No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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Khaled Miah— PETITIONER

vs.

United States of America— RESPONDENT

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

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## QUESTION PRESENTED

Can an online social media post that at most forewarns of a possible future terroristic attack violate 18 U.S.C. § 875(c), if the post does not identify any particular natural person or group of natural persons as a target?

## CORPORATE DISCLOSURE STATEMENT

Muslim Legal Fund of America, Inc. is a non-profit 501(c)(3) corporation with no parent corporation, and no publicly held company owns 10% or more of the organization's stock. *See* Supreme Court Rule 29.6.

## PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Khaled Miah*, D.C. No. 2-21-cr-00110-001 (W.D. Pa. Oct. 18, 2021) (entering judgement of conviction)
- *United States v. Khaled Miah*, No. 22-2983 (3d Cir. Mar. 28, 2025) (affirming conviction)

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- The Third Circuit Court of Appeals Order Denying Rehearing is included in at Pet. App. 32a.
- The Western District of Pennsylvania's Order Denying the Motion to Dismiss is reported at *United States v. Miah*, 546 F. Supp. 3d 407 (W.D. Pa. 2021).
- The Western District of Pennsylvania's Judgment is included at Pet. App. 153a-161a.

## JURISDICTION

The Third Circuit Court of Appeals filed a precedential panel opinion affirming Mr. Miah's conviction and sentence on October 18, 2024. *See* Pet. App. 3a-19a. The court denied his Petition for Rehearing on March 28, 2025. *See* Pet. App. 32a-33a. This Court therefore has jurisdiction under 28 U.S.C. § 1254(1).

## STATUTORY PROVISION

Title 18 U.S.C. Section 875(c) provides:

"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."

## STATEMENT OF THE CASE

### I. Factual Background

This entire case began with offensive but innocuous public comments on a YouTube video posted in 2019. The YouTube video, posted by user "Mosul Medic," depicted military personnel treating wounds in Iraq. Pet. App. 81a; 148a-149a. Mosul Medic reported to the FBI the anonymous public comments posted in response to his public video by user "BlitzKrieg" (Mr. Miah's YouTube account username).

The comments exchanged publicly between BlitzKrieg (Mr. Miah) and Mosul Medic in January 2019 were as follows:

| | |
|---|---|
| BlitzKrieg: | "I wanna cut your balls off Mosul Medic" |
| Mosul Medic: | "Come get some" |
| BlitzKrieg: | "hey medic you'll be needed in America not Mosul. We are all here Tick Tock." |
| Mosul Medic: | "who is "we" and where are you?" |
| BlitzKrieg: | "you'll find out very soon, soon, soon." |

Pet. App. 148a-149a.

More than a year and a half later, in 2020, in response to Mosul Medic's complaint, the FBI opened an investigation into Mr. Miah's online activity. *See* Pet. App. 82a. On September 28, 2020, FBI agents went to Mr. Miah's apartment to interview him about the YouTube posts and other social media posts they discovered during their investigation that "suggested he believed in a 'particular extremist ideology,' consisting of a 'vengeful, violent form of Islam.'" Pet. App. 4a-5a.

Notably, the public YouTube comments that sparked the investigation never resulted in any criminal charges.

In response to the FBI's investigation, Mr. Miah began trolling[1] investigating agents online via the social media platform Twitter. For example, on one of his Twitter accounts, Mr. Miah changed his profile picture to a photograph of Agent Edquist's wife that he obtained from a public online source. *See* Pet. App. 84a. He also changed the username displayed on the account from "@Lügenpress_" to "@[agent's wife's name]presse." *See id*. Additionally, he modified his own biographical information to match the public information he found about the agent and his wife. *See id*. Using this account, Mr. Miah posted offensive tweets of a sexual nature about the agent and his wife. *Id*.

On this same account, Mr. Miah also tweeted his belief that white supremacy had "infiltrated government and its agencies." *Id*. When the FBI discovered this modified @Lügenpress_ account, agents obtained a warrant to search Mr. Miah's home and electronic devices. *See* Pet. App. 85a. During their search, agents confronted Mr. Miah about his use of the agent's wife's information and photo on the Twitter account. He subsequently got rid of this Twitter account along with two other accounts. *See* Pet. App. 87a-90a. These Twitter posts never resulted in any criminal charges.

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[1] "Troll" means "to antagonize (others) online by deliberately posting inflammatory, irrelevant, or offensive comments or other disruptive content." *Troll*, MERRIAM-WEBSTER, , https://www.merriam-webster.com/dictionary/troll (last visited June 20, 2025).

