

<p>COURT OF APPEALS, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203</p> <p>Appeal from Mesa County District Court Judgment of Conviction and Sentence. Case Number 22CR371. Honorable Matthew D. Barrett.</p>	
<p>Plaintiff-Appellee: PEOPLE OF THE STATE OF COLORADO v. Defendant-Appellant TINA PETERS</p>	
<p>Appellant's Attorneys: John Case, Atty reg. # 2431 John Case, P.C. 6901 South Pierce St. #340 Littleton CO 80128 Phone: (303) 667-7407 E-mail: brief@johncaselaw.com</p> <p>Patrick M. McSweeney, Pro Hac Vice Robert J. Cynkar, Pro Hac Vice McSweeney, Cynkar & Kachouroff, PLLC 3358 John Tree Hil Woodbridge VA 22192</p> <p>Peter Ticktin, Pro Hac Vice The Ticktin Law Group 270 SW Natura Avenue Deerfield Beach, Florida 33441</p>	<p>Case Number: 2024CA1951</p>
<p style="text-align: center;">REPLY IN SUPPORT OF APPELLANT'S PETITION FOR REVIEW OF TRIAL COURT'S DENIAL OF BOND PENDING APPEAL</p>	

Mrs. Peters asks this Court to accept Mrs. Peters' petition for review under C.A.R. 26(b) for "good cause shown." *People v. Jenkins*, 2025 COA 90 ¶ 20. As we will demonstrate below, Mrs. Peters has persistently sought appellate review of the trial court's denial of appeal bond as a violation of her First Amendment rights. We are here because after 499 days of incarceration, she still has not received a ruling on this crucial constitutional issue.

Mrs. Peters continues to be in danger from violent criminals with whom she is confined. If this Court knows that it intends to dismiss convictions or at least require resentencing, granting Mrs. Peters' petition will correct a situation which could end in tragedy. It is reasonably possible, if not probable, that a new sentence, if any, will be time served. Every additional day in which Mrs. Peters is denied bond on appeal could be an extra day on her ultimate sentence.

It is not Ms. Peters' fault that she was improperly convicted, sentenced, and denied bond on appeal. The government is obsessed with keeping Mrs. Peters in harm's way in prison, in order to gag her from speaking about elections.

I. The Trial Court Denied Mrs. Peters' First Amendment Rights.

Article II, Section 19 (2.5)(b) of the Colorado Constitution allows bond on appeal if the defendant "does not pose a danger to the safety of any person or the community." On October 3, 2024, the trial court found that Mrs. Peters was a danger

to the community because of words that she used to criticize Colorado's computer voting system:

And this is what makes Ms. Peters such a danger to our community. It's the position she held that has provided her the pulpit from which she can **preach these lies, the undermining of our democratic process, the undermining of the belief and confidence in our election systems.**

[Tr. 10/3/24 99:20-24].

And **prison is for those folks where we send people who are a danger to all of us**, whether it be by the pen or the sword or the **word of the mouth.**

[Id. 101:14-16]. According to the judge, Mrs. Peters' words were "just as bad, if not worse, than the physical violence that this court sees on an all too regular basis. And it's particularly damaging when those words come from someone who holds a position of influence like you." [Id. 100:5-8]. There is no doubt that when the trial denied bond on appeal [Id. at 100:15-24, and CF 5203], it relied on its own findings that Mrs. Peters' words made her a "danger to the community."

The People cannot defend the trial court's egregious findings that Mrs. Peters is a danger to the community because of her speech. Searching desperately for any justification to deny bond, the People claim that the trial court "adopted the prosecution's arguments about her flight risk." Response at 10. The record reveals

no finding by the trial court that Mrs. Peters was a “flight risk.” Any such finding, if it existed, would be clearly erroneous, because no evidence in the record supports it. As we demonstrate in Section III below, the People never produced any evidence that Mrs. Peters is a flight risk. She meets all statutory criteria for bond pending appeal.

II. There is Good Cause to Accept this Petition for Review

Appellate courts find “good cause” under C.A.R. 26 (c) to accept late filings in criminal appeals if, as here, the appellant is imprisoned and has pursued a persistent course of action to protect his or her appellate rights. *Jenkins*, at ¶ 20 (finding “good cause shown” where appellant persistently pursued bond on appeal in the trial court, and appellate rules and statutes were silent as to the deadline for filing a petition in the Court of Appeals); *Estep v. People*, 753 P. 2d 1241, 1246-47 (Colo. 1988) (finding “good cause shown” where appellant missed deadline because he trusted court-approved stipulation that he could wait to combine the denial of multiple Rule 35 petitions into a single appeal). The U.S. Supreme Court encourages procedural flexibility toward those in prison:

“When a litigant is subject to the continuing coercive power of the Government in the form of imprisonment, our legal traditions reflect a certain solicitude for his rights, to which the important public interests in judicial efficiency and finality must occasionally be accommodated. We have previously refused to allow technicalities that caused no prejudice to the prosecution And

procedural accommodations to prisoners are a familiar aspect of our jurisprudence.”

