19-6761 ORIGINAL

No.

In the Supreme Court of the United States

YOUNES KABBAJ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

It is a federal crime under both 18 U.S.C. §875 and §115 to threaten to injure *the person* (i.e. physical body) of another, yet not legally settled as to whether such offense conduct also qualifies to be defined as a "crime of violence" pursuant to 18 U.S.C. §16. Questions presented are:

1) Whether, consistent with the First Amendment and Elonis v. United States, 135 S. Ct. 2001 (2015), a conviction for issuing a "true threat" requires proof of defendant's subjective intent to threaten injury upon *the person* (physical body) of another; or whether intent to threaten injury to *the reputation* of another is enough to sustain a "true threat" conviction for felony "crime of violence," as upheld by Third Circuit's interpretation of *Elonis* in this instant matter.

2) Whether, consistent with the Sixth Amendment and Apprendi v. New Jersey, 530 U.S. 466 (2000), a defendant who is convicted for "threatened assault" under 18 U.S.C. §115 (after admitting a threat to injure *the reputation* of another) can be subject to felony punishment for offense conduct equally criminalized as misdemeanor "simple assault" under the same statute (as per the lower court's interpretation of *Elonis*). To restate the question: Whether 18 U.S.C. §115 is unconstitutionally vague under *Apprendi* for providing two different statutory maximum penalties to punish identical offense conduct criminalized as both misdemeanor "simple assault" and felony "threatened assault."

3) Whether, consistent with McCarthy v. United States, 394 U.S. 459 (1969), Dusky v. United States, 362 U.S. 402 (1960), Godinez v. Moran, 509 U.S. 389 (1993), Indiana v. Edwards, 554 U.S. 164 (2008), and the First and Fifth Amendments, a defendant can be prosecuted for "speech crimes" committed in response to illegal threats of violence and terrorism orchestrated against his family (and others) by the government, while simultaneously found "incompetent" to stand trial after government doctors falsely interpret all threats perceived by defendant as resulting from "schizophrenic delusions," and wherein the court refuses to permit defendant his right to cross-examine these doctors and prove their forgeries, and instead directs defendant (after changing the law to criminalize threats to injure reputation) to enter an involuntary plea consistently declared by defendant to be induced by threats of violence and terrorism (whether real or imaginary).

TABLE OF CONTENTS

INDEX TO APPENDICES/APPENDIX CONTENTS

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

All civil/criminal cases appearing on www.pacer.gov under the party name "Younes Kabbaj" are either directly or tangentially related to the instant dispute between defendant and the government which started in 1987 when he was only 12 years old (yet is still ongoing).

TABLE OF AUTHORITIES CITED

TABLE OF AUTHORITIES (CONTINUED)

Constitutional Provisions:

Statutes:

Other Authorities:

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays a writ of certiorari issue to review the judgment below.

1. OPINIONS BELOW

The Third Circuit Court of Appeals (opinionless) Order Affirming Conviction (filed 9/19/19) is attached at App.1a, and Denial of Rehearing En Banc (filed 9/19/19) is at App 2a.

The Eastern District of Pennsylvania ("EDPA") District Court Memorandum denying Motion to Dismiss Indictment (filed 10/31/16) is at App. 4a, and Memorandum denying Selective Prosecution (filed 1/24/17) is at App. 11a.

The Transcripts of the Plea Hearing held 1/27/2017 is at App. 17a

2. JURISDICTION

The judgment of the Court of Appeals for the Third Circuit affirming conviction was entered on 9/19/19, App. 1a, and a timely petition for panel rehearing and rehearing en banc was denied on 9/19/19, App. 2a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

3. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. The First Amendment to the United States Constitution provides: Congress shall make no law . . . abridging the freedom of speech[.]

B. 18 U.S.C. § 875(c) - Whoever transmits ... any communication containing any threat ... to injure ***the person*** of another, shall be fined under this title or imprisoned not more than five years, or both. (Emphasis Added)

C. 18 U.S.C. § 115(a)(1)(B) - Whoever threatens to ***assault ... or murder***... a United States judge ... with intent to retaliate ... on account of the performance of official duties, shall be punished as provided in subsection (b). (Emphasis added)

D. 18 U.S.C. § 16 - The term "crime of violence" means ... an offense that has as an element the ... threatened use of ***physical force*** against ***the person*** ... of another ... (Emphasis added)

Related statutes:

E. 18 U.S.C. § 875(d) – Whoever, with intent to extort ... any money or other thing of value ... transmits ... any communication containing any threat to injure ***the property or reputation*** ... of another ... shall be filed under this title or imprisoned not more than two years, or both. (Emphasis added)

4. STATEMENT OF THE CASE

This case concerns an important First Amendment conflict between numerous federal and

state courts recently taken up by the Supreme Court in *Elonis v. United States*, 135 S. Ct. 2001 (2015): whether a defendant can be convicted of a "speech crime" for making a "true threat" only if he subjectively intended to threaten physical force against *the person* (i.e. physical-biological body) of another, or whether a defendant can threaten to injure the *reputation* of another and be convicted for "true threat" despite lack of intent to threaten illegal physical force.

Petitioner was charged in a two-count indictment under 18 U.S.C. §875(c) and 18 U.S.C. §115(a)(1)(B)&(b), which criminalize threats to apply illegal physical force to *the person* (i.e. physical body) of another. While the First Amendment does not protect "true threats," *Watts v. United States*, 394 U.S. 705, 708 (1969) (per curiam), the scope of that category of unprotected speech remains the subject of widespread confusion in this age of global interconnectivity and the internet. In the absence of comprehensive guidance from this Court, Jennifer E. Rothman, *Freedom of Speech and True Threats*, 25 Harv. J.L. & Pub. Pol'y 283, 302 (2001) ("The Supreme Court's minimal guidance has left each circuit to fashion its own test."), most lower courts adopted an "objective" standard, looking to whether a reasonable person familiar with the context of the statement would understand it to be a threat of illegal physical force upon *the person* of another, see Paul T. Crane, Note, *"True Threats" and the Issue of Intent*, 92 Va. L. Rev. 1225, 1243-1244 (2006). In *Virginia v. Black*, 538 U.S. 343 (2003), this Court "[f]or the first time * * * defined the term 'true threat,'" Crane, 92 Va. L. Rev. at 1226, holding that the term applies to "those statements where the speaker *means to communicate* a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals," 538 U.S. at 359 (citing *Watts*, 394 U.S. at 708) (emphasis added).

Prior to *Elonis*, the lower courts were sharply divided about the implications of *Black*. The Ninth Circuit and several state supreme courts hold that the objective standard cannot be reconciled with this Court's jurisprudence, and accordingly "the subjective test set forth in *Black* must be read into all threat statutes that criminalize pure speech." *United States v. Bagdasarian*, 652 F.3d 1113, 1117 (9th Cir. 2011); accord *O'Brien v. Borowski*, 961 N.E.2d 547, 557 (Mass. 2012); *State v. Miles*, 15 A.3d 596, 599 (Vt. 2011); *State v. Grayhurst*, 852 A.2d 491, 515 (R.I. 2004); see also *State v. Pomianek*, 58 A.3d 1205, 1217 (N.J. Super Ct. App. Div. 2013) (stating that construing state bias-intimidation statute not to require "proof of intent with respect to each element of the offense" "would cause the statute to run afoul of the First Amendment principles espoused in *Black*"). The Tenth Circuit has likewise recognized in *dicta* that true threats "[u]nprotected by the

Constitution[,] * * * must be made 'with the intent of placing the victim in fear of bodily harm or death.'" *United States v. Magleby*, 420 F.3d 1136, 1139 (10th Cir. 2005) (quoting *Black*, 538 U.S. at 360). And the Seventh Circuit has written that "an entirely objective definition [of 'true threat']" may "no longer [be] tenable" after *Black*. *United States v. Parr*, 545 F.3d 491, 500 (7th Cir. 2008). But other courts, like the court of appeals below, considered themselves constrained to follow pre-*Black* authority. "[A]bsent a clearer statement from the Court, the circuit courts will not change the firmly established precedent of their true threat jurisprudence." Crane, 92 Va. L. Rev. at 1264. That "clearer statement" was eventually provided by Judge Roberts in *Elonis* wherein the Supreme Court states:

> This Court "ha[s] long been reluctant to infer that a negligence standard was intended in criminal statutes." Rogers v. United States, 422 U. S. 35, 47 (Marshall, J., concurring). And the Government fails to show that the instructions in this case required more than a mental state of negligence. Hamling v. United States, 418 U. S. 87, distinguished. Section 875(c)'s mental state requirement is satisfied if the defendant transmits a communication for the purpose of issuing a threat or with knowledge that the communication will be viewed as a threat. The Court declines to address whether a mental state of recklessness would also suffice. Given the disposition here, it is unnecessary to consider any First Amendment issues."

Elonis establishes that a *mens re* of negligence in commission of a "true threat" is not sufficient to sustain a conviction for a felony speech crime (and purported "crime of violence"). To be properly convicted, a defendant must transmit a communication "for the purpose of issuing a threat or with knowledge that the communication will be viewed as [such] a threat." *Elonis* assumes that the term "threat" is defined as a threat "to injure *the person* of another." For example, 18 U.S.C. §875(c) criminalizes the *type* of injury being threatened as follows:

> 18 U.S.C. §875(c) - 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. (Emphasis added).