Later, Mr. Miah created new accounts with different usernames, including "@BruhKhaled" and "@54marienstrasse." The latter included a display name of "Fishing Expedition," with a profile photo of the satirical movie character Borat.[2] *See* Pet. App. 96a. The account also noted that it contained "profane and intentionally provocative statements, references to the seizure of his devices and the ongoing investigation." *Id*. Mr. Miah used this account to tweet additional statements directed at Agent Edquist.*See* Pet. App. 98a-99a. For example, Mr. Miah tweeted, "[Edquist] is a little weasel. His grandfather was prob Nazi Waffen SS. Pussy face coward. His whole clan are bitch asses. Retarded wedding." *See* Pet. App. 99a. This tweet depicts one example of Mr. Miah's sometimes offensive and tasteless posts, but the posts go on to show Mr. Miah's view that the FBI was wrongfully investigating him as part of its War on Terror within the United States: "If your [sic] looking for a radical, well there's this guy named … (pay me $1 million in gold bullions) first, and let me fuck your boys [sic] girl. Obviously I'm not gonna pull out." Pet. App. 98a. Mr. Miah further tweeted his belief that the agents on his investigation are racist and that generally "White Supremacy has no place in the government." Pet. App. 99a. And he tweeted his view that the FBI does not take

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[2] Borat is a fictional journalist in the mockumentary comedy film, Borat: Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan, and its sequel, Borat Subsequent Moviefilm. In the films, Borat is a foreigner in the U.S., with little understanding of American customs, interviewing real-life Americans. *See generally Borat*, WIKIPEDIA, https://en.wikipedia.org/wiki/Borat (last visited Mar. 31, 2021). The films are considered by many to be offensive and controversial. *See Arab Countries Ban Borat*, THE GUARDIAN (Dec. 1, 2006), https://www.theguardian.com/ film/2006/dec/01/filmcensorship; *Kazakh Organization Asks Awards to Disqualify 'Borat' Sequel*, VARIETY (Nov. 16, 2020), https://variety.com/ 2020/film/news/borat-sequel-kazakh-communityaward-ban-1234833223/.

white extremism seriously. See *id*. ("On October 27th, 2018 . . . [w]hile [FBI agents] were neglecting their responsibilities at work, a white extremist entered the #TreeofLifeSynagogue and killed 12 #jewish worshippers. . ."). 

Notably, on November 12, 2020, while the investigation continued, Mr. Miah tweeted, "I don't believe in violence. But I do believe in offending people. The law is the law [FBI agent]. Too bad We both know each other's secrets." Pet. App. 98a. Contrasting himself with other individuals the FBI may investigate, Mr. Miah further posited, "The people that I know, the ones that are serious and dedicated, have zero cyber footprints …" Pet. App. 99a.

In December 2020, after three months of investigation by the FBI agents, Mr. Miah created another satirical Twitter account with the display name "Federal Intelligence Service" and username "@ServiceFederal." Pet. App. 74a.[3] The photo associated with the account depicted a mock FBI seal. *See id*.

From December 27 to December 31, 2020, Miah posted the following tweets on this account:

- "Currently eating pasta and watching the second plane hit the south tower. Nick, Dave, Mike and the whole bureau, the deed will be done at a time which is most opportunistic for me, chosen by myself." (Count One)
- "The zero hour is approaching." (Count Two)
- "38° 53' 42. 7" N, 77° 1' 33" W"[4] (Count Three)
- "Rasheed, Dave, Nick, Mike … how's your investigation going? Things are looking 'bright' in 2021. Did you find the Saudi passports?" and "2001-2021 is

[3] At various points, Mr. Miah altered the display name on this account. On January 1, 2021, agents discovered that the display name had been changed to "TRUMP2020". Pet. App. 74a.
[4] These are the apparent coordinates of the FBI headquarters in D.C., notably *not* the FBI office where the investigating agents worked.

20 years. An entire generation, yet men like me still exist and pop up into existence. Next time you come in cowboy with the crew, the hardwood will collapse beneath your feet." (Count Four)

- "Remember boys, the more eyes on me, the less on the others. Regardless, yellow tapes will flow." (Count Five)

Pet. App. 68a.

