No. 18-949

In the Supreme Court of the United States

JAMAL KNOX,
Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Pursuant to Supreme Court Rule 37.2(b), the National Association of Criminal Defense Lawyers (NACDL) respectfully requests leave to file the attached brief. Petitioner has consented to the filing of this brief, and a blanket letter of consent has been submitted to the Clerk of this Court. *Amicus* is filing this motion because respondent has declined to consent.

NACDL is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice.

NACDL files numerous amicus briefs each year in this Court and other federal and state courts, seeking to provide assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. This case presents a question of great importance to NACDL and the clients its attorneys represent. The uncertainty regarding the proper standard for threat prosecutions poses serious

constitutional concerns. And NACDL is well-suited to provide additional insight into the implications of the decision below for criminal defendants, as well as the way in which our criminal justice system compounds the concerns associated with that decision.

Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers.

NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous amicus briefs each year in this Court and other federal and state courts, seeking to provide assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

This case presents a question of great importance to NACDL and the clients its attorneys represent. The number of criminal threat statutes and prosecutions, the unsettled state of the law governing

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[1] Counsel of record received timely notice of the intent to file this brief, and petitioner's counsel filed a blanket letter of consent. Respondent's counsel withheld consent and, accordingly, amicus has submitted a motion for leave to file. No counsel for a party authored this brief in whole or in part; and no such counsel, any party, or any other person or entity—other than amicus curiae and its counsel—made a monetary contribution intended to fund the preparation or submission of this brief.

"true threats," the insufficient protection afforded by the standard adopted by the majority below, and the fact that the vast majority of criminal prosecutions end in guilty pleas together present a real risk that arrests and prosecutions will be based on constitutionally protected but offensive or unpopular speech. NACDL has a strong interest in advocating for clear rules that do not allow the government to criminally punish objectively non-threatening speech.

INTRODUCTION AND SUMMARY OF ARGUMENT

There is widespread and longstanding confusion about what qualifies as a "true threat" such that pure speech can be criminalized without running afoul of the First Amendment. Such uncertainty is problematic in criminal law as a general matter because the public needs to be on notice of what acts constitute crimes. But in the specific context of statutes that criminalize pure speech, such uncertainty is untenable. Only this Court can clarify the constitutionally required standard, and ensure that unpopular or offensive speech is not silenced by a rule that allows the government to punish speech that is objectively non-threatening.

The danger here is real and pervasive. There are dozens of federal and state statutes that criminalize pure speech when that speech qualifies as a threat. These statutes are responsible for hundreds of prosecutions each year. And threat prosecutions have persisted with great frequency in the wake of this Court's recent decision in *Elonis v. United States*, 135 S. Ct. 2001 (2015).

The split decision of the Pennsylvania Supreme Court below exemplifies the confusion among the

lower courts with regard to the First Amendment "true threat" standard. And the majority's mistaken belief that "an objective, reasonable-listener standard . . . is no longer viable" (Pet. App. 19a) is particularly troubling. If that were so, a person could be jailed for saying something that no reasonable person would perceive to be a genuine threat. Whatever level of subjective intent (or mens rea) is appropriate or required, this Court's case law and basic First Amendment principles impose an objective baseline before speech can qualify as a proscribable "true threat." And the realities of our criminal justice system—including broad police discretion and the overwhelming prevalence of guilty pleas—reinforce the need for an objective backstop to carefully preserve the line between true threats and unpopular or offensive, but constitutionally protected, speech.

ARGUMENT

I. THE QUESTION PRESENTED IMPLICATES A SIGNIFICANT NUMBER OF STATUTES AND PROSECUTIONS

This case presents the Court with a much-needed opportunity to clarify what it means to be a "true threat" such that pure speech can be criminalized without running afoul of the First Amendment. As the petition explains (at 8-14), widespread confusion among the lower courts on this issue prompted the grant of certiorari in *Elonis v. United States*, 135 S. Ct. 2001 (2015), and persists in the wake of that decision. The existing uncertainty about the reach of statutes that criminalize and, more broadly, chill pure speech is itself problematic. The frequency with which the question arises only further highlights the need for this Court's review.