The very next subsection of the statute mimics the above language as follows:

> 18 U.S.C. §875(d) - Whoever, with intent to extort ... any money or other thing of value, ... transmits in interstate or foreign commerce any communication containing any threat to injure ***the property or reputation*** ... ***of another,*** ... shall be filed under this title or imprisoned not more than two years, or both. (Emphasis added).

The existance of 18 U.S.C. §875(d) makes it clear that threats to injure *the person* or *the reputation* of another, are different crimes (based on different circumstances). The defendant in

this instant case consistently affirmed that the specific speech charged against him as a crime was intending to threaten injury upon *the reputation* of another (while defendant also emphatically denied any "veiled threat" to injure *the person* of another as demonstrated by the context of the dispute). The court responded to defendant's unambiguous and consistent denials of guilt by interpreting *Elonis* to permit conviction despite lack of intent to threaten illegal violent physical force upon *the person* (physical body) of another.

Threat statutes also do not anticipate that there are religions which advocate that *the person* (physical body) can be "fluid" in its "identity" and/or "orientation" beyond the boundaries of our physical (i.e. visible) dimension, thereby allowing their members to interpret threats to injure their *reputation* (or even their *property*) as targeting injury upon their *physical body*. It is unconstitutional for the judiciary to show bias in favor of one religion over another by granting enhanced First Amendment rights to certain religions, thereby permitting their members to imprison anyone who threatens to injure/destroy their reputation by turning the public against them (even if such incitement is justified and warranted via publication of truthful information). In this day and age where many people are joining these new (and powerful) minority religions which demand legal protection for different "orientations" of the human body extending beyond that which is standardized within the majority community, it is important for the judiciary and the courts to find a global definition of the physical boundaries of the human body (and stick to it), or else this type of confusion regarding how to define *the person* of another will continue to affect fairness in the application of constitutional rights (as occurred in this instant case).

If *Elonis* expands the reach of "true threats" to criminalize threats to injure *the reputation* (i.e. metaphysical and/or emotional components of a person's psychology), then how does the court also determine what statutory maximum penalty to apply when punishment also depends upon the type of injury being threatened? Can such interpretation of *Elonis* also be reconciled with the very prominent Supreme Court precedent set in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) which deals specifically with statutory maximum penalties and how they are to be lawfully applied to specific offense conduct in order to preserve every citizen's right to a trial by jury? Permitting conviction in this matter and imposing imprisonment beyond the statutory maximum applicable to a misdemeanor (for an alleged felony "crime of violence"), and placing such a stigmatizing and devastating public criminal record upon defendant for the remainder of his life based on (at best) negligence for an alleged crime of pure speech, was already found by this court

to be contrary to the basic First Amendment principles held in *Elonis* requiring guilt to be conscious (at least on some level greater than negligence). The judiciary cannot afford (even in just a few select cases) to engage preference for one religion over another in the application of First Amendment rights which are the sacred life-blood of our American democracy.

A. Factual Background

This case concerns an unprecedented dispute between defendant's family and the government taking place over 3 decades thus far. Starting in 1987, defendant and his family began to receive "true threats" from members of a pseudo-government organization called the American School of Tangier ("AST"), as documented in the affidavit/exhibits just recently submitted in the underlying EDPA Case No. 16-cr-365, ECF#212. The "true threats" eventually expanded to include threats of terrorism that eventually materialized starting in the early 1990s, culminating in the 911 attacks. The government regularly threatened violence and terrorism against defendant, and he regularly responded with counter-threats. These exchanges went on for nearly two decades since the 911 attacks without prosecution of anyone (despite the government threatening to either kill defendant or falsely frame him with federal terrorism offenses to illegally imprison him to silence his whistleblower status).

Starting in 2009, AST eventually abandoned their attempts to entrap defendant into involvement with terrorism, and they instead went public with the dispute by filing a series of selective, vindictive and malicious criminal prosecutions seeking to restrain his whistleblower activities through illegal imprisonment for alleged "speech crimes." These entrapment schemes all followed the same pattern: AST engaged an illegal public smear and threat campaign against defendant starting February of 2009, falsely accusing him of running a criminal enterprise against them. Defendant responded with counter-threats and further public disclosure of AST crimes, and AST retaliated with a false criminal complaints accusing defendant of "terroristic threats" (which they then claim to be falsely originating from "mental illness"). AST then claims (as part of the criminal prosecution) that defendant's whistleblower allegations against them are all "hallucinations" thereby justifying criminal prosecution for his resulting "speech crimes." The success of this alleged theory of prosecution depends upon AST's ability to prevent defendant from submitting evidence of their crimes into the public court record (and to a jury) so that his communications are properly placed within their substantial and unprecedented context.

AST attempted their first unsuccessful criminal prosecutions of defendant for "true threats"

from 2009-2010, which was dismissed after defendant submitted evidence of AST criminal misconduct to police and the courts. After that dismissal, defendant sued AST in Delaware District Court under Case No. 10-cv-431 for their illegal crimes taking place from 2009-2010. AST begged defendant to settle the case and thereby provided him approximately $171,111 in damages (and two letters of apology for illegally defaming him) in exchange for defendant's consent to withdraw the charges and grant jurisdiction over enforcement of the settlement agreement (the "2012 Contract") to a specific Delaware magistrate named Mary Thynge ("Thynge"). This procedure instead proved to be part of an overarching plot to imprison defendant through a second attempted speech prosecution filed by AST in New York from 2013-2015 (in complete breach of the 2012 Contract which Thynge refused to enforce). The entrapment scheme again failed because defendant was not subject to pre-trial detention to prevent him from investigating, acquiring and submitting evidence of AST's illegal provocations into the Court record (resulting in dismissal of the "terroristic threat" charges in February 2015 on the eve of trial).

Even after dismissal of the second illegal speech prosecution attempted by AST in February of 2015, they still continued to engage illegal threats and defamation against defendant all throughout the remainder of 2015 and into 2016 to try and force him to remove his website (documenting AST crimes) from the internet. Defendant eventually responded to this continued, unrestrained illegal stalking, defamation and threat campaign on February 18th, 2016, with a 4-page email sent to several AST Agents threatening financial ruin upon them, threatening to have their computers "hacked" and challenging several male AST Agents to a "fair fight" (the "2016 email"). At various points in the 2016 email, the defendant also made passing mention that he would have Thynge (the magistrate recruited by AST in Delaware) investigated and/or "hacked" (i.e. her computer infiltrated, which is not a threat of physical force or illegal violence) to expose her illegal cover-up of AST crimes and turn the public against her (with the ultimate goal of getting her "arrested and terminated" from her career as openly declared at the outset of the 2016 email).

Defendant was arrested on March 7th, 2016 pursuant to an FBI warrant for "true threats" allegedly contained in his 2016 email, and immediately subject to illegal pretrial detention to prevent him from successfully defending against a third falsified speech prosecution filed against him since 2009. The entirety of the alleged "criminal speech" contained in the 2016 Email as it relates to Thynge (the individual whom defendant is charged with threatening) is reproduced as follows:

> "So I will be ***hacking*** for ***the purposes of obtaining the arrest and/or termination of you people from your careers*** ... Since my religion forbids me to attack/harm a woman, unfortunately I ***cannot threaten*** to decapitate Mary Pat Thynge for her attempt to recruit 'agents' in New York to murder me, so I will leave that to the Muslim Women to deal with as they will avenge for me what she did ... As for Thynge, I will have my female ***hacker*** squad to ***investigate her*** and decide what the proper punishment is for a female judge that ***attempts to murder an innocent person*** because of some unresolved sexual issues (whatever they are). I will leave it up to the Islamic females to thereby deal with the atheist females which have targeted me in this illegal way because ***I intend to focus my efforts on the males which I deem to be much more dangerous*** because of their intelligence." (Emphasis added)

The context of the dispute thereby confirms that the term "decapitate" (which was repeated in defendant's 2016 email) was actually central to the substantial criminal speech litigation filed by AST against defendant from 2013-2015 after defendant threatened to decapitate two AST Agents who sent him an email death threat against his mother (wherein Thynge had long-term exposure to litigation resulting from that prior dispute, so she was fully aware exactly why defendant repeated that specific term in his 2016 email. The terms "attack/harm" (as documented in the 2016 email) are also specific terms mentioned (in that exact order) in the 2012 Contract signed between AST and defendant, whereby the contract was supposed to restrain AST from being permitted to publish any speech that harms defendant in any way whatsoever (even if it is merely disparaging defendant). The 2012 Contract also restrain AST from filing any civil/criminal complaints without first obtaining permission from Thynge to file them (a procedure they illegally breached and Thynge forgave it by joining their "criminal speech" complaints starting in 2016 to force defendants conviction (to "repair" the unsuccessful prosecutions attempted from 2013-2015). Defendant's threats to have Thynge investigated and/or "hacked" clearly resulted from the fact that AST was denying (as part of their illegal criminal prosecutions of defendant outside of Delaware from 2009 to 2015) that they were the source of illegal internet threats directed against defendant by instead accusing defendant of "hacking" their accounts to send the death threats to himself (while relying upon Thynge to block defendant's civil/criminal subpoenas attempting to trace the illegal internet publications to prove they originated with AST).