Stutson v. United States, 516 U.S. 193, 196-97 (1996) (Citations omitted).

Like the prisoners in *Jenkins*, *Estep*, and *Stutson*, Mrs. Peters has persistently pursued her right to bond on appeal. She filed a motion in the trial court [CF 5108-13], which was denied because of her speech [Tr. 10/3/24 99:20-24 and 101:14-16]. She initiated this appeal on November 7, 2024. At the time, C.A.R. 9(b) allowed a defendant to apply directly to this Court for bond pending appeal. Mrs. Peters promptly filed her initial motion for appeal bond pursuant to 9(b) on November 17, 2024. On December 8, 2024, another division of this court denied her motion for bond without stating a reason.

On February 7, 2025, Mrs. Peters filed her Application for Habeas Corpus in U.S. District Court, asking to be released on bond pending appeal because the trial court violated her First Amendment rights in denying bond on appeal. The habeas application languished for ten months until December 8, 2025, when the federal court ruled that it lacked jurisdiction under the *Younger* abstention doctrine because this Court had not entered final judgment.

On December 5, 2025, the President of the United States pardoned Mrs. Peters for “those offenses she may have committed or taken part in related to election integrity and security during the period from January 1, 2020 through December 31,

2021.” On December 12, 2025, counsel served the pardon on the Women’s Correctional Facility at LaVista, but the Colorado Department of Corrections refused to release Mrs. Peters. On December 23, 2025, Mrs. Peters filed her Urgent Motion to Determine Jurisdiction in this Court, arguing that Mrs. Peters should be released forthwith because she had been unlawfully prosecuted in state courts and pardoned by the President. That issue is still pending.

To determine whether “good cause” exists to accept a late filing, the Court must assess the totality of circumstances in light of three factors: (1) the potential prejudice to the People; (2) the interests of judicial economy; and (3) the propriety of requiring the defendant to pursue other remedies. *Jenkins*, at ¶ 21. Considering the first factor, there is no prejudice to the People, who have already briefed the issue. This petition is one more skirmish in the war to release a political prisoner while the Court decides the merits of her appeal. As to judicial economy, this Court must rule on the First Amendment issue in judging the merits of the appeal, so there is little additional burden on the Court to order the trial court to grant bond before the Court decides the merits. Finally, concerning the propriety of requiring Mrs. Peters to pursue other remedies, there are no other remedies available. Considering these factors and the totality of circumstances, the Court should accept the petition and grant relief.

As an alternative to accepting Mrs. Peters' petition "for good cause shown" pursuant to C.A.R. 26(c), this Court can accept the petition as a request for reconsideration of this Court's order denying bond December 8, 2024. The People argue that they are aware of no authority that provides for a second review of the trial court's denial of an appeal bond, asserting "this Court should not permit Mrs. Peters a second bite of the apple." Response at 4. C.A.R. 27(b) authorizes motions to reconsider procedural orders. Appellate rules do not prohibit a motion to reconsider the denial of a motion for bond, especially where, as here, substantial time may elapse before the Court rules on the merits of the appeal, and the Court now has complete information, including the entire trial court record, and the benefit of oral argument, to make an informed decision. In *Jenkins*, the court treated defendant's petition for review as a notice of appeal. By the same logic, this Court can treat Mrs. Peters' petition for review as a motion to reconsider.

III. Mrs. Peters Meets All Criteria to Be Released on Bond

Art. II, § 19(2.5)(b)(I) of the Constitution of Colorado and requires the court to find that Mrs. Peters is unlikely to flee, and that she does not pose a danger to the safety of any person or the community. There is no evidence in the record that Mrs. Peters ever tried to flee the court's jurisdiction or that she is likely to do so in the future. To the contrary, the record shows that Mrs. Peters traveled frequently out of

state during the 31 months she was released on bond. Each trip required advance written notice to the Court and prosecution of Mrs. Peters destination and travel arrangements. Mrs. Peters could have used any of these trips to become a fugitive from justice. Each time she returned to face her accusers, and ultimately, to be sentenced. [Tr. 10/3/24 p. 6:4-10].