These five tweets alone became the basis of the federal criminal charges against Mr. Miah.[5]

## II. Procedural Background

On January 6, 2021, the government arrested Mr. Miah and charged him with eight counts. Specifically, in separate counts, the government alleged that each of the five tweets, standing alone, were threats under § 875(c) and that the last two tweets also constituted threats to FBI agents with the intent to impede their investigation under § 115(a)(1)(B). *See* Pet. App. 68a-69a. Finally, in count eight, the government alleged that the changes and deletions to Mr. Miah's Twitter account and posts over several months violated 18 U.S.C. § 1519. *See* Pet. App. 70a.

Before trial, Mr. Miah moved to dismiss all counts for failure to state an offense based on the absence of an actual threat to injure or assault a natural person as required by the plain text of § 875(c) and § 115(a)(1)(B). *See* Pet. App. 40a-48a. Ignoring the statutory language, the district court denied the motion, finding that a jury could consider Mr. Miah's tweets to be "true threats" due to the surrounding context. Pet. App.102a.

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[5] Here, Mr. Miah challenges the tweets in counts two, three, and five.

To provide background context for the tweets, the government moved to admit 404(b) evidence, claiming that evidence of Mr. Miah's past internet searches, downloads, and conversations related to his admiration of terrorists (large portions from several years preceding the investigation) was relevant to prove his knowledge and intent. *See* Pet. App. 103a-107a. Mr. Miah objected because the other-acts evidence was not intrinsic to the offense and not offered for a proper Rule 404(b) purpose. It was also only available to the investigating agents because they seized Mr. Miah's devices and viewed the items, providing improper context for the investigating agents specifically. Even though the district court found none of the government's proffered evidence intrinsic to the charged offenses, the court allowed evidence depicting acts that were neither contemporaneous with the charges, nor necessary to prove any element of the charges, and in my cases, with the court proffering its own chain of inferences to admit the evidence. Pet. App. 108a-143a.

At trial, a jury convicted Mr. Miah of counts one through six and count eight. *See* Pet. App. 150a-152a.

On appeal, Mr. Miah challenged his § 875(c) convictions in counts one, two, three, and five on two bases: first, that the statements did not threaten to injure a natural person as required for conviction under § 875(c), and second, that the statements did not constitute "true threats" as defined by this Court, thus entitling them to First Amendment protection. *See* Pet. App. 189a-205a.

After oral argument, the Third Circuit published a nonprecedential opinion affirming Mr. Miah's convictions and sentence. Government counsel then filed a

motion seeking to republish the opinion as precedential. *See* Pet. App. 22a-28a. The Third Circuit granted the government's motion and filed the panel opinion as precedential. *See* Pet. App. 29a-31a.

As relevant here, the precedential panel opinion held that the threat charges properly went before the jury "both under Section 875(c) and the First Amendment." Pet. App. 8a. Specifically, the appellate court found that even tweets that did not "identify a natural person as their target" could still be charged as threats under § 875 based on the "context and totality of circumstances of the communications." *Id.* In reaching this conclusion, the appellate court cited to *United States v. C.S.*, 968 F.3d 237, 245 (3d Cir. 2020) (holding that "context and circumstances" of statements could "enable a reasonable person to view them as serious [threats]"). *Id.* at 108. Further, the opinion held that "threats targeting FBI agents generally are sufficiently particularized to qualify as true threats." *Id.* (citing *United States v. Davitashvili*, 97 F.4th 104, 111 (3d Cir. 2024)).

Next, the appellate court found that a "reasonable jury could find Miah's tweets communicated a 'serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals and therefore constituted true threats under First Amendment jurisprudence." Pet. App. 9a. (citing to *United States v. Davitashvili*, 97 F.4th 104, 109 (3d Cir. 2024). Specifically, the appellate court agreed that "a reasonable jury could find Miah's contextualized tweets expressed a serious intent to harm the agents," based on allegations in the indictment showing "Miah's antipathy for specific agents, as well as his animosity

towards law enforcement in general" and his "captivation with weapons and terroristic-style attacks." *Id.*

On March 28, 2025, the Third Circuit Court of Appeals denied Mr. Miah's Petition for Rehearing. *See* Pet App. 32a-33a. On April 7, 2025, the court entered judgment affirming the district court's decision. *See* Pet. App. 1a-2a. This petition for a writ of certiorari follows. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## REASONS FOR GRANTING THE PETITION

### I. Certiorari review is necessary to resolve the circuit split regarding how much particularity is required to constitute a threat under 18 U.S.C. § 875(c).