Thynge was fully aware of the significance of defendant's selection of terms like "decapitate," "attack/harm" and "hack" in his email as resulting from the context of the dispute (and also the 2012 Contract she demanded jurisdiction over), yet she joined AST's ongoing pattern

of filing false speech complaints by pretending as if she "forgot" the entire history of the dispute taking place from 2009-2016. The government instead engages a non-credible selective quoting of the email (along with complete omission of its substantial context), to reconstruct a "veiled" threat to "decapitate" (i.e. murder) Thynge (who is the only female mentioned in the email). Just like in the *Elonis* case, defendant was thereby accused of issuing a "veiled threat" for simply explaining that he is *not allowed to threaten violence against a woman*, whereby defendant was imprisoned for merely expressing restating the rules of his religion (i.e. his religious beliefs). Using that legal theory, the government alleges that the term "decapitate," when combined with terms like "Islamic females" are all "cryptic/veiled" references intended by defendant to convey a terroristic threat alleging that "Islamic females" have been deployed to engage the "decapitation" of a Delaware magistrate (since AST was falsely accusing defendant of being a member of "Al-Qaeda" for years, which is one of their main illegal provocations engaged against defendant).

B. Procedural History

The lower court's erroneous interpretation of *Elonis* is attached at App. 4a-10a. The Court's denial of defendant's motion to dismiss for selective/vindictive prosecution is attached at App. 11a-16a (wherein it avoids proper discussion of the threats of violence directed against defendant to provoke his responses). And finally, App. 17a-43a contains the actual transcripts of the plea allocution hearing where the Rule 11 violations alleged by defendant in this petition took place, thereby confirming the numerous constitutional errors requiring intervention by this Court.

Defendant was arrested for threatening to "decapitate" (i.e. murder) Thynge and subjected to pretrial imprisonment starting on March 7th, 2016 (in violation of the Bail Reform Act). The government once again presented their theory of prosecution as being that defendant is "schizophrenically hallucinating" the AST crimes used to provoke his "delusional" responses. Just as suddenly as they initiated the prosecution, the government then pivoted to allege defendant was incompetent to stand trial (without any evidence to support their assertions other than the testimony of government doctors that the court refused to allow defendant his right to cross-examine). To support their false claim of incompetency, approximately June of 2016 the government recruited a "Dr. Obrien" to conduct a competency evaluation for the express purpose of forging a false "schizophrenia" diagnosis to prevent defendant from proceeding PRO SE. When defendant asked that the evaluation be video-recorded (because he was already familiar with this tactic from the prior two illegal speech prosecutions from 2009-2015), the court refused to permit it, causing the

defendant to refuse to participate in any rigged evaluation. Even though defendant refused to participate in the evaluation, Dr. Obrien still forged a medical diagnosis falsely accusing defendant of being incompetent to stand trial due to "schizophrenia" and "delusional disorder" (which he based upon his review of unspecified evidence provided by the government). The court then called a telephonic hearing (attended by defendant from the prison) on 7/15/2016 where it refused to permit defendant his legal right to cross-examine Dr. Obrien regarding the false "schizophrenia" claims being relied upon by the court to now find defendant "incompetent" to stand trial or proceed PRO SE. In that same hearing, the "incompetent" defendant was thereby ordered to be shipped to another prison for further "evaluation" and "restoration of competency."

These rulings were so brazenly unlawful that the court refused to reduce them to writing after defendant immediately drafted and filed a lawsuit against his court appointed attorneys (literally the very next day) regarding their illegal complicity in the scheme to manufacture his "incompetence." The lawsuit was never docketed by the court and merely disappeared (just like many other pleadings defendant tried to file while illegally detained), and the order finding defendant "incompetent" was simply withdrawn by the court (by the next hearing) without any explanation as to why (and without the court officially reversing its prior finding of incompetency issued on 7/15/2016). In a blatant attempt by the court to sabotage defendant's appeal, the transcript of the 7/15/2016 hearing was destroyed before defendant could obtain a copy of it following his release from the unlawful imprisonment (in violation of the Court Reporters Act).

After the court retreated from its finding of "incompetency" issued on 7/15/2016 and instead scheduled another hearing on 8/2/2016 to allow defendant to proceed PRO SE (without reversing its prior finding of incompetence), the alleged "incompetent" defendant was thereby permitted to represent himself PRO SE all the way to conviction. Defendant was thereby prohibited by the court (in all pretrial and postconviction proceedings in this matter) from being permitted to have a competency hearing so he could cross-examine the government doctors who were forging all these falsified medical reports of "schizophrenia" against defendant (to specifically cover up crime). The court instead oscillated between intimating that defendant's allegations against the government are "schizophrenic delusions" when the legal situation demands it, while exonerating him of this alleged "delusional incompetency" anytime the proceedings threaten to become stalled by the court's refusal to permit its doctors to be cross-examined by defendant.

Even despite the pretrial detention and sabotage of proceedings through the imposition of

allegations of "schizophrenic incompetency" that defendant is not permitted to dispute, defendant still mounted a vigorous defense comprised of substantial motion practice to try and preserve as much of his rights as possible. Defendant also submitted a motion and sworn affidavit to the Court (EDPA Case No. 16-cr-365, ECF#61) explaining each and every single line of his 4-page email to confirm that he absolutely lacked any criminal intent whatsoever to issue any "true threat" against a *woman* because his Islamic religious beliefs specifically prohibit it (just as he openly stated in his 2016 email), nor did defendant have any intent to commit any speech crime whatsoever as fully demonstrated by the unprecedented context of the dispute. Defendant clearly explained (in his sworn declarations) that his only intent behind any speech directed towards the only *female* mentioned in that email (Thynge), was to issue a threat of injury to her reputation for helping the AST *males* to commit crimes against defendant (and whereby several of the AST males were themselves claiming to be "females" trapped in male bodies and thus they should be given a pass for their crimes because a "special condition of their First Amendment person" demands it).

Defendant was thereby able to properly present several fatal defects in his prosecution despite the unlawful pretrial detention, which were essentially the same defects that caused the prior two malicious prosecutions taking place from 2009-2015 to be dismissed before trial. Common sense logic behind all speech prosecutions dictate that it cannot be legal for AST (and their agents, to include government officials) to engage "true threats," "fighting words" and defamation against defendant to provoke responses they seek to prosecute as "speech crimes." Either "true threats," "fighting words" and defamation are illegal for everyone, or they are legal for everyone. There is no room in our constitution to permit granting different speech rights to different people based upon the government's desire to promote the religious beliefs of one group of people over another.

C. VIOLATION AND/OR MISINTERPRETATION OF *ELONIS*

Since defendant was openly admitting (from the inception of the case) that he threatened to injure *the reputation* of Thynge to retaliate against her regarding criminal misconduct that cannot be protected from civil and/or criminal prosecution under the doctrine of judicial immunity, defendant eventually discovered a flaw in the indictment under Count 1 whereby it failed to include the statutory language identifying the type of injury threatened as injury to "*the person*" of Mary Thynge (rather than "*the reputation*" of Mary Thynge, which could only have been criminalized against defendant pursuant to 18 U.S.C. §875(d)). Since defendant was openly admitting he issued

a threat to injure *the reputation* of Mary Thynge, he was thereby required to file a series of related affidavits/motions as part of his effort to dismiss the indictment for failing to include the statutory language affirming a threat to injure *the person* (rather than *the reputation)* of another in order to be convicted. The Court denied these motions by interpreting *Elonis* to establish that the type of injury being threatened is not a required element of the offense, in App. 8a as follows:

> **EDPA Case No. 16-cr-365, ECF#42 - Issued on 10/31/2016:**
> Pg5-"Our Court of Appeals again last week discussed the elements required for conviction under Section 875(c) in the United States v. Elonis ... Nothing in 875(c), as reviewed by our Court of Appeals last week, requires the identity of the type of injury being threatened by Mr. Kabbaj.

Since the Court determined that a "true threat" can include any threat to injure *the reputation* of another because *Elonis* establishes that the type of injury being threatened need not be identified in the indictment, defendant was deprived of a fair trial because he already admits the elements of the offense conduct required by the court to sustain conviction. A PRO SE litigant cannot overrule a judge, except through review of the judge's rulings by a higher court. When defendant showed up at the court to accept conviction for his admitted threat to injure reputation, he discovered that instead of pleading to Count 1 under 18 U.S.C. § 875(c) as originally requested, the government was instead requesting for defendant to plead to Count 2 under 18 U.S.C. § 115(a)(1)(B). Defendant again informed the government that as per the Court's interpretation of *Elonis*, he still refuses to stipulate to anything more than sending an email that contains a threat to injure reputation because the Court has already ruled that the type of injury being threatened is not an element of the offense (and thus the term "assault" as contained in the statute and indictment is thereby superfluous language, just as the term "*the person*" was similarly found to be superfluous by the Court as per its interpretation of *Elonis*). The government understood and allowed defendant to proceed with a plea colloquy under those terms (whether lawfully or not) and never objected to defendant's consistent refusal to admit intent to threaten injury/assault via application of illegal physical force upon *the person* of Thynge (despite numerous opportunities to do so).

