners also pray for this Court to shorten the time for response due to the exigent nature and circumstances of the unconstitutional imprisonment—and its impact on the health and safety of Mr. Wentworth and Mr. Herr and their respective families.⁶ See 210 Pa. Code § 63.7.⁷

A. Constitution Of The Commonwealth Of Pennsylvania Art. I, § 14. Prisoners To Be Bailable; Habeas Corpus.

The Constitution of the Commonwealth of Pennsylvania (1838) provides in relevant part under Article IX:

ARTICLE IX

That the general, great, and essential principles of liberty and free Government may be recognized and unalterably established, WE DECLARE,

Of the equality and rights of men.

immediate, emergency supersedeas or stay of/from the unlawful Order of Commitment of Judge Wojcik until the merits and scope of the underlying jurisdictional bases for the practice of veterinary medicine and exceptions by definition and by enumerated provision can be determined. A party seeking to suspend the enforcement of a trial court order during an appeal must obtain a supersedeas. A supersedeas order is not an appellate ruling on the merits of the judgment below and does not open, strike off or vacate the judgment, remove the judgment from the record or otherwise render it invalid. *Goodstein v. Goodstein*, 619 A.2d 703, 706 (Pa. Super. 1992), app. dismissed, 639 A.2d 1180 (Pa. 1994). “[A] supersedeas order is an auxiliary process designed to supersede or hold in abeyance the enforcement of the judgment of an inferior tribunal.” *Id.*

⁶ For one of the men, this includes the trauma and psychological torture of saving a young man from committing suicide by hanging—twice. The other man is under acute mental stress and appears to be mentally shutting down due to the psychological stress, having been threatened with a physical attack and having witnessed that same person physically assault another individual.

⁷ See 210 Pa. Code § 63.7 (Motions, Miscellaneous Petitions, and Applications for Relief) (“Court Note: Time periods for responses*...*May be shorter in stay or supersedeas applications when circumstances require, or by court order.”), available online at <https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/210/chapter63/s63.7.html&d=>.

Section I. That all men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness.

Of the origin of power, and the end of government.

Sect. II. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness: For the advancement of those ends, they have, at all times, an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.

Of the rights of conscience, &c.

Sect. III. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority can, in any case whatever, controul or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishments or modes of worship.

Of a disqualification on account of religion.

Sect. IV. That no person, who acknowledges the being of a God and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth.

Of elections.

Sect. V. That elections shall be free and equal.

Trial by jury.

Sect. VI. That trial by jury shall be as heretofore, and the right thereof remain inviolate.

Of the liberty of the press.

Sect. VII. That the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government: And no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. In prosecutions for the publication of papers, investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence: And, in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

Of security from searches and seizures.

Sect. VIII. That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures: And that no warrant to search any place, or to seize any person or things, shall issue, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

Of the rights of the accused in criminal prosecutions.

Sect. IX. That, in all criminal prosecutions, the accused hath a right to be heard by himself and his council, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favour, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage: That he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

Of informations, &c.

Sect. X. That no person shall, for any indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, or, by leave of the court, for oppression and misdemeanor in office. No person shall, for the same offence, be twice put in jeopardy of life or limb; nor shall

any man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being made.

Of the courts of justice, and suits against the state.

Sect. XI. That all courts shall be open, and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial or delay. Suits may be brought against the commonwealth in such manner, in such courts, and in such cases, as the legislature may by law direct.

Of suspending laws.

Sect. XII. That no power of suspending laws shall be exercised, unless by the legislature, or its authority.

Of bail, fines, and punishments.

Sect. XIII. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Of the habeas corpus.

Sect. XIV. That all prisoners shall beailable by sufficient sureties, unless for capital offences, when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Of oyer and terminer, &c.

Sect. XV. That no commission of oyer and terminer or gaol delivery shall be issued.

Of insolvent debtors.

Sect. XVI. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

Of ex post facto laws.
Sect. XVII. That no ex post facto law, nor any law impairing
contracts, shall be made.

Id. (emphasis added).⁸

B. The Great Writ—The Writ Of Habeas Corpus.

The “Great Writ” of habeas corpus is a fundamental right in the Constitution that protects against unlawful and indefinite imprisonment.