A prosecution under § 875(c) prohibits interstate communications "containing any threat to kidnap *any person* or any threat to injure the *person of another*." 18 U.S.C § 875(c) (emphasis added). Regarding the statute's requirement that the prohibited threat be directed toward "any person" or "the person of another," circuit courts differ on how much particularity is required to make this showing.[6] The Ninth Circuit has correctly interpreted § 875(c) and related threat statutes to

[6] *Compare United States v. Havelock*, 664 F.3d 1284, 1286 (9th Cir. 2012) ("§ 875 clearly envisions that 'person' is limited to a natural person . . . ."); *United States v. Carlson*, 787 F.3d 939 (8th Cir. 2015) (adopting the Ninth Circuit's reasoning in *Havelock*) *with United States v. Horton*, 580 Fed. Appx. 380, 384 (6th Cir. 2014) (finding that the "Florida Fifth Judicial Circuit, Middle District of Florida" could be considered as addressed to a "person" in a prosecution under § 876(c), a precursor statute to §875); *United States v. Davila*, 461 F.3d 298, 308–09 (2d Cir. 2006) ("Connecticut State's Attorney's Office" could "reasonably be understood" as a person under § 876(c)).

require a threat toward a natural person. *See United States v. Havelock*, 664 F.3d 1284, 1286 (9th Cir. 2012). But the Third Circuit has deviated too far afield of this statutory requirement, finding true threats even when no one at all is identified as a target. *See* Pet. App. 7a-8a. This Court's review is necessary to clarify that context cannot be used to supply a natural person in a social media post that does not contain any threat target.

**a. The Ninth Circuit correctly concluded that to qualify as a threat, a written statement must be directed toward a particular natural person or group of persons.**

In *Havelock*, the Ninth Circuit found that "[section] 875 clearly envisions that 'person' is limited to a natural person." 664 F.3d at 1286.

The backdrop of *Havelock* was Super Bowl XLII, held in Glendale, Arizona. "Five days before [the game], Havelock traveled to the Scottsdale Gun Club and purchased an AR-15 assault rifle, five extra magazines, and ammunition to spare. Evening found Havelock seated at his home computer, studying a map of the parking lots surrounding the…site of the upcoming game." *Id*. On Super Bowl Sunday, Havelock mailed his "Manifesto" to various news outlets. *Id*. at 1287. The Manifesto included "a fractured meditation on the purported evils of American society and past-tense account of the experiences, beliefs, and convictions that set off his anticipated 'econopolitical confrontation.'" *Id*. It also "included prospective remarks:"

> "But you have attacked my family. You have destroyed the futures of my children. So now, I will reciprocate in kind. Only mine will not be the slow crush of a life of a wage slave, or of malnutritioned [sic] sicknesses, or of insurmountable debt. It will be swift, and bloody. I will sacrifice your children upon the altar of your excess …
>
> …So I will make the ultimate sacrifice; I will give my life. And I will take as many of the baneful and ruinous ones with me.
>
> …
>
> I will slay your children. I will shed the blood of the innocent."

*Id*.

"After leaving the post office, Havelock drove to a parking lot near the stadium 'to wait for an opportunity to shoot people.'" *Id*. at 1287–88. After arriving, he had a "change of heart" and voluntarily reached out to law enforcement. *Id*. at 1288.

The government charged Havelock with six counts of mailing threatening communications in violation of § 876(c), which "prohibits the mailing of communications 'addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another.'" *Id*. Each count "correspond[ed] to the four media outlets and the two websites to which Havelock mailed his Manifesto." *Id*. "The threat, as alleged in each of the six counts, consisted of 'a threat to injure the person of another, specifically children and persons in the vicinity of the Super Bowl XLII event in Arizona." *Id*.

Havelock moved to dismiss the indictment on various grounds, including failure to state an offense because the mailings were not directed to natural

persons. *Id*. The district court denied the pre-trial motions and post-trial motion for a judgment of acquittal. *Id*.

The Ninth Circuit reversed Havelock's conviction and remanded for a judgment of acquittal, finding that the Manifesto mailing did not constitute a threat because it was not directed toward a particular person: it had "no salutation line" and the contents "indicate[d] nothing at all about the identity of any individual 'person' to whom the communication supposedly was addressed," (i.e., whose children or which innocents were targeted). *Id*. at 1296. After analyzing and applying tenets of statutory interpretation (including cross-referencing § 875), the court concluded that "a reasonable jury could not have found that Havelock's writings were addressed to a natural person, as § 876(c) requires." *Id*.

