

No. 19-

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IN THE  
SUPREME COURT  
OF THE UNITED STATES

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CHAD STONER,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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November 7, 2019

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## **QUESTION PRESENTED**

The question presented is whether, as the court of appeals in this case held, a person may be convicted of the federal crime of interstate transmission of a threat, in violation of 18 U.S.C. § 875(c) and § 876(c), merely for reposting video of a threatening incident on the individual's own internet page and for discussing violent scenarios in private letters with a willing and sympathetic correspondent.

## **PARTIES TO THE PROCEEDINGS**

The petitioner herein, who was the defendant-appellant below, is Chad Stoner.

The respondent herein, which was the appellee below, is the United States of America.

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## **PETITION FOR A WRIT OF CERTIORARI**

The petitioner, Chad Stoner, hereby petitions this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Third Circuit.

### **OPINIONS BELOW**

The opinion of the court of appeals is unpublished but is reproduced in the appendix to this petition, Petition Appendix (“Pet. App.”) 1a, and is available at 2019 WL 3231137.

### **JURISDICTION**

The judgment sought to be reviewed was entered by the court of appeals on July 19, 2019. Pet. App. 1a. A petition for rehearing of the judgment was timely filed thereafter, and denied by the court of appeals on August 13, 2019. *Id.* at 13a. This Court has jurisdiction over this petition pursuant to 28 U.S.C. § 1254(1).

### **STATUTORY PROVISIONS**

The relevant statutory provisions, 18 U.S.C. § 875(c) and § 876(c), provide respectively in relevant part as follows:

Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.

....

Whoever knowingly so deposits or causes to be delivered as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. §§ 875(c), 876(c).

## STATEMENT OF THE CASE

The relevant facts and procedural history in this case are simple, and largely undisputed.

1. The case began when the defendant, Chad Stoner, confronted an official in a local Pennsylvania township in August 2016 with complaints over perceived corruption in the management of municipal affairs and conduct of township meetings. Pet. App. 3-4a. During the conversation, Mr. Stoner made comments that were interpreted by the official as a threat to engage in violence against her and others. *Id.*<sup>1</sup> Mr. Stoner was arrested and imprisoned the next day on charges of making terroristic threats under state law. *Id.*

Several days after the confrontation, while Mr. Stoner remained incarcerated, Mr. Stoner's girlfriend – who had been present at the incident and had recorded it using a cellular telephone – posted a video of the event on a “YouTube” page that Mr. Stoner had previously used to publicize materials that in his view demonstrated corruption and malfeasance in the local government. Pet. App. 3-4; *see id.* at \_\_ (Appx105-109). In subsequent months, Mr. Stoner sent two letters to his girlfriend at their home, in which he expressed his intense feelings for her and desire to reunite. *Id.* at 3-4; *see id.* at \_\_ (Appx111-112, 220-239). The letters also mention, although only briefly, Mr. Stoner's anger towards law enforcement officials and belief that

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<sup>1</sup> Mr. Stoner suggested, specifically, that if officials continued to conduct themselves in the same way, the township would “turn into” a town such as Dallas, Texas – in which several police officers had been shot and killed a month before the confrontation. Pet. App. 3-4a.

there should be a revolution in the country, along with his “hope [that] more people start killing cops again.” *Id.* at 3-4; *see id.* at \_\_ (Appx111-112, 220-239).<sup>2</sup> The letters were later discovered, in the couple’s bedroom, when police conducted a search of their home. *Id.* at 3-4.

The video and the letters were identified as “interstate threats” in an indictment filed against Mr. Stoner in August 2017, charging him with three separate counts of violating 18 U.S.C. § 875(c) (transmitting a threat in interstate commerce) and 18 U.S.C. § 876(c) (mailing threatening communications). Ex. A at 2. Trial went forward in December of that year, and resulted in a verdict of guilty on all counts. *Id.* Mr. Stoner was ultimately sentenced to a term of imprisonment of 150 months – more than twelve years in prison. Ex. A at 5.

2. The principal issue on appeal was whether the evidence at trial showed that the video or letters could be considered a “true threat,” as necessary to support conviction under 18 U.S.C. § 875(c) and § 876(c). Pet. App. 3-4. A “true threat” is defined for these purposes, as the panel purported to recognize, as a communication

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<sup>2</sup> The relevant language, which appears in only a single paragraph in each of the two multi-page letters, states in full as follows:

I truly believe we do need to kill more “law enforcement.” Or in other words “domestic terrorist,” that’s what they really are. We need another war. This whole country is a ticking bomb and we need the timer to run out. I really hope more people start killing cops again.

Pet. App. \_\_ (Appx220, 225-26).

There are a few people that are going to have hell to pay, when I do get out. I’ve decided that some of them have caused more than enough harm to myself and my family to justify a retaliation. What’s even better is, I have a lot of time to plan.