Translated from Latin, it means “show me the body.”⁹ Habeas corpus has historically been an important instrument to safeguard individual freedom against arbitrary executive power. Our nations’ Founders considered habeas corpus so important to guaranteeing our basic rights that they specifically enshrined it in Article I of the U.S. Constitution.

Habeas corpus is a centuries-old legal procedure that protects against unlawful and indefinite imprisonment. It is a right that is even older than the United States. Our nation’s founders considered habeas corpus essential to

⁸ Constitution of the Commonwealth of Pennsylvania – 1838 (Duquesne University School of Law), available at <https://www.paconstitution.org/texts-of-the-constitution/1838-2/> (older text used to highlight history and tradition of the text); alternatively, access to current version available through Pennsylvania General Assembly website, Constitution Of The Commonwealth Of Pennsylvania, <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/00/00.001..HTM> (corresponding citations to Pa. Const. art. I, §§ 1-17).

⁹ Also translated “you have the body.” See Clarke D. Forsythe, *Historical Origins of Broad Federal Habeas Review Reconsidered*, 70 Notre Dame L. Rev. 1079-80 (1995), available at <http://scholarship.law.nd.edu/ndlr/vol70/iss5/2>.

guaranteeing our basic rights and enshrined it in the Constitution. Article I, Section 9 of the Constitution states.

For hundreds of years, the writ of habeas corpus has allowed detainees to seek a judicial ruling on the lawfulness of their detention. The Constitution's Suspension Clause explicitly preserves that right. Thus, for nearly eight centuries, the writ of habeas corpus has served as a check against arbitrary executive detention. The Framers regarded habeas corpus as so essential to ordered liberty that they included a provision in the Constitution providing that "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." U.S. Const. art. I, § 9, cl. 2.

Alexander Hamilton wrote in his Federalist Paper No. 84, "*The establishment of the writ of habeas corpus, the prohibition of ex post facto laws...are perhaps greater securities to liberty and republicanism than any [the Constitution] contains.*"¹⁰ And Thomas Jefferson called the protections provided by habeas corpus one of the "*essential principles of our Government.*"¹¹

¹⁰ Available online at https://avalon.law.yale.edu/18th_century/fed84.asp.

¹¹ Speech of Mr. Jefferson at his inaugural, Washington, March 4, [1801], LOC.gov, available at <http://www.loc.gov/resource/rbpe.1900040a> (last accessed Apr 30, 2024).

The Great Writ,¹² the Writ of Habeas Corpus is of particular significance in Pennsylvania. The cases that follow reflect the significance of the 1780 Act for the Gradual Abolition of Slavery in Pennsylvania. The act prohibited the importation of slaves into the Commonwealth of Pennsylvania and, due to their masters' violation of the new law and the PAS's lawyering, many individuals were granted their freedom by the court.¹³

III. FACTUAL AND PROCEDURAL STATEMENT & UPDATE ON CONTINUED UNLAWFUL IMPRISONMENT

A. No Due Process Afforded Until 20 Days After Commitment; The April 29, 2024 Hearing & Continued Unlawful Commitment Order.

Only upon a motion for immediate release, filed on April 26, 2024, with the Commonwealth Court, did Judge Wojcik afford any due process or notice and opportunity to be heard and defend to the Petitioners. After that hearing, which occurred twenty days after the men were summarily arrested and committed to prison without any conditional ability to purge themselves from the finding of contempt, Judge Wojcik reaffirmed his order of un purgeable, unconditional punishment by continued commitment without any legal basis

¹² Magna Carta: Muse and Mentor, Writ of Habeas Corpus, LOC.gov, available at <https://www.loc.gov/exhibits/magna-carta-muse-and-mentor/writ-of-habeas-corpus.html>.

¹³ These cases include the list of individuals freed by writ of habeas corpus as provided and available by The Historical Society of Pennsylvania (the "HSP")—founded in 1824 and one of the nation's largest archives of historical documents—see Habeas Corpus Actions, available at <https://hsp.org/history-online/digital-history-projects/pennsylvania-abolition-society-papers/habeas-corpus-actions> (physical review of these documents are available at "AMS 051, box 4A/ microfilm reel 24")

and without having any full hearing on merits of the underlying subject matter jurisdiction of whether the State Board has jurisdiction to seek the subpoenaed records it seeks or whether the records lie outside of the practice of veterinary medicine according to the exemptions and definitions under Pennsylvania law. Further, the Court asserted in its May 16, 2023 Order that NoBull Solutions, LLC was served in person, but the record contradicts that statement, showing that Attorney Czerniakowski served NoBull Solutions, LLC by First Class Mail and presumes they received it. At no point were Ethan Wentworth or Rusty Herr ever named parties to the enforcement action. At no point was an order mailed to them as named persons or recipients.