The transcripts of the plea hearing are attached at App. 17a-43a. As the plea colloquy confirms, the defendant was only required to admit that he sent the 2016 email and nothing more in order to find himself convicted of an alleged felony speech crime and purported "crime of violence." At no time did the government or the court demand that defendant admit the email contained any threat to injure/assault the physical body of Thynge through the application of illegal

physical force because it had already previously ruled that *Elonis* does not require defendant to identify the type of injury he intended to threaten in order to be convicted (and thus the government and the court could not contradict their prior interpretation of *Elonis* by demanding defendant admit otherwise). The entirety of defendant's admission of guilt in the plea colloquy is thereby found in just one sentence on Pg. 94 of the transcripts (App. 40a) as follows: "I've stipulated to sending this e-mail with intent to retaliate against the judge." Defendant even refused to admit that he intended to retaliate against the judge "on account of performance of official duties" (as required by the language contained in both the statute and indictment) because he also does not consider a conspiracy to commit murder to be part of the official duties of any federal official (even if the court takes yet another expansive and overbroad interpretation of the statute to conclude that a conspiracy to commit murder can qualify as an "official duty," just as threat to injure reputation is now a qualified "true threat").

Defendant further refused to enter an official guilty plea unless the sentence was agreed upon prior to being imposed, as clearly documented on Pg. 100 of the plea transcripts (App. 41a) when defendant stated that "I plead guilty, conditioned upon the sentence of -- agreed upon -- being imposed." The conditional nature of defendant's plea is unprecedented, and still the court unilaterally entered an involuntary guilty plea on his behalf following a Rule 11 plea colloquy that was thoroughly deficient with regards to nearly every constitutional standard that applies. After defendant learned that the court unilaterally and officially changed his plea to guilty (without his consent despite the conditional nature of defendant's plea), he immediately filed motions to withdraw the plea the very next day (EDPA Case No. 16-cr-365, ECF#118, #119, #122, #129) which the Court denied. Defendant filed a sentencing memorandum (id. at ECF#134, #135) whereby he clearly objected to the sentence the court was about to impose (whether via agreement or otherwise) because defendant subsequently discovered (after the plea colloquy) that the proposed 18-24 month sentence was also illegal under *Apprendi* because it exceeded the statutory maximum penalty of 1-year applicable to the only offense conduct admitted by defendant (i.e. a threat to injure reputation). These arguments thereby set the stage for the second major flaw in this prosecution resulting from misclassification (for purposes of determining the appropriate statutory maximum penalty) of a non-violent threat to injure *the reputation* of another, as a felony "true threat" speech crime and purported "crime of violence" punishable by up to ten-years in prison (rather than a misdemeanor threatened assault, punishable by a maximum 1-year in prison).

D. VIOLATION OF *APPRENDI*

According to the lower court's interpretation of *Elonis*, 18 USC 115(a)(1)(B) is clearly unconstitutionally vague and overbroad for providing three different alleged statutory maximum penalties to punish threats to engage different types of injury identified as "simple assault," "threatened assault," and "threatened murder." This is not a practical way to approach threat jurisprudence because as a matter of general psychology, the human mind perceives any threat of unwanted physical contact (no matter how slight), as a potential "death threat" for at least the first microseconds following formulation of "original fear" and continuing until the origins of their fear are further extrapolated into their proper reality-based dimensions. Fear is an emotion that originates from the human mind's primordial (both conscious and sub-conscious) attempts to perceive and interpret death (i.e. as a malfunction of "life"), and thus all types of human fears are ultimately rooted in the overarching fear of death. 18 USC §875(c) is thereby much more psychologically compatible and consistent with reality because it already assumes that all threats to injure *the person* of another are initially (by the very biological nature of the human mind) interpreted as death threats and/or threats to murder (for at least the first microseconds following formulation of "original fear") until the mind begins to compute the proper temporal scale of immediacy which prioritizes the dimensions of any particular threat. 18 USC §875(c) incorporates this psychological reality by providing <u>one</u> statutory maximum penalty (of 5 years) to punish <u>all</u> threats to injure *the person* of another (even if the statute is instead unconstitutional for setting a 5-year max rather than a 1-year max). 18 USC §875(c) does not attempt to differentiate between threats to assault or murder, and thus it does not permit a victim of an alleged "true threat" (or the government) to obtain further "reasonableness" discretions which permit them to also arbitrarily and capriciously select the maximum penalty to be applied without allowing the defendant any ability or opportunity to dispute it.

18 USC §115 thereby provides three different statutory maximum penalties to punish "true threats," which are divided upon a theory that it is possible for the mind to feel (at least) three separate and distinct forms of fear (two of which focus upon "less than death" manifestations of fear resulting from "threatened assault"). These three statutory maximum penalties are then arbitrarily and capriciously divided up in a manner that allows a prosecutor full discretion to decide the statutory maximum penalty they wish to apply to any speech offense which is equally criminalized under all three. The statutory maximum penalties are identified as follows:

18 USC 115(b)(i) – "Simple assault" (i.e. a threatened assault lacking physical contact) – "a term of imprisonment for not more than 1 year."

18 USC 115(b)(4) – "Threatened assault" (i.e. lacking physical contact) - , i.e. simple assault) – "imprisonment for a term ... that ... shall not exceed 6 years."

18 USC 115(b)(4) – "Threatened [murder]" – "imprisonment for a term of not more than 10 years."

18 USC §115 thereby alleges three different criminal threats which are specifically dependent upon invocation of three possible types of fear, two of which are rooted in the "fear of less than death" (i.e. fear of either "simple assault" or "threatened assault"), and the third of which is rooted in a "fear of death" (i.e. fear of murder). So not only is conviction under 18 USC 115 premised upon establishing a "true threat," the statutory maximum penalty must then be extrapolated by also determining the specific type of fear (of the three provided) that is ultimately invoked in the mind of a victim/recipient. The Courts have already struggled with the "reasonableness" standard necessary just to charge a true threat to begin with (a flaw in all threat prosecution that continues to plague First Amendment jurisprudence despite *Elonis*, as demonstrated by this instant case). Demanding further "reasonableness" inquiries to determine the proper statutory maximum penalty to apply to any particular speech offense will only leave further room for bias and abuse, especially when the court refused to allow such inquiries to be conducted by a jury of peers (or otherwise admitted by defendant directly). The lower court in this matter instead demands the right to deny a defendant their constitutional right to trial by jury in a criminal prosecution arising from pure speech.

Apprendi holds that any fact which determines the statutory maximum penalty for an offense must be charged in the indictment, submitted to the jury (if the case goes to trial), and proved beyond a reasonable doubt. In the case of a guilty plea, the facts must either be admitted by defendant or otherwise established by the evidence beyond any reasonable doubt. In this matter, the indictment under 18 USC §115 was charging defendant with a "threat to assault" Thynge, yet the government was instead accusing defendant of a "threat to murder" Thynge while defendant was only admitting a "threat to injure [Thynge's] reputation" by having her investigated (which is a specific action that does not require physical contact or force to be applied to *the person* of Thynge). The court had already previously interpreted *Elonis* to establish that the type of injury being threatened need not be identified in the indictment (and admitted by defendant) to sustain

conviction, but this ruling did not anticipate the sentencing issues that would also arise because "threat to injure reputation" does not describe offense conduct that is correlated to any of the three statutory maximum penalties applicable to "true threats" charged under 18 USC 115.

The sentencing issues are thereby thoroughly confounded by the fact that the government and court alleged that defendant threatened to "decapitate" (i.e. murder) Thynge, yet the indictment charged a "threatened assault" rather than a "threatened murder" (which are separate and different crimes with different statutory maximum penalties under the statute). Defendant was also refusing to admit anything more than a threat to injure reputation, and the court responded to this admission by alleging it qualifies to be charged as a crime. These contradictions simple cannot be reconciled with *Apprendi*. It is impossible for decapitation to be classified as a form of assault (as opposed to a form of murder) because humans do not remain alive following decapitation. The indictment does not charge a "threat to murder" as alleged by the government and the court, but rather a "threat to assault." Furthermore, the statute criminalizes two additional forms of assault which can be threatened, which are identified as "simple assault" (a threatened assault that fails to result in physical contact) and "threatened assault" (which is merely a restatement of the definition of "simple assault"). 18 USC §115 provides a statutory 1-year maximum penalty for "simple assault" and another alleged 6-year maximum penalty for "threatened assault" (without explaining the difference between the two offenses because both are threats to assault which exclude physical contact and/or use of a weapon).

18 USC §875(c) is more psychologically consistent (as a threat statute) because it makes it illegal to threaten <u>any</u> form of physical force that injures *the person* (body) of another (without attempting to identify the origin of a victim's fear to determine the level of punishment because the invocation of fear itself is what is being punished). The model of threat jurisprudence proposed by 18 USC 115 is not constitutional because even a threat to punch someone in the face can be reasonably construed as both a threat to assault and/or a threat to murder (as people have died from nothing more than a punch). 18 USC §115 is thereby unconstitutionally vague and overbroad for attempting to differentiate a "threat to assault" from a "threat to murder," and also attempting to differentiate a "simple assault" from a "threat to assault" (especially when the difference between all these categories of "true threats" ranges from a potential maximum penalty of 1-year to a potential maximum penalty of 10-years). Defendant argued that he should not be subject to felony penalties without admitting a "threat to murder" (as the prosecution was alleging), and that his

admission of a threat to injure reputation also cannot be criminalized as a "threat to assault" and subject to a maximum penalty beyond that which applies to the lowest form of threatened assault, which is threatened simple assault (the equivalent of a "threat to threaten" which clearly cannot be punishable beyond the maximum penalty of 1-year imprisonment applicable to simple assault as per the "rule of lenity").

