
In the Supreme Court of the United States

JAMAL KNOX,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF PENNSYLVANIA**

To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States Supreme Court and Circuit Justice for the Supreme Court of Pennsylvania:

1. Pursuant to Supreme Court Rule 13.5, petitioner Jamal Knox respectfully requests a 60-day extension of time, until Friday, January 18, 2019, within which to file a petition for a writ of certiorari. The Supreme Court of Pennsylvania issued its opinion on August 21, 2018. A copy of the opinion is attached. This Court's jurisdiction will be invoked under 28 U.S.C. § 1257(a).

2. Absent an extension, a petition for a writ of certiorari would be due November 19, 2018. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This petition concerns a divided Pennsylvania Supreme Court decision regarding the applicable standard for determining whether a statement constitutes

a “true threat” unprotected by the First Amendment—a question of widespread importance and the subject of an acknowledged circuit split.

4. In this case, Petitioner was convicted of making “terroristic threats” and witness intimidation based solely on the content of a rap song that he wrote and recorded, and that someone else posted online to Facebook and YouTube. The Pennsylvania Supreme Court granted review to determine whether the song “constitutes protected free speech or a true threat punishable by criminal sanction.” *Commonwealth v. Knox*, 165 A.3d 887 (Pa. 2017) (per curiam). In a divided decision, the Pennsylvania Supreme court affirmed petitioner’s convictions. *Commonwealth v. Knox*, 190 A.3d 1146 (Pa. 2018) (attached hereto). The majority noted the deep division among federal courts of appeals regarding the standard for determining whether a statement is an unprotected “true threat.” *Id.* at 1156-58. Some courts ask whether an objectively reasonable listener would consider the statement threatening. *Id.* Others ask whether the speaker had the subjective intent to threaten. *Id.* The majority joined the short side of this split and ruled that “the Constitution allows states to criminalize threatening speech which is specifically intended to terrorize or intimidate,” even if a reasonable observer would not believe the statement was a threat. *Id.* at 1158. In a separate opinion, two justices of the state high court surveyed the circuit split and proposed a different test. *Id.* at 1165 (Wecht, J., joined by Donohue, J., concurring and dissenting).¹

¹ The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Eleventh Circuits apply an objective test for assessing “true threats.” See *United States v. Clemens*, 738 F.3d 1, 10 (1st Cir. 2013); *United States v. Davila*, 461 F.3d 298, 305 (2d Cir. 2006); *United States v. Elonis*, 730 F.3d 321, 331 n.7 (3d Cir. 2013), *rev’d on other grounds by Elonis v. United States*, 135 S. Ct. 2001 (2015); *United States v. White*, 810 F.3d 212, 221 (4th Cir. 2016); *Porter*

5. Petitioner respectfully requests an extension of time to file a petition for certiorari. Petitioner confirmed his engagement of undersigned counsel just last week, on November 1, 2018. A 60-day extension would allow recently retained counsel sufficient time to fully research and analyze the important First Amendment issue presented and prepare the petition for filing. In addition, undersigned counsel has a number of other pending matters that will interfere with counsel's ability to file the petition on or before November 19, 2018.

Wherefore, petitioner Jamal Knox respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to January 18, 2019.

November 5, 2018

Respectfully submitted,



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v. Ascension Parish Sch. Bd., 393 F.3d 608, 616 (5th Cir. 2004); *United States v. Jeffries*, 692 F.3d 473, 479 (6th Cir. 2012); *United States v. Parr*, 545 F.3d 491, 500 (7th Cir. 2008); *United States v. Nicklas*, 713 F.3d 435, 440 (8th Cir. 2013); *United States v. Martinez*, 736 F.3d 981, 988 (11th Cir. 2013), *vacated on other grounds by Martinez v. United States*, 135 S. Ct. 2798 (2015) (per curiam). In contrast, the Ninth and Tenth Circuits, and the Pennsylvania Supreme Court, focus on the speaker's subjective intent. *See United States v. Cassel*, 408 F.3d 622, 633 (9th Cir. 2005); *United States v. Magleby*, 420 F.3d 1136, 1139 (10th Cir. 2005); *Commonwealth v. Knox*, 190 A.3d 1146, 1157-58 (Pa. 2018).