1. The April 29, 2024 Order

The April 29, 2024 Order reinforcing the un purgeable commitment to county prison as punishment provides as follows:

“NOW, April 29, 2024, upon consideration of the "Motion for Immediate Release" (Motion) filed on behalf of Ethan Wentworth and Rusty Herr of NoBull Solutions, LLC (NBS), and the Answer in opposition thereto submitted by the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs (BPOA), and following oral argument conducted this day, said Motion is hereby DENIED”

Michael K Wojcik
MICHAEL H. WOJCIK, Judge

Order Exit
04/29/2024

¹ By Order dated May 16, 2023, the Court adjudicated NBS in contempt of this Court's previous Order dated November 30, 2021 (relating to enforcement of investigative subpoena duces tecum), provided NBS with conditions to purge its contempt, imposed a monetary civil penalty, and cautioned the custodian of records and any members, managers, or others directing the activities of NBS that failure to purge the contempt may result in the issuance of a warrant for their arrest and incarceration. At no point during these proceedings has Mr. Wentworth or Mr. Herr challenged BPOA's allegations that they are the principal members of NBS and directing its activities or made any attempt to purge this Court's finding of contempt.

2. The May 16, 2023 Order¹⁴

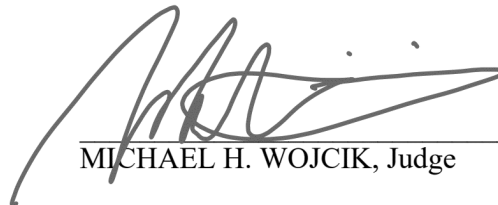
NOW, May 16, 2023, following a hearing on this Court's Rule to Show Cause why NoBull Solutions, LLC (NBS) should not be held in contempt of this Court's November 30, 2021 Order (Enforcement Order), and after notice to NBS by personal service, which did not appear and has not complied with this Court's Enforcement Order, this Court's Rule to Show Cause is hereby made ABSOLUTE. NBS is adjudicated IN CONTEMPT of this Court's Enforcement Order. The Court hereby ORDERS as follows:

1. To purge its contempt, NBS shall:
 - a. Within 10 days of service of this Order, provide the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs (BPOA) with the name and address of its custodian of records as well as

¹⁴ Judge Wojcik states that this occurred by personal service. However, the Docket shows an 8/10/2023 entry that this occurred by First Class Mail and is only presumed to have been served. We have no confirmed receipt of this document. No personal service occurred according to the docket and verification of Attorney for Department of State Amber Czerniakowski.

the names and addresses of all members, managers, and other persons who direct the activities of NBS

- b. Within 30 days of service of this Order, provide BPOA with the records requested in its Investigative Subpoena Duces Tecum;
2. In the event that NBS and/or its custodian of records fails to comply with the deadlines set forth above, the Court imposes a civil penalty of \$100.00 per day against NBS for every day of noncompliance thereafter.
3. Further, in the event that NBS and/or its custodian of records fails to purge their contempt, and upon notification of such by BPOA, the Court may issue a warrant for the arrest and incarceration of the custodian of records and/or any members, managers, or others who direct the activities of NBS.
4. BPOA shall immediately serve this Order upon NBS and shall thereafter file a proof of service of the same.
5. This Court retains jurisdiction over this matter.



MICHAEL H. WOJCIK, Judge

3. The November 30, 2021 Order

NOW, November 30, 2021, this matter having come before the Court pursuant to the authority set forth in Section 27(b) of the Veterinary Medicine Practice Act, Act of December 27, 1974, P.L. 995, No. 326, as amended, 63 P.S. § 485.27(b), and following a hearing this day with respect to Petitioner Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs' "Petition to the Original Jurisdiction of the Commonwealth Court to Enforce an Investigative Subpoenas Duces Tecum" (Petition

to Enforce), the Petition to Enforce is GRANTED. The custodian of records for NoBull Solutions, LLC, is hereby ordered to produce the records designated within the State Board of Veterinary Medicine's February 16, 2021 Investigative Subpoena Duces Tecum within thirty (30) days of service of this order

The Court retains jurisdiction over the parties and subject matter of this case until NoBull Solutions, LLC, has fully complied with this Order.