The Ninth Circuit is not alone in its natural person interpretation; other circuits have reached the same conclusion in similar threat cases. *See United States v. Carlson*, 787 F.3d 939, 947 (8th Cir. 2015) (holding that "person" means a natural person in § 876); *United States v. Williams*, 376 F.3d 1048, 1053 (10th Cir. 2004) (holding that "person" under § 876 includes a government official addressed by his title because an official is a natural person "capable of having a sense of personal safety").

### i. Under Ninth Circuit law, Mr. Miah's tweets do not constitute threats under § 875(c).

Applying *Havelock* to Mr. Miah's case, the charged tweets are not threats because they were not directed toward any particular natural person or group of persons.

First, in count one, "[t]he zero hour is approaching" at most reads like a vague forewarning. Pet. App. 71a. Even assuming context can be used to establish that this statement constitutes an actual threat to injure, it unquestionably does not identify any person as a target.

Next, in count three, "38° 53' 42. 7" N, 77° 1' 33" W" merely provides the apparent coordinates of the FBI headquarters in Washington, D.C., notably *not* the FBI office where the investigating agents in Mr. Miah's case worked. *Id.* Even assuming that this tweet constitutes a threat to injure someone at FBI headquarters, no natural person is identified as a target.

Finally, in count five, Mr. Miah posted: "Remember boys, the more eyes on me, the less on the others. Regardless, yellow tapes will flow." *Id*. Again, even assuming that context can supply enough information to qualify these statements as actual threats to injure, and going a step further by assuming that "boys" intends to address FBI agents and/or law enforcement generally, similar to *Havelock*, the tweets still "indicate[] nothing at all about the identity of any individual 'person' to whom the communication supposedly was addressed." 664 F.3d at 1296. Thus, none

of these tweets contain the requisite natural-person target required for prosecution under § 875(c).

As *Havelock* recognizes, threat prosecutions under § 875(c) and related statutes aim to stifle real threats toward real people. If the courts do not uniformly draw the line at natural people as required targets, where do the boundaries lie for threat prosecutions?

**b. The Third Circuit allows a social media post to qualify as a threat under § 875(c) even when it does not identify any person as a target.**

The tweets Mr. Miah challenges here were not directed toward any natural person(s). But the Third Circuit ignored these glaring omissions in affirming his § 875(c) convictions and determined that "the context and totality of circumstances" could be used to fill in the gaps in Mr. Miah's tweets—not only could context supply an implied intent to harm, but even tweets that did not "identify a natural person as their target" could still qualify as threats under § 875(c). Pet. App. 8a. In the absence of any particular natural person named in the tweets, the court pointed to the indictment's allegations "describing Miah's retaliatory targeting of Agent Edquist's wife, his inclusion of the investigating agents in his [other] tweets, the contents of his devices revealing an 'interest in weapons, his fascination with violence, and his strong animosity toward law enforcement,' and his recurring surveillance of Agent Edquist's residence and the FBI Pittsburgh Field Office." *Id*. The Third Circuit's analysis is problematic.

The appellate court's first misstep was using context to supply a natural person as a target where none was named. Even assuming the court could permissibly rely upon this "context" to read in implied threats to injure into tweets that do not contain any actual threats of violence,[7] deeming tweets that do not reference anyone at all as threats to injure a particular individual or group of individuals is beyond the pale.

Next, the court impermissibly considered all of Mr. Miah's charged tweets together as part of the context in evaluating whether his online statements were threats, even though the government charged each tweet separately. While the government can rely on the same evidence to prove each count in the indictment, one count cannot serve as evidence to prove another count. As this Court has held, "[e]ach count in an indictment is regarded as if it was a separate indictment." *United States v. Powell*, 469 U.S. 57, 62 (1984). While the government could've elected to charge all of the tweets it deemed threatening in one count, it chose instead to charge each online statement separately. But "[i]f separate indictments had been presented against the defendant … and had been separately tried, the same evidence being offered in support of each, an acquittal on one could not be pleaded as *res judicata* of the other." *Id*. at 62–63. Thus, as here, "[w]here the

[7] *E.g.*, "Currently eating pasta and watching the second plane hit the south tower. Nick, Dave, Mike and the whole bureau, the deed will be done at a time which is most opportunistic for me, chosen by myself;" or "Rasheed, Dave, Nick, Mike … how's your investigation going? Things are looking 'bright' in 2021. Did you find the Saudi passports?" and "2001-2021 is 20 years. An entire generation, yet men like me still exist and pop up into existence. Next time you come in cowboy with the crew, the hardwood will collapse beneath your feet." Pet. App. 68a.

offenses are separately charged in the counts of a single indictment, the same rule must hold." *Id.* at 63.