The Court in *United States v. Fulmer*, 108 F.3d 1486 (1st Cir. 1997) is the first one to discover that a "threat to assault" can also be defined as a "threat to threaten" when the *type* of assault being threatened is *simple assault*. Defendant's admitted offense conduct cannot constitute anything greater than a "threat to threaten" as originally described in *Fulmer* because defendant threatened to initiate an *investigation* of Thynge to expose her criminal collusion with AST, and the term *investigation* does not describe activity intended to result in physical force being applied to *the person* of Thynge. Since simple assault is the only form of assault that excludes physical contact, defendant's admitted offense conduct can only be described (at best) as a threat to threaten (i.e. a threat to simple assault).

Congress already corrected at least one similarly fatal unconstitutional ambiguity originally found in 18 USC §111 (the federal assault statute) by amending it to properly distinguish between simple and non-simple assault (confirming that the term "assault" is itself vague unless the type of assault is identified), but they failed to correct this identical ambiguity in 18 USC §115 which suffers from the exact same flaws. An example of the problems that arise when an indictment is vague with regards to the type of assault being charged (or threatened) can be found in the Tenth Circuit's decision in *United States v. Hathaway* 318 F.3d 1001 (10th Cir. 2003), which was specifically addressed in the legislative discussion of the *Court Security Improvement Act of 2007*. In that case, the defendant physically assaulted a federal agent, but the indictment alleged only that he had "forcibly assaulted" the agent. The court of appeals held that the indictment was sufficient to allege only "simple assault" because it did not charge the defendant with engaging in physical contact as required to be convicted for non-simple assault. The court thereby remanded for resentencing as a misdemeanor simple assault. The entire legislative history of this provision is found in the *Court Security Improvement Act of 2007*, Pub. K. No. 110-117, tit. II, 208(b), 121 Stat. 2538 (2008) in the following comment by Senator Kyl:

> "This provision also clarifies an assault offense that was created by Congress in 1994. The offense establishes penalties for simple assault, assault with bodily injury, and for assault in 'all other cases.' As one might imagine, the meaning of

> assault in 'all other cases' has been the subject of confusion and judicial debate. The offense has also been the subject of constant vagueness challenges, and although those legal challenges have been rejected, the offense is rather vague. [The proposed Act] takes the opportunity to correct this legislative sin, codifying what I believe is the most thoughtful explanation of what this language means, the 10th Circuit's decision in United States v. Hathaway ... so that people can easily figure out what this offense actually proscribes." [153 Cong. Rec. 8 15789-15790 (Dec. 17, 2007)(remarks of Sen. Kyl)

The "Rule of Lenity" is a judicial doctrine requiring that those ambiguities in a criminal statute relating to criminal penalties be resolved in favor of the defendant. It embodies a presupposition of law to resolve doubts in the enforcement of a penal code against imposition of a harsher punishment. The courts, while construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should always resolve the ambiguity in favor of the more lenient punishment. This concept (as applied to threats) is further supported by another case dealing specifically with this First Amendment issue, which is *Wurtz v. Risley*, 719 F.2d 1438 (9th Cir. 1983) wherein the court declared that whenever *a threat* is criminalized, the activity and/or injury being threatened must still be analyzed to ensure that any threat to engage a minor or misdemeanor offense (or even a non-crime) cannot be punished as a felony simply because the activity was threatened instead of engaged. *Wurtz* states: "But to punish as a felony the mere communication of a threat to commit such a minor infraction when the purpose is to induce action - any action - by someone, is to chill the kind of 'uninhibited, robust, and wide-open' debate on public issues that lies at the core of the First Amendment." It is thereby clear that the lower court could not simply jump to impose felony penalties upon defendant for his admission of sending an email containing a threat to injure *the reputation* of another (even if it concludes that the type of injury being threatened is no longer an element of the threat offenses), without determining how his admitted offense conduct qualifies to be criminalized beyond a misdemeanor under the statute.

18 USC §115 is thereby unconstitutionally overbroad and/or vague for establishing three different statutory maximum penalties to punish offense conduct that could be equally classified as simple assault, threatened assault or threatened murder (because fear of death is what provokes all of them). Although 18 USC §875(c) is psychologically consistent by properly quantifying fear as the target emotion that makes a "true threat" illegal (without attempting to allege that there are different types of fear that can result in different statutory maximum penalties), the unconstitutionality of 18 USC §875(c) instead comes from the fact that it reclassifies the traditional

definition of "simple assault" as felony "threatened assault," without any real difference in the criminal culpability required to commit either crime (thereby turning a misdemeanor into a felony without any valid explanation as to why). It seems that the only moral difference between "simple assault" and a "threat to injure *the person* of another," is that a simple assault is much more credible and traumatic to receive as a threat because it traditionally describes a direct physical confrontation, such as one where a defendant lunges at a victim's body in an unsuccessful attempt to physically attack them. Language-based threats (which can be delivered face to face or through long distance) are generally less credible than direct displays of physical force because the fear that language is intended to provoke must first be formulated by the victim through imaginative thought (which is a much less traumatic event that being confronted with a real physical danger that is not in need of imaginative interpretation in order for its maximum effects to be felt). If anything, language-based threats (made face to face or long distance) are less demonstrative and predictive of intent to engage actual illegal physical force and/or physical contact upon *the person* of another (than would be a direct display of physical force) because the vase majority of offenders generally do not demonstrate any additional steps taken toward actually attempting to follow through on any language-based threats.

A defendant could thereby lung at a judge in a courtroom and be subdued with a stun-gun before he could make physical contact with the judge (or anyone else), yet only qualify to be charged with "simple assault" for what is a substantially provocative expression of physical conduct that only a fraction of the population would ever attempt (and still only face a maximum 1-year sentence). Yet a person who expresses a language-based threat to "smack" a judge (without any attempt to carry out the threat and/or complete lack of ability to do so), can be subject to up to 5 years in prison under 18 USC §875c, or up to ten years in prison under 18 USC §115 for activity that involves nothing more than arranging words into a sentence comprised of pure speech. This psychological reality should be considered by this court, as it is unfair for any citizen to be imprisoned for up to 10 years (or even 5 years) for any first offense comprised of pure speech, especially when misdemeanor simple assault already adequately punishes the worst of all threatening conduct that stops short of making physical contact with *the person* of another through illegal physical force (and not the type of quantum-based physical contact that occurs when sound waves and/or light waves interact with a human's sensory organs to produce imaginary thought).

Thousands of people have been overcharged with felony speech crimes resulting from a form of criminal intent that is actually less (not more) than what is required for someone to actually search for a victim, locate them, travel to where they are located and then attempt to physically attack them (which is defined as misdemeanor "simple assault," assuming no other aggravating factors like successful physical contact and/or display or use of a weapon as part of any threatened assault). This injustice does not comport with the First Amendment and our constitution.

E. THREAT TO INJURE REPUTATION A "CRIME OF VIOLENCE"

A simple assault, threatened simple assault and/or threat to injure reputation also cannot be deemed a "crime of violence" pursuant to 18 USC §16. *United States v. Hathaway*, 318 F.3d 1001 (10th Cir. 2003)(arguing that "both the indictment and the jury instructions failed to distinguish between simple and non-simple assault - and thus charged only a misdemeanor violation"), *United States v. McCulligan*, 256 F.3d 97 (3rd Cir. 2001)(holding that "because non-simple assault carries a greater statutory maximum than simple assault, each element of non-simple assault must be charged in the indictment and proven to a jury beyond a reasonable doubt"). *United States v. Vallery*, 437 F.3d 626 (7th Cir. 2006)(holding that an indictment which fails to allege physical contact is only charging a misdemeanor "simple assault"), *United States v. Hazlewood*, 526 F.3d 862 (5th Cir. 2008)(finding that an indictment which fails to allege physical contact is only charging a misdemeanor "simple assault"), *Tran v. Gonzales*, 414 F.3d 464 (3rd Cir. 2005)(finding that "a crime whose *mens rea* is pure recklessness is not a crime of violence), *Popal v. Gonzales*, 416 F.3d 245 (3rd Cir. 2005)(holding that "simple assault" is not a "crime of violence"), *United States v. Otero*, 502 F.3d 331 (3rd Cir. 2007)(finding that "simple assault" is not a "crime of violence"), *Leocal v. Ashcroft*, U.S. 1,125 S. Ct. 377)(2004)(holding that a "crime of violence" cannot be negligent).

Numerous Courts have thereby determined that (a) intent to commit a "crime of violence" cannot be formulated through negligent and/or reckless offense conduct, and that (b) simple assault (i.e. threatened assault) is not categorically a "crime of violence" because it only requires a *mens re* of recklessness to be convicted, and (c) the Supreme Court has not yet determined (as part of *Elonis*) if a *mens re* of recklessness will suffice to sustain a "true threat" conviction. Under these conditions, this court should also affirm that a conviction for threatening to injure/assault another cannot also qualify as a "crime of violence" unless something greater than "simple assault" (and/or threat to injure reputation) is being threatened. This affects numerous convictions under the threat

statutes which are currently unconstitutionally classified by the Bureau of Prisons and other federal entities as "crimes of violence," resulting in any number of negative consequences upon the offender. This in justice is also occurring despite the fact that centuries if speech jurisprudence has failed to explain why a "true threat" should be classified as a greater moral evil than "simple assault" when both seek to punish the exact same crime, which is a defendant's unlawful invocation of the "fear of death" in the mind of another (no matter how fleeting). The unlawful display of physical force inherent in a "simple assault" is clearly the more egregious form of "true threat" (above and beyond all threats using language and pure speech), yet simple assault still does not qualify as a "crime of violence" because only a *mens re* of recklessness is required to sustain conviction for that misdemeanor crime.