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

Order Exit
12/01/2021

IV. ARGUMENT

A. **The Standard For Contempt; The Law Is Clear: This Order Constitutes Criminal Contempt.**

The **unconstitutional and statutory defects** identified in the Order overlook or ignore the following provisions of law:

1. Civil Contempt: Elements of Civil Contempt

To find a defendant in contempt, a court must find by a preponderance of the evidence that (1) the defendant had notice of the court order, (2) the defendant's failure to pay was volitional, and (3) the defendant acted with wrongful intent. See *In re Cullen*, 849 A.2d 1207, 1211 (Pa. Super. Ct. 2004).¹⁵ Notice of a "clear, definite, and specific" order means that a

¹⁵ See *also*, Hon. Alice Beck Dubow et al., *The Pennsylvania Restitution Benchbook*

defendant can be held in contempt for violating a court order only if the order is “definite, clear, and specific—leaving no doubt or uncertainty” in the defendant’s mind as to what the obligation is. *Lachat v. Hinchliffe*, 769 A.2d 481, 488-89 (Pa. Super. Ct. 2001) (citation and emphasis omitted).

Further, any ambiguities or omissions in the order must be construed in favor of the defendant. *Id.* at 489. A defendant who only “plausibl[y]” violated only one interpretation of the order cannot be held in contempt. *Id.* at 490.

An additional condition of civil contempt: the defendant ***must have the present ability to comply with the purge condition.*** A court holding a defendant in civil contempt must impose a “purge condition”—a way to escape the punishment for contempt (otherwise, the court has unlawfully used its criminal contempt authority without appropriate procedural safeguards). *Barrett v. Barrett*, 368 A.2d 616, 621 (Pa. 1977); *see also*

2020, 59-60, <https://www.pacourts.us/Storage/media/pdfs/20210526/234952-file-11360.pdf>; published by the Administrative Office of Pennsylvania Courts (AOPC) (“The procedural requirements, and the burden of proof, differ based on the type of contempt. Compare *In re Cullen*, 849 A.2d 1207, 1211 (Pa. Super. 2004) (explaining the elements of civil contempt) with *Commonwealth v. Baker*, 722 A.2d 718, 721 (Pa. Super. 1998) (en banc) (criminal contempt). There is a right to counsel in all cases of criminal contempt, and a right to counsel in all cases of civil contempt where there is ‘a likelihood of imprisonment.’ *Commonwealth v. Diaz*, 191 A.3d 850, 862 (Pa. Super. 2018) (civil contempt); *Commonwealth v. Ashton*, 824 A.2d 1198, 1203 (Pa. Super. 2003) (criminal contempt). The defendant must have a ‘timely opportunity to consult with counsel’ prior to the hearing. *Commonwealth v. Mauk*, 185 A.3d 406, 412 (Pa. Super. 2018).” *Id.*)

Schnabel Assoc., Inc. v. Bldg. and Const. Trades Council, 487 A.2d 1327, 1334 (Pa. Super. Ct. 1985).

When it imposes a proper purge condition, a court must find beyond a reasonable doubt that the defendant can immediately comply with that condition. *Id.* If the defendant cannot comply with the condition and escape punishment, then the coercive civil contempt sentence has been transformed into a punitive criminal contempt sentence—but without the heightened criminal contempt procedural protections. For this reason, the “beyond a reasonable doubt” standard applies when the court determines whether the defendant can comply with the purge condition. *Id.* For example, if a court holds a defendant in contempt, imposes a sentence of five (5) days in jail, and imposes a purge condition of \$500, that purge condition is legal only if the court finds beyond a reasonable doubt that the defendant has the present ability to pay that \$500. Under such circumstances, defendants should consider filing an appeal and seek a stay of that order and/or, if necessary, file a petition for a writ of habeas corpus.

