

<p>DISTRICT COURT CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, CO 80202 Phone: (303) 606-2300</p>	<p>DATE FILED: November 25, 2023 10:03 PM FILING ID: B52FBD13564FB CASE NUMBER: 2023CV32577</p>
<p>NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAUFER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN, Petitioners,</p> <p>v.</p> <p>JENA GRISWOLD, in her official capacity as Colorado Secretary of State, and DONALD J. TRUMP Respondents.</p>	<p>▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Respondent Donald J. Trump:</i> Scott E. Gessler (28944), sgessler@gesslerblue.com Geoffrey N. Blue (32684), gblue@gesslerblue.com Justin T. North (56437), jnorth@gesslerblue.com Gessler Blue LLC 7350 E. Progress Pl., Suite 100 Greenwood Village, CO 80111 Tel: (720) 839-6637 or (303) 906-1050</p>	<p>Case Number: 2023CV32577</p> <p>Division/Courtroom: 209</p>
<p>RESPONDENT DONALD J. TRUMP’S BRIEF REGARDING PETITIONERS’ OBLIGATION TO PROVE PRESIDENT TRUMP HAD THE SPECIFIC INTENT TO ENGAGE IN AN INSURRECTION</p>	

An essential element of Petitioners’ claim is proving that President Trump had the specific intent to engage in an “insurrection” as defined under Section Three of the Fourteenth Amendment. According to Petitioners’ own arguments and experts, in order to prove that President Trump “engaged” in an insurrection, Petitioners must prove specific intent.

I. Petitioners must show that President Trump acted with specific intent to engage in an insurrection.

Petitioners have acknowledged that specific intent is an essential element of “engaging in insurrection,” stating in their *Response to President Trump’s Third Motion to Dismiss* that “‘engaged in’ means one was ‘actively involved in the planning or execution of *intentional* acts’ of insurrection, or ‘*knowingly* provided active, meaningful, *voluntary*, direct support for, material assistance to, or specific encouragements of such actions.’”¹ This language is the language of specific intent.

Furthermore, their expert ██████████ also agrees that Petitioners must prove President Trump’s specific intent, citing historical resources.² He quotes an opinion published by Attorney General Stanbery where he stated that finding someone “‘engaged in rebellion’ required ‘some direct overt act, done with the *intent* to further the rebellion.’”³

██████████ also cites letters by President Johnson and his cabinet as approving of Stanbery’s interpretation and quotes them as saying that “‘engaging in rebellion . . . must be an overt and *voluntary act done with the intent of aiding or furthering* the common unlawful purpose.’”⁴

Caselaw also informs us that Petitioners must prove specific intent as well. The

¹ *Response in Opposition to President Trump’s Third Motion to Dismiss*, at 36 (citing William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section 3*, 172 U. Pa. L. Rev. (forthcoming 2024), at 18, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532751) (emphasis added).

² ██████████ Expert Report at 21-22.

³ *Id.* (quoting 12 Op. Att’y Gen. 141, 164 (1867)) (emphasis added).

⁴ *Id.* at 22 (citing 6 James D. Richardson, *A Compilation of the Messages and Papers of the President* 528-31, 552-56 (1897)).

General Assembly uses the terms “intentionally” and “with intent” when it is requiring a prosecutor to prove specific intent.⁵ This standard used by the Colorado Supreme Court tracks Attorney General Stanbery’s opinion, in which he said, “some *direct overt act*, done with *intent* to further the rebellion, is necessary to bring the party within the purview and meaning of this law.”⁶ These words mean, as Petitioners and ██████████ acknowledge, that Petitioners must prove that President Trump had the specific intent to engage in an insurrection.

II. Petitioners must prove that President Trump intended a specific outcome.

Black’s Law Dictionary defines “specific intent” as, “The intent to accomplish the precise criminal act that one is later charged with.”⁷ Colorado’s jury instructions are in accord. The criminal jury instruction defines it as, “A person acts ‘intentionally’ or ‘with intent’ when his [her] conscious objective is to cause the specific result proscribed by the statute defining the offense.”⁸ The civil jury instruction instructs, “A person acts with intent when (his) (her) conscious objective is to cause a specific result.”⁹ Petitioners, therefore, must show that President Trump consciously intended to engage in an insurrection on January 6. To be sure, this Court has to date declined to set forth the definitions of “engage” and “insurrection.” But whatever standard this Court ultimately adopts, the Petitioners must prove that President Trump specifically intended that particular outcome.

⁵ *Candelaria v. People*, 2013 CO 47, ¶ 14 (gathering statutes).

⁶ 12 Op. Att’y Gen. 141, 164 (1867) (emphasis added).

⁷ “INTENT”, Black’s Law Dictionary (11th ed. 2019).

⁸ CJI-CRIM, F:185, “Intentionally (and with intent),” *citing* C.R.S. § 18-1-501.

⁹ CJI-Civ 32:5, *citing* C.R.S. § 18-1-501.

Respectfully submitted this 25th day of October 2023,

GESSLER BLUE LLC

s/ *Geoffrey N. Blue*
Geoffrey N. Blue

Certificate of Service

I certify that on this 25th day of October 2023, the foregoing was electronically served via email or CCES on all parties and their counsel of record.

s/ *Joanna Bila*
Joanna Bila, Paralegal