Are all "true threats" crimes of violence? Are only some deemed crimes of violence based upon the type of injury/assault being threatened? Are all "true threats" disqualified as crimes of violence because only negligence and/or recklessness suffices to sustain conviction? The Supreme Court remains silent on this very critical aspect of First Amendment jurisprudence which remains unresolved even despite the lower court's interpretation of *Elonis* in this instant matter (and despite the fact that this injustice is affecting numerous citizens convicted of a crime for pure speech).

F. SELECTIVE/VINDICTIVE PROSECUTION AND INVOLUNTARY PLEA

This First Amendment litigation also resulted in an alleged "incompetent" defendant being permitted to defend himself PRO SE all the way to an involuntary plea which he openly declared to be resulting from illegal threats of violence and terrorism. In all three criminal speech prosecutions filed against defendant from 2009 to present, immediately after the criminal charges were filed the government then pivoted to alleging that the case cannot proceed because defendant is "incompetent" to stand trial. The court thereby declared defendant to be "incompetent" to stand trial in this instant matter in the hearing held on 7/15/2016 based upon the persistent false claim by the government alleging that defendant was "hallucinating" the crimes he alleged to have provoked him to respond with "criminal speech" (which the court refuses to allow defendant to dispute). The court could not sustain that ruling and withdrew it (without providing any explanation as to why) by the next hearing on 8/2/2016 whereby it permitted defendant to proceed PRO SE despite the finding of "incompetence" issued on 7/15/2016. Defendant was then prohibited from pretrial release (and all his motions dismissed/denied) based upon the government claims that defendant was "hallucinating" his innocence.

Defendant attempted to address the unconstitutionality of this theory of prosecution from its very origin by filing a motion to dismiss the indictment for selective/vindictive/malicious prosecution (EDPA Case No. 16-cr-365, ECF#70) to highlight the glaring double standard inherent in how the defendant's constitutional rights were being violated. Defendant was able to submit (in his motion to dismiss for selective/vindictive prosecution) evidence already previously submitted on the civil court record before his kidnapping into pretrial detention (and thereby preserved) to prove that he was not hallucinating these threats. When faced with that proof, the court retreated from its false accusations of "delusion" and instead denied the motion (App. 11a, App. 14a-15a) by alleging that the "true threats" directed against defendant are somehow not actionable because defendant lacks employment as a federal judge. This fascinating First Amendment analysis is attached at App. 11a and App. 14a-15a is reproduced as follows:

> EDPA CASE NO. 16-CR-365, ECF#108
> Pg1(App. 11a) - "Mr. Kabbaj claims he is being singled out for prosecution when the United States will not prosecute a non-Muslim homosexual for allegedly similar threats against him. He claims the United States is applying a double standard because he threatened a federal official but will not prosecute a person who did not threaten a federal official. This claim lacks merit. The United States charges Mr. Kabbaj with threats against a federal judge. His litigation adversaries did not threaten a federal judge ... the United States did not selectively prosecute him for acts which he did and others did not."
> Pg-4,5 (App. 14a-15a) "Mr. Kabbaj's ... theory is based on belief the people he has threatened ... are similarly situated to him because they also threatened him. His argument is misplaced. Assuming, arguendo, the people Mr. Kabbaj has threatened have likewise threatened him, they would still not be similarly situated. To be similarly situated, they would need to have issued a threat to a federal judge through interstate commerce ... Mr. Kabbaj sent the February 18th, 2016 email with threats to a federal judge. The other persons did not. There is no basis for dismissing the indictment."

The above rulings came full circle during the plea colloquy when the Court was again mandated to inquire whether defendant was threatened with violence to plead guilty, whereby defendant again affirmed that he was and the court could not openly restate its prior ruling alleging it was somehow permissible for individuals to threaten violence against defendant to induce him enter an involuntary guilty plea because he lacks employment as a judge (in order to qualify for First Amendment protection from "true threats"). When defendant was again asked if he was being threatened with violence to plead guilty as per the requirements of Rule 11, he immediately answered in the affirmative thereby resulting in the following exchange as documented on Page

20-22 in the transcripts of the plea (App. 21a-22a) as follows:

> **THE COURT**: Has anyone forced you or physically threatened you or otherwise threatened you to sign that document?
> **THE DEFENDANT**: Ah, to sign the document, no, but I do believe you're aware that there are threats and counter-threats being traded between the parties which results in this case.
> **THE COURT**: Okay. Between the parties - let's be careful there. Between you -
> **THE DEFENDANT**: Myself and the Government.
> **THE COURT**: Okay, And you believe it's the Government because of Mr. Gabriel's involvement?
> **THE DEFENDANT**: Of Course.
> **THE COURT**: Okay, all right.
> **THE DEFENDANT**: And the FBI and the people who have been ... threatening me, including the email ... you saw the email from the Department of Homeland Security Agent who threatened to kill me ... in an email.
> **THE COURT**: Okay. Okay. Has anyone in connection with [the plea] document, I appreciate what you're talking about before leading to this incident. But has anyone threatened you, physically or otherwise, in connection with the last month, two months in connection with the guilty plea agreement?
> **THE DEFENDANT**: Well, just I guess in connection with the dispute in general, as you're aware ... I'm incorporating the pleadings that have been filed civilly. I am a witness in a terrorism investigation. I'm pretty much being held hostage by the FBI and by terrorists and I was in the middle of that dispute between them and started being used as a hostage by both sides.
> **THE COURT**: Okay.
> **THE DEFENDANT**: So, in that regards, it's an ongoing matter, the FBI refuses to question me about any of it directly. I haven't been questioned since 9/11 ... and I did find evidence to corroborate my claims since that time and I've presented them to the Courts.
> **THE COURT**: Okay. My question, though, sir, for your purposes, okay, it's really focusing on whether you believe, that someone has forced you today. In other words, today, this day, January 27th, to come forward and sign this document today.
> **THE DEFENDANT**: Nobody has come to me today, and -
> **THE COURT**: Or forced you to sign this? Or to sign this document? Did anybody come to you and said, sir, "if you don't sign this document something will happen to you?"
> **THE DEFENDANT**: Well, nobody said those words to me.
> **THE COURT**: Okay. So, are you willing to - you've signed this agreement, is that correct?
> **THE DEFENDANT**: I did.

As documented in the testimony above, the Court could not admit that it was legal for defendant to be subject to an involuntary plea simply because he lacks employment as a federal judge (which is the logic used to deny the motion to dismiss for selective/vindictive prosecution).

The Court also could not attempt to assert that the threats of violence perceived by defendant were "delusional" because this would also confirm its prior ruling on 7/15/2016 alleging defendant to be "incompetent" and thus not able to stand trial (or enter a voluntary plea). If anything, defendant's belief that violence will be engaged against him and others (to include possible terrorism) if he continues to demand his right to expose the illegal activities of AST has increased as a result of the crimes he witnessed during this instant prosecution. The court navigated this legal minefield by alleging that threats of violence can only impact the voluntariness of defendant's plea if issued against him on the same day he signed the plea agreement, and only if the threat specifically stated that "if you don't sign this document something will happen to you." Since the judge was directly present when defendant signed the agreement, the judge was also clearly aware that the individuals who were threatening defendant with violence were not in the courtroom during that event (and so he already knew that the scenario he was presenting was false). The fact that defendant did not receive any additional specific threat of violence at the very moment he signed the plea agreement does not automatically invalidate a +30-year history of illegal threats of violence resulting in actual acts of terrorism, all of which clearly and unequivocally caused defendant to withdraw from proceeding with a rigged trial that would thereby cause AST (and its political constituency) to provoke additional acts of terrorism in order to retaliate against defendant for attempting to obtain investigation of their crimes by the public.

5. REASONS FOR GRANTING THE PETITION

I. Certiorari Is Warranted to Resolve Continued Confusion in the Lower Courts Regarding the Proper *Mens Re* Necessary to Sustain a Conviction for True Threat.

Following this Court's decision in *Elonis*, it is clear that the Supreme Court intended for the lower courts to narrow (not broaden) the type of language which can result in a "true threat" conviction. The lower court in this instant matter instead interpreted *Elonis* as substantially broadening the scope of threat statutes to criminalize any threat (including threats to engage actions which are legal), regardless of the type of injury being threatened. A firm statement from the Supreme Court is thereby warranted in light of the manner in which the lower court completely misinterpreted and/or intentionally defied the spirit of *Elonis*.