Applying *Barrett*, courts have ruled purge conditions illegal when it is impossible for the defendant to immediately pay the amount of money required or meet other conditions set by the court. For example, the Superior Court has invalidated a purge condition that had him use his IRS refund to

make payments because he was not entitled to an IRS refund. *Godfrey v. Godfrey*, 894 A.2d 776, 783 (Pa. Super. Ct. 2006). The court also invalidated a requirement that he obtain employment, as that was a “condition [that] will only be met sometime in the future.” *Id.*; see also *Hyle v. Hyle*, 868 A.2d 601, 606 (Pa. Super. Ct. 2005) (purge condition that defendant pay \$2,500 through work release invalid because the defendant lacked the present ability to pay the money and could only make the money sometime in the future). By the same token, if the defendant has already done whatever the court wanted, even if he or she is late in doing so, any punishment of that action is accomplished through criminal, not civil, contempt. See *Bruzzi v. Bruzzi*, 481 A.2d 648, 654 (Pa. Super. 1984) (parent who absconded with children and had already returned them by the time of contempt hearing was subject to criminal, not civil, contempt). **That is because the defendant would not have the present ability to do something to escape the punishment.**

2. Procedural Requirements

A finding of civil contempt ordinarily requires five procedural steps. *Crislip v. Harshman*, 365 A.2d 1260, 1261 (Pa. Super. Ct. 1976) (en banc) ((1) a rule to show cause why attachment should issue; (2) an answer and hearing; (3) a rule absolute; (4) a hearing on the contempt citation; and (5)

an adjudication.) The notice must give the defendant an opportunity to prepare a defense, which in these circumstances means explaining that the defendant's "ability to pay is a critical issue in the contempt proceeding." *Harrington v. Dep't of Transportation*, 763 A.2d 386, 392 (Pa. 2000) (explaining that "due process requires sufficient notice of the conduct that forms the basis for a deprivation so that the respondent may adequately prepare a defense"); *Turner v. Rogers*, 564 U.S. 431, 447 (2011) (procedural safeguards to prevent "erroneous deprivation of liberty" in civil contempt proceedings for nonpayment include, inter alia, "notice to the defendant that his 'ability to pay' is a critical issue in the contempt proceeding").

Defendants facing imprisonment for nonpayment of LFOs have a right to counsel at their contempt hearings, and they must have a "timely opportunity to consult with counsel," meaning before they appear before the judge. *Commonwealth v. Mauk*, 185 A.3d 406, 412 (Pa. Super. 2018). The Superior Court has made clear that such a right exists under Rule 122 of the Rules of Criminal Procedure for nonpayment in summary cases, *Commonwealth v. Farmer*, 466 A.2d 677, 678 (Pa. Super. Ct. 1983) (Rule 122 (then numbered Rule 316) addressing summary offenses requires appointment of counsel prior to imprisonment for nonpayment of LFOs), and there is also a Due Process right under the Fourteenth Amendment in all

cases. *Commonwealth v. Diaz*, 191 A.3d 850, 861 (Pa. Super. Ct. 2018), *Commonwealth v. Diaz*, 2018 PA Super 175 (Pa. Super. Ct. 2018).

If the judge holds the defendant in contempt and imposes a punishment that does not require any additional court hearing or order before it takes effect, the defendant can immediately appeal. *Foulk v. Foulk*, 789 A.2d 254, 258 (Pa.Super. 2001) (en banc); *Stahl v. Redcay*, 897 A.2d 478, 487 (Pa. Super. Ct. 2006) (“civil contempt orders imposing sanctions generally constitute final, appealable orders”). A defendant can take an appeal even if there is a purge condition that would allow the defendant to escape punishment. *Foulk*, 789 A.2d at 258 (it would be “inappropriate and unnecessarily harsh for a contemnor in a civil contempt action to undergo incarceration or fulfill another sanction before this Court will accept an appeal of a contempt order.”)

Likewise, Chapter 2 of The Pennsylvania Restitution Benchbook 2020—authored by the Honorable Alice Beck Dubow, the Honorable Judith Ference Olson, the Honorable Jack A. Panella, and the Honorable Victor P. Stabile of the Superior Court of Pennsylvania—confirms the necessity of counsel for any form of contempt that threatens imprisonment and that an

order of imprisonment without any means to end that imprisonment constitutes a criminal contempt. *Id.* at 59-60 (emphasis added).¹⁶

B. Even Assuming Civil Contempt Were Proper, The Length Of Time Exceeds Any Statutory Basis—An Extension Of Time Willfully & Knowingly Imposed By The Commonwealth Court After Twenty Days Of Imprisonment.