Finally, the court relied on flawed precedent. In support of its decision in Mr. Miah's case, the court cited to *C.S.*, which held that to "satisfy the objective component" of § 875(c), a factfinder may consider "the context and circumstances in which a communication was made to determine whether a reasonable person would consider the communication to be a serious expression of an intent to inflict bodily injury on an individual." 968 F.3d at 244. There, C.S. posted online statements in a chatroom "dedicated to discussing the Islamic State . . . often referred to as 'ISIS.'" *Id.* at 240. In the chatroom, he used a "screenname that evoked allegiance to Islamic fundamentalist guerrillas," and posted a "photo of himself wearing a headscarf and a headband of another terrorist organization, Hamas." *Id.* The court found that C.S.'s online statement, "[o]r if Christians trigger me then I go at the church," was a threat under § 875(c), "despite the conditional nature of his statements and absence of definite plans." *Id.* at 246. The "context and circumstances" upon which the court relied in reaching that conclusion included C.S.'s possession of an "extensive collection of weaponry" and his posting of "photos displaying those items" online, *id.*, as well as "Islamic Jihadi propaganda videos depicting beheadings. *See Id.* at 242. Critically, the opinion did not include any discussion regarding why "the church" was a target that qualified as "any person" or "the person of another," so the appellate court should not have relied on it in Mr. Miah's case. 18 U.S.C. § 875(c).

The court also relied on *Davitashvili* in reaching its decision. 97 F.4th 104 (3d Cir. 2024). In Davitashvili's case, the Third Circuit concluded that a "jury could have found beyond a reasonable doubt that Davitashvili's threats to injure 'others' targeted particular people," even though none were named. *Id.* at 109–110. Instead, the Third Circuit incorrectly found that "one could reasonably dispute whether particularization is a necessary condition for a statement to qualify as a true threat," arguing that "no precedential court of appeals case . . . [has] overturn[ed] a conviction because the threat was not sufficiently particularized." *Id.* at 113.

*Davitashvili* centered around statements made by an immigrant from Georgia who became a naturalized U.S. citizen. Davitashvili sent messages to his estranged wife on Viber, "a texting app popular in Eastern Europe." *Id*. at 107. The messages threatened his ex and also referenced "others" without identifying them by name. One message, for example, stated: "You have two paths forward, either come clean, or the second one is wheelchair. Make a choice, whore, together with your co-workers that will soon be sucking my d***." *Id*. Another message stated in part: "I will not just depart this life. I will take someone with me. At least five, I swear. I don't know how to gather you all together, but at a minimum I will take 15 of you and will depart this life peacefully." *Id*.

The court used Davitashvili's earlier messages to provide context, specifically one where he accused his wife of "taking the side of 'other people who didn't treat him well.'" *Id*. at 110. The court determined that even though the messages didn't specify particular people as targets, "a jury could find that the five to fifteen people

whom Davitashvili expressed an intent to kill were acquaintances of Davitashvili and [his estranged wife]," therefore targeting natural persons with sufficient particularity, despite not identifying any of them. *Id.*

Another § 875(c) case the Third Circuit relied upon is *United States v. Khan*, 937 F.3d 1042 (7th Cir. 2019), interpreting *Khan* as holding "that threats to harm 'an entire city region' counted as sufficiently particularized." Pet. App. 9a. But the court's summary of *Khan's* holding is incorrect. Nowhere in *Khan* does the Seventh Circuit find that "an entire city region" is a sufficiently particularized target for § 875(c) liability. Those words do not even appear in the opinion. Rather, in an uncharged Facebook post, Khan stated: "I'm claiming the loop area of Chicago to the northern Lincoln Park area where the students be as free fire zones if push comes to shove." *Khan*, 937 F.3d 1042 at 1049.[8] This post was *not* one the court analyzed in affirming the § 875(c) conviction.