To start, there are dozens of criminal "threat" statutes on the books. Federal law criminalizes threats against various government officials (18 U.S.C. §§ 115(a)(1)(B), 871(a), 879); foreign officials, official guests, and internationally protected persons (*id.* § 878(a)); jurors (*id.* § 1503(a)); and witnesses, victims, and informants (*id.* § 1512(a)(2)). Federal law also criminalizes threats transmitted in interstate commerce (*id.* § 875(c)), and by mail (*id.* §§ 876(c), 877), as well as threats that obstruct proceedings before government agencies (*id.* § 1505), or the rights and duties associated with court orders (*id.* § 1509). And it prohibits threats in a variety of other circumstances too. *See, e.g.*, *id.* §§ 247(a)(2), 248(a). In addition, the vast majority of states criminalize threating communications.[2]

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[2] *See, e.g.*, Ala. Code § 13A-10-15; Alaska Stat. § 11.56.807; Ariz. Rev. Stat. Ann. § 13-1202; Ark. Code Ann. § 5-13-301; Cal. Penal Code § 422(a); Colo. Rev. Stat. § 18-3-206; Conn. Gen. Stat. § 53a-62; Del. Code Ann. tit. 11, § 621; D.C. Code § 22-407; Fla. Stat. § 836.10; Ga. Code Ann. § 16-11-37; Haw. Rev. Stat. § 707-716; Iowa Code § 712.8; Kan. Stat. Ann. § 21-5415; Ky. Rev. Stat. Ann. § 508.080; Me. Stat. tit. 17-A, § 209; Mass. Gen. Laws ch. 275, § 2; Mich. Comp. Laws § 750.411i; Minn. Stat. § 609.713; Neb. Rev. Stat. § 28-311.01; Nev. Rev. Stat. § 200.571; N.H. Rev. Stat. Ann. § 631:4; N.J. Stat. Ann. § 2C:12-3; N.Y. Penal Law § 240.30; N.C. Gen. Stat. § 14-277.1; N.D. Cent. Code Ann. § 12.1-17-04; Okla. Stat. tit. 21, § 1378; 18 Pa. Cons. Stat. § 2706; Tenn. Code Ann. § 39-17-308; Tex. Penal Code Ann. § 22.07; Utah Code Ann. § 76-5-107; Vt. Stat. Ann. tit. 13, § 1702; Va. Code Ann. § 18.2-60; Wash. Rev. Code § 9.61.160; Wis. Stat. § 940.203; Wyo. Stat. Ann. § 6-2-505. Several other states criminalize threats made by telephone, Idaho Code § 18-6710; La. Stat. Ann. § 14:285(A); N.M. Stat. Ann. § 30-20-12; threats directed at public officials, 720 Ill. Comp. Stat. 5/12-9; Md. Code Ann., Crim. Law § 3-708; 11 R.I. Gen. Laws § 11-42-4; S.C. Code Ann. § 16-3-1040; or "terrorist"

These are not dormant statutes. Between 2004 and 2014, on average, more than 20 defendants were charged under 18 U.S.C. § 871(a) with making threats against the President each year.[3] During that same time frame, about 150 people were arrested and booked annually for making "threatening communications" under federal law.[4] And although the statistics are not readily available, many more were likely charged for the same under state law.

Indeed, in the three years since *Elonis* was decided, 215 cases available on Westlaw have cited 18 U.S.C. § 875(c) (which prohibits transmitting threats in interstate commerce), and 83 cases have cited 18 U.S.C. § 876(c) (which prohibits transmitting threats by mail). More than 300 decisions have cited *Elonis* itself. And there are nearly a dozen post-*Elonis* reported decisions from the courts of appeals involving threat and intimidation prosecutions.[5]

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threats, Mo. Rev. Stat. § 574.125; S.D. Codified Laws § 22-8-13; W. Va. Code § 61-6-24.

[3] *See* Bureau of Justice Statistics, Federal Criminal Case Processing Statistics, http://www.bjs.gov/fjsrc/ (last visited Mar. 1, 2019) (follow "Defendants charged in criminal cases: trends" hyperlink; then select year range of 2004-2014, variable of "Filing offense," and offense of "Threats against the President").