Under 42 Pa. C.S. § 4131-4139,¹⁷ Pennsylvania law prohibits imprisonment for most indirect contempt:¹⁸

§ 4133. **Commitment** or fine for contempt.
Except as otherwise provided by statute, ***the punishment of commitment for contempt provided in section 4132 (relating to attachment and summary punishment for contempts) shall extend only to contempts committed in open court. All other contempts shall be punished by fine only.***¹⁹

The statutory code is clear. Even assuming “civil contempt” applied to the circumstances here as the Commonwealth Court claims in its April 29, 2024 Order continuing its order of imprisonment—a label which even the Pennsylvania case law and the Pennsylvania Restitution Benchbook 2020 negates—nowhere in these provisions is the Commonwealth Court empowered to issue an arrest warrant and order of immediate commitment

¹⁶ See *supra* n.12.

¹⁷ Entitled “SUBCHAPTER C - CONTEMPT OF COURT”

¹⁸ Public law citations and dates of amendments have been omitted.

¹⁹ Emphasis Added.

for “civil contempt” of court for a period of **30 days**²⁰ under the factual circumstances of this case.

V. SPECIFIC IMMEDIATE & EMERGENCY RELIEF REQUESTED

1. Petitioners hereby seek to file an immediate application, petition, and notice with the Supreme Court of Pennsylvania that they remain unlawfully imprisoned, and they petition this Court, requesting that an immediate writ of habeas corpus should issue.

2. In the alternative, Petitioners seek such relief as this Court may afford and deems just in affording immediate, emergency relief from unlawful imprisonment and shortened response time by this Court.

VI. CONCLUSION

WHEREFORE, for the reasons set forth above, the Petitioner-Applicants, Ethan Wentworth and Rusty Herr, respectfully request that the Court grant this emergency application and immediately issue a writ of habeas corpus or order their release from county prison and reinstate their liberty.

Dated: May 2, 2024

By: /s/ Bradford L Geyer

²⁰ Under § 4133, “Commitment or fine for contempt”—“Except as otherwise provided by statute, *the punishment of commitment for contempt provided in section 4132 (relating to attachment and summary punishment for contempts) shall extend only to contempts committed in open court. All other contempts shall be punished by fine only.*” Moreover, even under § 4136, Indirect Criminal Contempt, the Punishment is limited to **15 days** commitment or imprisonment for contempt. (Emphasis added.)

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**IN THE SUPREME COURT
FOR THE COMMONWEALTH OF PENNSYLVANIA
MIDDLE DISTRICT**

Ethan Wentworth & Rusty Herr	:	Supreme Court of Pennsylvania
Petitioners,	:	
	:	NO. 45 MM 2024 (Sealed)
v.	:	
	:	
Dept of State et al.,	:	
Respondents.	:	PROPOSED ORDER OF EMERGENCY RELIEF & WRIT

ORDER

On application and petition/motion of counsel for Petitioner-Applicants, and for good cause shown for emergency relief, it is hereby ORDERED that immediate writ of habeas corpus shall issue for Ethan Wentworth and Rusty Herr.

It is so ordered this 2nd day of May, 2024.

/s/ _____, J.
[Name]
SUPREME COURT OF
PENNSYLVANIA

Dated: _____, 2024

**CERTIFICATION OF COMPLIANCE WITH
CASE RECORDS PUBLIC ACCESS POLICY**

I certify that this filing on behalf of Petitioner-Applicants Ethan Wentworth and Rusty Herr complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than nonconfidential information and documents.

May 2, 2024

/s/ Bradford L. Geyer .
Bradford L. Geyer
Pa. Bar ID #: 62998

CERTIFICATE OF COMPLIANCE WITH WORD COUNT

I certify that this filing is in compliance with the Word Count Limit because it is 5,387 Words, as calculated by Microsoft Word Processing System for Office16. This word count includes footnotes, headers, and the body text of this filing.

/s/ Bradford L. Geyer
Bradford L. Geyer

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2024, I caused a true and correct copy of the foregoing filing to be filed via the UJS PACFile E-Filing system as stated and served via E-Service and/or certified prepaid mail upon the following:

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