The People argue that the trial court “adopted the prosecution’s arguments about her flight risk.” Response at 10. The People presented no evidence that Mrs. Peters tried to flee or planned to flee in the future. Instead, the People cited the following as a basis to deny bond on appeal:

From the time this case was filed with the District Court until the time the Defendant was placed on home detention with electronic monitoring for a different misdemeanor conviction, the Defendant frequently flew around the country and had access to private planes as evidenced by the reimbursement payments made to Mike Lindell filed by defense counsel and the admission in the Defendant’s statement dated September 16, 2024, which is part of the presentence report.

[CF 5127]. The above facts show that Mrs. Peters had many opportunities to flee the jurisdiction, but never did. At page 9 of the Response, the People cite *People v. Gurule*, 174 P. 3d 846 (Colo App. 2007). In *Gurule*, the Court of Appeals approved the trial

court's finding that defendant was a flight risk because he failed to appear for sentencing and did not return for four months. *Id.* at 846.

The People argued in the trial court, and continue to argue here, that Mrs. Peters is a flight risk because of her travel history and alleged disregard of court orders:

Should the court impose a custodial sentence, the Defendant's prior travel history, often with the assistance of others along with her disregard for court orders indicates that she is a flight risk.

[CF 5129]. The People urge that the trial court "adopted the People's arguments about her flight risk" when the court denied bond "for the additional reasons stated in the response." CF 5203. But a trial court cannot accept the blanket adoption of one party's findings and arguments without heightened scrutiny. The appellate court must verify that facts in the record support proposed findings. *Elite Storage Holdings, LLC v. Dan Brennan, LLC*, 2024 Colo. App. LEXIS 1689 ¶ 19. Here, the People provided the trial court with nothing more than the conclusory accusation that Mrs. Peters was a flight risk. The People produced no facts that support this allegation. If the trial court adopted the People's unsupported accusation as a finding of fact, the trial court abused its discretion. *People v. Burlingame*, 434 P. 3d 794, 796-97 (Colo. App. 2019) (holding that trial court abused its discretion by finding police were guilty of outrageous conduct, when evidence in record did not support finding).

Article II, section 19 (2.5)(b)(II) requires the court to find that Mrs. Peters' appeal is not frivolous and that it is not pursued for purpose of delay. It was apparent at oral argument that the three-judge panel believes Mrs. Peters appeal is not frivolous, and there is no evidence that she filed the appeal for purposes of delay. Thus, the petition satisfies the requirements of Article II, section 19 (2.5)(b), and Mrs. Peters is eligible for bond pending appeal if she meets the nine statutory criteria of C.R.S. §16-4-202(1) (a) through (i). These criteria are discussed fully at pages 9-13 of the petition, and need not be repeated here.

IV. Granting Bond Will Protect Mrs. Peters From Further Harm.

This Court heard oral argument on January 14, 2026. Four days later, on January 18, 2026, Mrs. Peters was assaulted by a 29-year-old inmate serving a six-year sentence for aggravated assault (she stabbed her fiancé three times in the back with a knife, and also stabbed her brother). Mrs. Peters is a 70-year-old non-violent first offender, whom D.O.C. classifies as a level 1 prisoner. By regulation, Mrs. Peters belongs in a minimum-security facility with non-violent women. Because D.O.C. does not operate minimum-security facilities for women, it houses Mrs. Peters with violent offenders. Since Mrs. Peters arrived at LaVista in April of 2025, she has been assaulted five times by other inmates.

The Response argues that conditions of confinement are not included in the statutory factors that can be considered for bond on appeal. Response at 14-15. We respectfully submit that the suitability of confinement must be considered as a factor in determining bond, as well as in sentencing. If the case is remanded to the trial court for an evidentiary hearing on bond, the conditions of confinement should be considered.

CONCLUSION

Mrs. Peters meets the constitutional and statutory criteria for being granted bond pending appeal. The only reason given by the district court for denying bond was that her statements about the voting system made her a danger to the community. This was error.

Pursuant to C.R.S. §16-4-204(3)(b), Mrs. Peters asks this Court to enter an Order directing the trial court to:

- (1) Assign a different judge to Mrs. Peters' case, 22CR371;
- (2) Grant bond pending issuance of the mandate in this appeal, by reinstating \$25,000 cash or surety bond under which Mrs. Peters was released during the proceedings below.

Respectfully submitted February 13, 2026,

s/John Case
John Case #2431

CERTIFICATE OF SERVICE

I certify that, on February 13, 2026, a copy of this Reply was electronically served through Colorado Courts E-Filing on opposing counsel of record.

s/ John Case _____