Khan's social media posts came on the heels of a pedestrian's lawsuit against Khan and his employer, Uber, after a traffic accident; "noise pollution around his house" which he interpreted as "organized persecution;" and his dissatisfaction with Chicago Mayor Rahm Emmanuel who "doomed Chicago to an early grave." *Id.* at 1047. Khan posted a series of statements on Facebook that ultimately drew the

[8] Specifically, the Seventh Circuit in *Khan* found that his posts were aimed at "at least six specified 'targets,'" with the area of Chicago explicitly identified by the court as the potential location for Khan carry out the threats in question—not itself a target of the threats. *Id.* at 1050.

FBI's attention. The government charged Khan with violating § 875(c), alleging the following Facebook posts constituted threats:

- If I see a high value target Ima exploit it. I'm not killin sum bum on the street. I want a high net worth individual to shoot. I want this to be a real human tragedy. Much mourned. I have a month. Ima hunt aggressively tonight. Keep an eye out for ideal victims. If I don't catch nobody tonite then another nite.

- Good dry run tonight. Saw a couple of excellent targets. The key is right approach and timing. There were many potential witnesses because it was a college student night. Inshallah the deed will be done well before the deadline I have set. … When I have said something, it means I will do it. The rest is opportune timing.

- The gun is cocked and ready to go. … Now I'm gona get my revenge, and that involves putting bullets in someone's body, so get out of the way or I'll literally shoot at them as well and we'll end up with a much bigger scenario on our hands. I'm not leaving America without getting revenge even if it costs me my life. And that's that.

*Id.* at 1047–49.

Khan challenged the indictment, arguing that his Facebook posts were insufficient to constitute threats, in part because they did not set forth *who* he threatened. *See id.* at 1050. The court determined that the context surrounding the posts sufficiently "signal[ed]" who the targets of the threats were, despite the absence of any natural person being targeted in the posts. *Id.*

By further and further deviating from § 875(c)'s natural person requirement, the Third and Seventh Circuits have stretched the boundaries for threat prosecutions. This Court should review Mr. Miah's case to clarify where the expansion must stop.

## II. This case presents a question of exceptional importance as online speech continuously expands.

Recent § 875(c) prosecutions have continued to examine online statements– an undeniably prevalent and recurring forum for speech. *See United States. v. Cassaday*, No. 23-1914, 2025 U.S. App. LEXIS 11991 at *1 (6th Cir. May 26, 2025) (where the defendant's § 875(c) conviction resulted from a jury finding that an email to a state court stating, "I want the clerk dead!!"); *see also United States v. Kirkendoll*, 61 F.4th 1013, 1015 (8th Cir. 2023) (where the basis of the defendant's conviction was a direct message to a witness on social media platform Snapchat stating, "Just no U gone die rat bitch. U act like I don't know where U lay yo head at").

Following Mr. Miah's indictment, the Justice Department has continued to break records in the number of individuals arrested each year for alleged violations of §875(c).[9] Many of these arrests involve purportedly "ideologically motivated individuals"—and because the majority of those charged choose to plead guilty, the increase in these prosecutions "arguably creates more room for prosecutors to push the statute toward charging people who have articulated more generalized, less specific threat language[.]"[10] Hence, the need for this Court's guidance regarding

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[9] Seamus Hughes & Camden Carmichael, *Section 875 Is Having Its Moment*, LAWFARE (Dec. 20, 2023), https://www.lawfaremedia.org/article/section-875-is-having-its-moment. *See also* Pete Simi, Gina Ligon, Seamus Hughes & Natalie Standridge, *Rising Threats to Public Officials: A Review of 10 Years of Federal Data*, 17 CTC SENTINEL 20 (May 2024), https://ctc.westpoint.edu/wp-content/uploads/2024/05/CTC-SENTINEL-052024-article-3.pdf (observing that "record highs" for 875(c) prosecutions persisted into 2023 and 2024).

[10] *Id.*

the application of this statute is becoming increasingly critical to aid judges in evaluating a rising number of these prosecutions.