*Id.* at \_\_ (Appx233-234, 238-239).



that *both* would be viewed by a reasonable person as conveying a serious intent to inflict harm *and* was intended as such by the speaker. *Id.* The video and letters could satisfy neither standard, as the video merely reported a threatening incident and the letters were sent by Mr. Stoner to his girlfriend alone. *See id.*

The panel in this case, nevertheless, upheld the convictions. Pet. App. 7-9. Without explicitly addressing the constitutional concerns raised by punishing individuals for engaging in reporting and protest activities and in sending purely private correspondence, the panel concluded that – because the video contained images of a threat being made, and because the letters contained threatening imagery – a reasonable person would see them as threats, and Mr. Stoner would have viewed them as such. *Id.* The materials therefore constituted “true threats,” in the panel’s judgment, sufficient to warrant conviction under 18 U.S.C. § 875(c) and § 876(c). *Id.* The court of appeals subsequently refused to rehear or reconsider the panel’s holding. *Id.* at 13a.

This timely petition for a writ of certiorari followed.

### **REASONS FOR GRANTING THE PETITION**

This is an extraordinary case. The opinion of the panel holds that an individual may be convicted of the federal offense of communicating an interstate threat under 18 U.S.C. § 875(c) and § 876(c), and punished with more than a decade in prison, for doing nothing more than reposting a video of an incident in which someone was threatened and discussing violent and revolutionary behavior in private letters with a willing correspondent. Ex. A at 7-9. That holding is flatly contrary to governing

caselaw, and poses a direct threat to core principles of free speech under the First Amendment to the U.S. Constitution.

Opinions from this Court and circuit courts across the Nation, including *Watts v. United States*, 394 U.S. 705 (1969), have long and consistently admonished that a statute which criminalizes “pure speech” – including 18 U.S.C. § 875(c) and § 876(c)– must be interpreted and applied to avoid reaching protected speech. *E.g.*, 394 U.S. at 707-08; *see, e.g., United States v. Stewart*, 411 F.3d 825, 828 (7th Cir. 2005).<sup>3</sup> Those provisions must therefore be read, as this Court said in *Elonis v. United States*, 135 S. Ct. 2001 (2015), to authorize conviction of an individual only if he or she makes a “true threat,” *viz.*, one that *both* would be viewed by a recipient as a direct threat of physical violence *and* was actually intended to be viewed as a threat by the speaker. *Id.* at 2011-12. Threats of this caliber fall outside the guarantees of the First Amendment, and for that reason may be prosecuted. *Id.* Communications that do not meet this standard, either because they do not include a direct threat or were not intended as a threat, retain full constitutional protection and cannot support conviction under 18 U.S.C. § 875(c) and § 876(c). *Id.*; *see also, e.g., Watts*, 394 U.S. at 707-08.

None of the communications in this case does, or could, satisfy this standard. The video was merely a recording of a threatening incident – not a threat itself – and it was posted on an internet page for the express purpose of delivering a political and

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<sup>3</sup> *See also, e.g., United States v. Whiffen*, 121 F.3d 18, 21 (1st Cir. 1997); *United States v. Darby*, 37 F.3d 1059, 1066 (4th Cir. 1994); *United States v. DeAndino*, 958 F.2d 146, 149-50 (6th Cir. 1992).

civic message, in the form of an exposé of perceived local corruption and malfeasance. Pet. App. \_\_ (Appx105-109). The letters did not actually threaten any person, but instead advocated for wide-scale (albeit violent) revolution against law enforcement, and they were sent privately to Mr. Stoner’s long-time girlfriend, with no indication that they ever would be – or were ever intended to be – shared with others. *Id.* at \_\_ (Appx110-112, 220-239). The communications neither conveyed a direct threat nor were intended to do so.

The communications were therefore not “true threats.” *See, e.g., E.g., Elonis*, 841 F.3d at 597. To deem them nevertheless sufficient to support conviction under 18 U.S.C. § 875(c) and § 876(c) – as does the panel opinion, Pet. App. 7-9 – conflicts with extensive and well-settled precedent of this Court, including *Elonis* and *Watts*.

Beyond those conflicts, but no less importantly, viewing these sorts of communications as potentially subjecting the speaker to incarceration will have an immense and broad chilling effect on clearly protected speech. Reporters could be imprisoned for reposting videos of violent events or threatening incidents; protesters could be convicted for promoting revolutionary activity or rebellious concepts; politicians could be prosecuted for suggesting in the heat of the moment that harm should be done to an opponent. These individuals would face the same punishment even if their statements were made in wholly private communications and correspondence, which were directed solely to a willing recipient and never intended or expected to be seen by others. The result of this would be a drastic, self-imposed restriction on speech, in which individuals avoid speaking or reporting on any

political, artistic, or educational area that might be conceived as threatening in any way – to anyone.

That result cannot be squared with this Court’s jurisprudence, or basic principles of the First Amendment. *E.g.*, *Watts*, 394 U.S. at 707-08. To address the conflict between the holding of the circuit court and opinions of this Court, and to protect the right of the Nation’s citizens to free and open speech, a writ of certiorari should issue, and the decision of the court of appeals should be reversed.

### CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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