[4] *See* Bureau of Justice Statistics, Federal Criminal Case Processing Statistics, http://www.bjs.gov/fjsrc/ (last visited Mar. 1, 2019) (follow "Persons arrested and booked: trends" hyperlink; then select year range of 2004-2014, variable of "Offense," and offense of "Threatening communications").

[5] *See, e.g.*, *United States v. Lynch*, 881 F.3d 812, 814 (10th Cir. 2018) (prosecution under 49 U.S.C. § 46504); *United States v. Petras*, 879 F.3d 155, 159 (5th Cir.) (same), *cert. denied*, 139 S. Ct. 373 (2018); *United States v. Stevens*, 881 F.3d 1249, 1251 (10th Cir. 2018) (prosecution under 18 U.S.C. § 875(c)), *cert.*

As significant as these numbers are, they only scratch the surface. Arrests and prosecutions rarely result in publicly available court decisions. And there is no way to quantify the constitutionally protected speech that is chilled by the existing state of the law. The various federal and state threat statutes should be enforced based on a clear and generally applicable standard that satisfies the constitutional minimum.

II. THE DECISION BELOW ALLOWS THE GOVERNMENT TO CRIMINALIZE SPEECH THAT IS OBJECTIVELY NON-THREATENING

Beyond the widespread uncertainty that currently exists, this Court's review is also needed because the majority below announced a rule that allows the government to criminalize objectively non-threatening speech. Whatever a "true threat" entails, it must at least start from the baseline of being an objective threat. A "subjective only" standard cannot be squared with this Court's case law, basic First

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denied, 139 S. Ct. 353 (2018); *United States v. Doggart*, 906 F.3d 506, 510 (6th Cir. 2018) (prosecution under 18 U.S.C. § 875(c)); *United States v. Mabie*, 862 F.3d 624, 628 (7th Cir. 2017) (prosecution under 18 U.S.C. §§ 875(c), 876(c)), *cert. denied*, 138 S. Ct. 1452 (2018); *United States v. LaFontaine*, 847 F.3d 974, 976 (8th Cir. 2017) (prosecution under 18 U.S.C. § 875(c)); *United States v. Dutcher*, 851 F.3d 757, 760-61 (7th Cir.) (prosecution under 18 U.S.C. § 871(a)), *cert. denied*, 138 S. Ct. 166 (2017); *United States v. Wynn*, 827 F.3d 778, 780-81 (8th Cir.) (prosecution under 18 U.S.C. §§ 875(c), 115(a)(1)(B)), *cert. denied*, 137 S. Ct. 604 (2016); *United States v. White*, 810 F.3d 212, 215-16 (4th Cir.) (prosecution under 18 U.S.C. § 875(b) and (c)), *cert. denied*, 136 S. Ct. 1833 (2016); *United States v. Houston*, 792 F.3d 663, 665 (6th Cir. 2015) (prosecution under 18 U.S.C. § 875(c)); *United States v. Martinez*, 800 F.3d 1293, 1294 (11th Cir. 2015) (prosecution under 18 U.S.C. § 875(c)).

Amendment principles, or the realities of our criminal justice system.

A. The Decision Below Contravenes This Court's Case Law And First Amendment Principles

Courts should not be choosing between an "objective" and a "subjective" standard. Whatever the required mens rea (the question left open in *Elonis*), pure speech cannot be treated as an unprotected "true threat" if the speech is objectively non-threatening. The court below erred in discarding that baseline.

Watts v. United States, 394 U.S. 705 (1969), is a useful starting point. That case involved the federal statute criminalizing threats against the President. *Id.* at 705-06. As the case came to the Court, the dispute was over the meaning of the "willfulness" requirement—*i.e.*, the mens rea. The courts of appeals disagreed over whether "the 'willfullness' requirement of the statute implied that a defendant must have intended to carry out his 'threat.'" *Id.* at 707. The Court, however, found it unnecessary to decide *that* question because the statute, construed in light of the First Amendment, "initially requires the Government to prove a true 'threat.'" *Id.* at 708. To determine whether the Government had done so, the Court looked to whether petitioner's statement, "[t]aken in context," could have been "interpreted" as an actual threat. *Id.* That is, before wading into the applicable mens rea, there first must have been a true "threat" understood from the vantage point of a reasonable listener. Because there was no such threat, petitioner's conviction could not stand.