Additionally, most major social media sites maintain content moderation policies that enable users to report posts believed to be threatening.[11] In fact, Twitter's policy at the time of Mr. Miah's tweets is highly relevant to this discussion. The social media platform advised users that they may not "state an intention to inflict violence on a specific person or group of people."[12] "Intent" includes "I will," "I'm going to," "I plan to," and conditional statements like "If you do X, I will."[13] By contrast, "[s]tatements that express a wish or hope that someone experiences physical harm, making vague or indirect threats, or threatening actions that are unlikely to cause serious or lasting injury are not actionable under this policy, but may be reviewed and actioned under [Twitter policies on abusive behavior and hateful conduct]."[14]

Twitter, now X, continues to modify its policies. Now, the "Violent Content" policy states that "X is a place where people can express themselves, show and learn

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[11] *See generally* Gintarė Gulevičiūtė et al., *A Comparative Analysis of Social Networks Content Moderation Guidelines and Blog Posts*, 12 ENTREPRENEURSHIP & SUSTAINABILITY ISSUES 118 (2025) (discussing the different goals and priorities of content moderation articulated by social media corporations, including, inter alia, TikTok, X, Meta, and Snapchat). Some states (notably California and New York) have also passed legislation on this point, providing civil mechanisms of redress for those who believe they have targeted by violent or hateful speech on social media platforms. *See* CAL. CIV. CODE § 1798.99.20 (2022); N.Y. GEN. BUS. § 394-CCC (2022).

[12] *See Violent Threats – Rules and* Policies, Twitter (Mar. 2019), https://help.twitter.com/en/rules-and-policies/violent-threats-glorification [https://web.archive.org/web/20230218062438/https://help.twitter.com/en/rules-and-policies/violent-threats-glorification].

[13] *Id.*

[14] *Id.*

about what's happening, and debate global issues . . . However, healthy conversations can't thrive when Violent Speech is used to deliver a message."[15] X defines "Violent Content" to include Violent Speech which is defined as "Content that threatens, incites, glorifies, or expresses desire for violence or harm."[16] Its policy goes on to specify that it prohibits speech that it considers "high in severity and likelihood of harm," including speech X considers to fall within the following categories: (1) "Violent Threats," (2) "Wish of Harm," (3) "Incitement of Violence," and (4) "Glorification of Violence." Most relevantly, "Violent Threats" are defined by X as "[t]hreats to inflict physical harm on others, which includes threatening to kill, torture, sexually assault, or otherwise hurt someone," as well as "threatening to damage civilian homes and shelters, or infrastructure that is essential to daily, civic, religious, or business activity."[17]

In determining whether a user's post has violated X's policies regarding "violent threats," X also indicates—in line with the legal approach to evaluating charges of true threats—the importance of context in determining whether policy violations have occurred. X states that it "seek[s] to evaluate and understand contextual nuances," thus "allow[ing] expressions of Violent Speech when there is no clear

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[15] *See* Violent Content, X Help Center, https://help.x.com/en/rules-and-policies/violent-content (Feb. 2025).
[16] *Id.*
[17] *Id.* Posts that do not rise to the level of a violation warranting removal of the post or suspension of the user may still be restricted from visibility on site, however; X suggests this may be appropriate in cases in which the "[h]arm is minor or non-deliberate," "[t]he target is unclear," the context is "outrage or reactive against perpetrators of major harm" or "self-defense or military conflict," or the post employs "coded language . . . to indirectly incite violence." *Id.*

abusive or violent context."[18] Meaningfully, Mr. Miah's speech would likely not have violated the previous Twitter policy in place at the time of his tweets or the current X policy governing "violent threats." Mr. Miah's comments, then, were federally prosecuted, but still not barred by the social media platform.

These policies highlight the importance of imposing clear parameters on online speech amidst a major proliferation of social media posts arguably supporting or glorifying violence.[19] Thus, Mr. Miah's case poses a question of exceptional importance that this Court should address.

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[18] Provided examples of relevant context include "[h]yperbolic and consensual speech between friends," "[f]igures of speech, satire, or artistic expression when the context is expressing a viewpoint rather than instigating actionable violence," or "quotes from books and movies, music lyrics or poetry." *Id.*

[19] *See, e.g.*, Global Project Against Extremism & Hate, *Escalating Online Rhetoric Reflects a Violent Authoritarian Turn Against the Judiciary* (May 8, 2025), https://globalextremism.org/post/violent-authoritarian-turn-against-the-judiciary/ (reporting increases in both general "violent rhetoric" as well as "explicit[ ] call[s] for violence" against judges across multiple social media platforms); Taegyoon Kim, *The Effects of Partisan Elites' Violent Rhetoric on Support for Political Violence*, POLITICAL BEHAVIOR, Apr. 16, 2025 (describing the increase in violent rhetoric as a bipartisan, top-down trend in recent years).

## CONCLUSION

Because the Third Circuit's precedential opinion conflicts with the Ninth Circuit's precedent on an issue of exceptional importance, this Court should grant a writ of certiorari.

Respectfully submitted,

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