A. The Issue Is Exceptionally Important.

It is important that this continued confusion and misapplication of the speech laws by the lower courts (even following *Elonis*) be resolved, because it is a microcosm for the exact reasons

why a collapse of government respect for the First Amendment ultimately results in other undesired consequences (such as the terrorism scandal for which defendant became a whistleblower). Notwithstanding the terrorism implications of this unprecedented dispute (which is a substantial harm incurred by the innocent public), unfair application of the threat statutes affects numerous citizens who may end up imprisoned for years for nothing more than pure speech (without any intent to actually commit a crime). The Department of Justice has brought hundreds of prosecutions for speech crimes in the recent years for which data is available. See U.S. Dep't of Justice, Bureau of Justice Statistics: Federal Criminal Case Processing Statistics, https://www.bjs.gov/fjsrc/. That represents just a fraction of the total number of criminal prosecutions implicating "true threats" doctrine. And most, if not all, states have enacted statutes analogous to the federal threat statutes. Further, the issue is growing in importance as communication online by email and social media has become commonplace, even as the norms and expectations for such communication remain unsettled. The inherently impersonal nature of online communication makes such messages susceptible to misinterpretation and to wide dissemination, to an audience including both the reasonable and the unreasonable, with no affirmative act on the part of the speaker. See Caleb Mason, Framing Context, Anonymous Internet Speech, and Intent: New Uncertainty About the Constitutional Test for True Threats, 41 Sw. L. Rev. 43, 72 (2011). It is therefore unsurprising that online statements have proven to be a major basis (perhaps the leading basis) for criminal threat prosecutions. See, e.g., *Bagdasarian*, 652 F.3d 1113 (Yahoo message board posting); *United States v. Stock*, No. 11-182, 2012 WL 202761 (W.D. Pa. Jan. 23, 2012) (defendant charged for threatening Craigslist advertisement); Bianca Prieto, Polk County Man's Rap Song Called Threat to Cops, So He's in Jail for 2 Years, Orlando Sentinel, Aug. 1, 2009, https://goo.gl/WRGOQ3.

A. The Lower Court's Interpretation of *Elonis* Is Wrong.

The lower court has now declared that intent to threaten injury to *the reputation* of another is actionable as a "true threat" if the recipient is a government official that wishes to use unlawful imprisonment as the preferred method by which to silence criticism that threatens fatal destruction to their reputation, loss of their career and possible criminal prosecution. It is important for federal officials (and most especially, federal judges and magistrates) to refrain from filing false speech complaints against litigants (and especially PRO SE litigants) in order to silence valid criticism of their activities both inside and outside a courtroom. The public depends upon the judiciary to be

impartial arbiters of the law (and not direct participants in a conspiracy to break it). Any action by any judge and/or magistrate that threatens the credibility of our entire judicial institution should be subject of substantial rebuke by the most Supreme of all our courts. What instead occurred in this matter is that numerous federal judges and magistrates (in multiple jurisdictions) all banded together in unison to engage two separate multi-jurisdictional imprisonment plots against defendant as part of their attempts to cover up this substantial First Amendment crime engaged against a PRO SE whistleblower by a very powerful political organization known as AST.

Among federal appeals courts who have unambiguously considered these First Amendment issues post-*Elonis*, the Third Circuit stands alone in expanding the scope of "true threats" to facilitate convicting defendant for his only admitted offense conduct, which is his admitted intent to threaten injury to *the reputation* of another. The Second, Fourth, Ninth, Tenth, and Eleventh Circuits have each confirmed after *Elonis* that whether a reasonable recipient would consider the communication a threat of illegal physical force upon *the person* must be analyzed, as a matter of either constitutional or statutory doctrine. *United States v. Wright-Darrisaw*, 617 F. App'x 107, 108 (2d Cir. 2015) ("[A] statement is a true threat if a reasonable person hearing or reading the statement would understand it as a serious expression of intent to inflict bodily injury[.]" (quotations omitted)); *United States v. White*, 810 F.3d 212, 220-21 (4th Cir. 2016) ("[T]o establish the third ['true threat'] element [of Section 875(c)], . . . the prosecution must show that an ordinary, reasonable recipient who is familiar with the context in which the statement is made would interpret it as a serious expression of an intent to do [bodily] harm."); *United States v. Zagorovskaya*, 628 F. App'x 503, 504 (9th Cir. 2015) ("[T]he evidence establishes that a reasonable person who heard [defendant's] statements would have interpreted them as a threat." (quotations omitted)); *United States v. Dillard*, 795 F.3d 1191, 1199 (10th Cir. 2015) ("The question is whether those who hear or read the threat reasonably consider that an actual threat has been made." (quotations omitted)); *United States v. White*, 654 F. App'x 956, 967 (11th Cir. 2016) (noting that Eleventh Circuit pattern jury instructions define "true threat" as one "that is made under circumstances that would lead a reasonable person to believe that the Defendant intended to [kidnap] [injure] another person"). With this new interpretation of *Elonis* by the lower court, we continue to be faced with a circuit-split regarding how to define "true threats" which has instead metastasized to include further violations of *Apprendi*, and other considerations regarding whether a "true threat" can also be classified as a "crime of violence" under any (or all) provisions of the

threat statutes.

A standard that makes ostensibly threatening speech proscribable, without examining whether a reasonable recipient would consider it a threat, makes little sense and risks sweeping in innocent or meritorious speech solely because of the known proclivities of some eccentric recipient (or group of recipients). It effectively gives the "heckler's veto" – the power to unilaterally silence a message that the listener (or particular group of listeners) personally dislikes – the imprimatur of federal law. Cf. *Reno v. ACLU*, 521 U.S. 844, 880, (1997). This is a particular danger in the age of internet and social media, especially when the courts attempt to show preference for the religious beliefs of one group over another by engaging bias in the application of First Amendment rights. In 1965, then-aspiring politician Ronald Reagan reportedly said, "I favor the Civil Rights Act of 1964[,] and it must be enforced at the point of a bayonet, if necessary." Had he been convinced that some atypical audience member would be unreasonably put in fear by the reference to a bayonet (or, indeed, by any other element of the statement), the lower court's standard in this instant matter could have subjected Reagan to prosecution for his statement. Similarly, a federal official (to include a federal judge) could effectively chill speech on some unwelcome topic by merely alleging to be the victim of a "speech crime" (as has occurred in this case). A political protester with a valuable message wholly inoffensive to a reasonable person could commit a crime if she knew she was likely to encounter a particular counter-protester with idiosyncratic sensitivities.

As this Court has long held, freedom of expression is "the matrix, the indispensable condition, of nearly every other form of freedom," and is "essential to the common quest for truth and the vitality of society as a whole." *Palko v. Connecticut*, 302 U.S. 319, 327 (1937); *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 503-04 (1984). The values enshrined in the First Amendment are to be "jealously guarded," *Dresner v. Tallahassee*, 375 U.S. 136, 146 (1963), even – especially – to the point of allowing speech that makes some uncomfortable: [Speech] may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949). Certainly, the Constitution's protection of speech is not absolute. It is well-settled that certain "well-defined and narrowly limited classes of speech" merit no First Amendment

protection, and that "true threats" comprise one such category. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942); *Watts v. United States*, 394 U.S. 705, 707-08 (1969). But this Court has recognized such categories of speech as unprotected because they are "of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Chaplinsky*, 315 U.S. at 572.

In the context of ostensible threats, the effect of otherwise-meritorious speech on a particular, unreasonable, recipient – even if that effect is one of fear, and is known to the speaker – bears no connection to the value of the speech as a "step to truth." It makes little sense, in the face of the First Amendment, to allow speech to be categorically banned based solely on the selfishness of any particular recipient who wishes to silence it, if that recipient's reaction is unreasonable and unconnected to the merits of the speech. Indeed, impassioned speech on issues of public concern can and often does turn "crude," "offensive," "vituperative," "vehement," "caustic," "unpleasantly sharp," and even "abusive." *Watts*, 394 U.S. at 707-08. But such speech "may nevertheless be part of the marketplace of ideas, broadly conceived to embrace the rough competition that is so much a staple of political discourse." *United States v. Velasquez*, 772 F.2d 1348, 1357 (7th Cir. 1985). Witness the defendant in Watts, who was prosecuted for saying at an anti-draft rally, "If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.," 394 U.S. at 706, or the defendant in *NAACP v. Claiborne Hardware Co.*, a civil rights activist in 1966 Mississippi, who told his audience that individuals who violated his boycott could "have their necks broken." 458 U.S. 886, 900 n.28 (1982). Even when the type of speech at issue is "vituperative, abusive, and inexact" – perhaps even particularly then, given the close connection between such speech and deeply-held ideas about public affairs – care must be taken to avoid a rule that threatens to sacrifice core political speech. *Watts*, 394 U.S. at 708. Even speech that may carry with it a risk of being unreasonably misinterpreted can have value as speech. As this Court has explained, "in public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate 'breathing space' to the freedoms protected by the First Amendment." *Snyder v. Phelps*, 562 U.S. 443, 458 (2011). Allowing prosecutions for speech that no reasonable recipient would consider threatening does not provide this constitutionally-mandated breathing space.

Moreover, This Court has already held that "awareness of some wrongdoing" is the touchstone for criminal *mens rea*. The "wrongdoing" at issue in a case involving threatening speech – that of which the defendant must be aware – is the transmission of speech that is a threat

to injure *the person* (rather than *the reputation*) of another. To the extent that knowledge is the line between innocent and criminal conduct, to avoid sweeping in innocent speech, the requirement must be that the defendant acted with knowledge that a reasonable person (familiar with the context of defendant's speech) would interpret it as a threat of injury to *the person* of another (and not *the reputation* of another).

C. The Lower Court's Interpretation of *Apprendi* Is Wrong.

To further complicate matters, 18 USC §115 is clearly unconstitutionally overbroad and vague for failing to properly identify how to discern the appropriate statutory maximum penalty applicable to offense conduct threatening injury to *the reputation* of another. Since this offense conduct does not correlate to what was traditionally criminalized under statute, the court responds to this reality by alleging that anything which is not directly (rather than creatively) criminalized by the statute, can be equally classified as a simple assault, threatened assault and/or threatened murder, thereby permitting the court to decide the punishment (rather than a jury). This flaw is especially prominent when attempting to determine the appropriate maximum penalty to apply to a threat to injure *the reputation* of another, which cannot result in anything other than a violation of *Apprendi* for trying to reclassify misdemeanor "simple assault" as felony "threatened assault" without allowing a jury to determine which statutory maximum applies beyond any reasonable doubt.

It thereby follows that under *Apprendi*, a citizen also should not be subject to a felony conviction for "crime of violence" and imprisoned for up to ten years (for a first offense) for conduct which is (for the vast majority of people) less offensive than being the victim of a misdemeanor "simple assault" punishable by a maximum of 1-year imprisonment (and thereby the terms "simple assault," "threatened assault," and "threat to injure the person" all describe one crime which is typically defined in its origin, as "simple assault." Permitting prosecutors and the courts to circumvent the role of a jury by allowing arbitrary and capricious charging of a misdemeanor simple assault as a felony "speech crime." The imposition of a sentence of 23 months imprisonment and 3 years supervised release (which cannot be subject to anything more than a maximum 1 year imprisonment/supervised release applicable to simple assault) is a clear violation of *Apprendi*. Forcing defendant to incur a felony "crime of violence" conviction on his record for the remainder of his life for admitted nothing more than (what was previously) a lawful threat to injure the reputation of another, is not permissible in any civilized society

II. This Case Presents an Ideal Opportunity to Resolve Important and Recurring Issues.

This case presents an ideal opportunity to resolve both of these important and recurring issues. These issues were squarely presented and thoroughly discussed below. The case's procedural history reveals no disputed issues of fact or any jurisdictional questions that would interfere with this Court's resolution of this matter. It is clear that the lower court has thoroughly misinterpreted *Elonis* in an act of either judicial confusion or defiance (and/or political protest against granting the defendant First Amendment rights equivalent to those granted to his alleged "adversaries" in this First Amendment warfare) in order to impose a standard of bias in favor of one religion over another (because the dismal politics of the day demands it). Nothing would be gained from delaying a resolution of this important First Amendment matter any further, and this court cannot expect that if it continues to allow judicial bias in the enforcement of the First Amendment rights to exist, that the result will be anything other than the lower courts becoming a law unto themselves (anytime they deem it necessary to give the members of one religion an unfair advantage over the members of another religion with regards to any particular competition). There is no America unless the First Amendment is applied equally to all.

III. Additional Considerations

The substantial constitutional issues raised in this petition continued to result in defendant's unlawful imprisonment after being placed on supervised release following his original term of imprisonment in this matter. He merely highlights the continued misconduct, especially if this will be his final communication with the highest court in the land.

Defendant was ordered to undergo "anger management" treatment as part of his supervised release which resulted from the underlying conviction, but because his supervision was taking place in the Southern District of Florida (despite the jurisdiction of the supervision remaining in Pennsylvania), the United States Probation Office in Florida could not obtain taxpayer money to pay for these "anger management" treatments without first obtaining a medical evaluation to confirm that these treatments are "medically necessary." When the probation demanded that defendant submit to a mental health evaluation (as part of their plot to defraud the taxpayers into paying for medically unnecessary treatment), he immediately agreed to participate if allowed to video-record it. The Court again prohibited defendant from being permitted to video-record it because it was already known that the report would be forged to issue a false diagnosis of "schizophrenia" in order to remain consistent with the prior forged diagnosis that defendant was

prohibited from disputing. The judge in this matter already has a substantial reputation for violating First Amendment rights by prohibiting citizens from being permitted to video-record illegal conduct engaged by the police (Google "Mark A. Kearney" and "First Amendment"). Defendant appealed the attempt by the court to prohibit him from recording the evaluation, yet the Third Circuit merely consolidated that supervised-release appeal with the original appeal and then eventually dismissed them all without any opinion or legal guidance provided to this PRO SE litigant who has clearly struggled to understand his rights under our constitution. Defendant thereby defied the court order and video-recorded the evaluation to document how the government forges these false diagnoses of "schizophrenia."

After the Court thereby forged yet another falsified "schizophrenia" diagnosis upon defendant approximately March 19th, 2018, they retreated from attempting to use this false medical report to demand defendant submit to treatment (for a medical condition he does not have) only after defendant immediately informed the probation officer that he still video-recorded the evaluation despite the Court prohibiting defendant from doing so. It is a felony crime to forge a medical report in order to obtain funds to pay for medically unnecessary treatment (see 18 U.S.C. §1347). This continued dispute over the "competency" of defendant (which was never resolved as part of the underlying criminal prosecution) thereby escalated after defendant demanded (as part of his supervised release) that he be permitted to cross-examine the government doctor who forged yet another false diagnosis of "schizophrenia" in order to remove it from his supervision file as a verified forgery (after finally acquiring a video-recording to easily prove the forgery).

The Court and probation refused to remove the forged medical report from defendant's file, and instead demanded that defendant submit to another mental health evaluation under penalty of imprisonment on State charges if he attempted to record the evaluation again. Defendant contacted the doctor who was scheduled to perform yet another evaluation of defendant on May 11th, 2019 and threatened to sue them for medical malpractice if they refused to permit defendant his right to video-record the evaluation. The doctor then cancelled the evaluation because they refused to permit defendant to record it (as they obviously intended to forge another false report). Probation then falsely accused defendant of violating his probation by failing to obtain medical treatment for "schizophrenia" (a medical condition that he does not have), all while refusing to allow defendant to cross-examine the doctors who are forging these false medical reports to cover up the fact of his illegal criminal prosecution.

Defendant was then illegally arrested on May 13th, 2019 and immediately denied a detention hearing so he could be released to fight the false revocation allegations. Defendant was also immediately denied a preliminary hearing for the government to show probable cause to proceed to a final revocation hearing. The government instead filed the false revocation charges against defendant and then immediately pivoted to allege that the proceedings (which they initiated) cannot proceed any further because defendant was "incompetent" and refusing to allow them to forge more false medical reports to "prove" it (while denying that defendant has any legal right to dispute or cross-examine these reports). This continued misconduct then resulted in defendant being illegally imprisoned for an additional four months without having ever committed any violation of his supervision whatsoever, and without being permitted to challenge his detention or the false allegations made by his probation officer to illegally imprison him (in order to prevent defendant from exposing her attempts to commit health care fraud on behalf of the court).

The court then held defendant hostage in prison for four months while demanding that he submit to an unrecorded "mental health" evaluation from the detention setting before he will be permitted to be release and/or to challenge the false revocation allegations being used to illegally imprison him. After defendant refused to permit additional forgery of false medical records while detained and physically prevented from video-recording them), the proceedings thereby collapsed into a standoff whereby defendant chose to be imprisoned rather than subjected to further false medical reports that the court was attempting to impose upon him to justify further illegal misconduct they wishes to pursue as part of his alleged "supervision" (which was nothing more than a cover to engage crimes against defendant to punish him for appealing his conviction to begin with). At some point the Court realized that it was impossible to proceed with a revocation hearing while it was still falsely accusing defendant of "delusions," and so after four months of this standoff, the court finally retreated from its illegal misconduct and called a hearing to find the defendant "competent" once again (despite his refusal to participate in any unrecorded evaluations). The court then quietly terminated the supervision because there was no way to continue it without their crimes being exposed sooner rather than later (as defendant was refusing to comply with any further supervision unless permitted to cross-examine the government doctors who are forging these falsified "schizophrenia" reports so that they can be removed from his file). The Court also terminated the supervision because defendant was threatening to continue to video-record all his interactions with the probation officers, who were themselves threatening to charge

defendant with a *State* (not federal) crime for recording them "without their permission" (because they cannot provide permission for defendant to document them committing federal felony crimes).

Only after the court resolved to imprison defendant on false probation violations did the Third Circuit finally enter a briefing schedule for defendant's appeal of the underlying conviction on May 3rd, 2019 (despite blocking the appeal from proceeding for almost two years since the notice of appeal was first filed by defendant on May 2nd, 2017). Defendant was thereby forced to file his appeal brief concerning the original conviction while illegally imprisoned for false probation violations all while AST and the government continued to issue threats of violence against him and others all throughout 2018-2019 (resulting in at least two additional deaths which occurred on June 17th, 2019 and September 5th, 2019 after defendant was illegally imprisoned on the falsified probation violations and thus unable to prevent them). If the underlying misconduct is not resolved, defendant anticipates that he will absolutely be subject to further unlawful imprisonments because he is a genuine whistleblower whom the government does seek to silence via either imprisonment or death, and this is no "hallucination" based upon what defendant witnessed and the substantial (long-term) history of this dispute.

6. CONCLUSION

Defendant quotes *Olmstead v. United States*, 72 L.Ed. 944, 277 US 438 (at 485) as follows:

> "Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent, teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means - to declare that the government may commit crimes in order to secure the conviction of a private criminal – would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face."

The petition for a writ of certiorari should be granted, the conviction in this instant matter should be vacated and dismissed with prejudice, or downgraded to a non-violent misdemeanor.

Respectfully submitted,

Younes Kabbaj

Date: November 21st, 2019