That understanding of the baseline need for an objective "threat" was also reflected in some of the

briefing and argument in *Elonis*. As Justice Breyer framed the issue: "What he does, and he has to do this or he's not guilty, is he has to communicate a true threat," *i.e.*, "a threat that a reasonable person would understand to convey a serious expression of an intention to inflict bodily injury or take the life of an individual." Transcript of Oral Argument 11:18-12:4, *Elonis v. United States*, 135 S. Ct. 2001 (2015) (No. 13-983). Justice Breyer then went on to discuss the "second question" which "has nothing to do with what you do" but, rather, "has to do with the state of mind." *Id.* at 5-8; *see also Elonis* United States Br. 35-37, 2014 WL 4895283 (Sept. 29, 2014) (discussing rationale for objective test). And some judges, including the dissenting judge below, have recognized the independent role of an objective standard and the need for a hybrid approach. *See, e.g.*, Pet. App. 37a-38a (Wecht, J., concurring and dissenting) (advocating "two-pronged approach" and explaining that the objective "prong . . . allows courts to determine objectively whether a statement is a threat and not political hyperbole, as was the case in *Watts*, or an instance of sophomoric utterances that could not be taken seriously"); *United States v. White*, 670 F.3d 498, 524 (4th Cir. 2012) (Floyd, J., concurring in part and dissenting in part) (advocating a "two-pronged test" with an objective and subjective component); *cf. United States v. Parr*, 545 F.3d 491, 500 (7th Cir. 2008) (suggesting possibility that, to "satisfy the constitutional concern," the "statement at issue must objectively *be* a threat and subjectively be *intended* as such"), *cert. denied*, 556 U.S. 1181 (2009).

Separate and apart from the appropriate subjective standard, an objective baseline is necessary to comport with fundamental First

Amendment principles. As *Watts* recognized, these are statutes that criminalize "pure speech." 394 U.S. at 707. And although this Court has carved out "true threats" from the constitutional protection otherwise afforded to such speech, there is a significant amount of unpleasant, aggressive, or politically disfavored speech that still warrants First Amendment protection. Indeed, there is a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

As this Court recently recognized, there are "difficult questions about the scope of First Amendment protections when speech is made in connection with, or contemporaneously to, criminal activity." *Lozman v. City of Riviera Beach*, 138 S. Ct. 1945, 1953-54 (2018). When the speech is *itself* the criminal activity, it becomes all the more important to carefully preserve those protections. *See City of Houston v. Hill*, 482 U.S. 451, 462-63 (1987) ("The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principle characteristics by which we distinguish a free nation from a police state.").

It is therefore critical to focus on why "true threats" are unprotected. Two key reasons: to "protect[] individuals from the fear of violence" and "from the disruption that fear engenders." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 388 (1992); *United States v. Jeffries*, 692 F.3d 473, 480 (6th Cir. 2012) ("Much like their cousins libel, obscenity, and fighting words, true threats 'by their very utterance inflict

injury' on the recipient." (citation omitted)), *cert. denied*, 571 U.S. 817 (2013). If no reasonable person would "fear" violence, then much of the rationale for excluding such speech from First Amendment protection in the first place no longer exists. *Id.* (explaining that the objective standard "complements the explanation for excluding threats of violence from First Amendment protection").

That some courts have questioned whether *Watts*'s fundamental baseline inquiry has been "retire[d]" (*Parr*, 545 F.3d at 500)—or, like the majority below, held that "an objective, reasonable-listener standard . . . is no longer viable" (Pet. App. 19a)—only underscores the need for this Court's guidance.

B. The Existing State Of The Law Paired With The Realities Of Our Criminal Justice System Risks Suppressing Speech

The absence of a clear standard and, worse still, the Pennsylvania high court's rejection of any objective inquiry, is particularly problematic in light of the realities of our criminal justice system. The risk that police officers may use their arrest power to punish and suppress unpopular speech is all too real. And the fact that the vast majority of prosecutions will end in a guilty plea, rather than a jury verdict, only further compounds the chilling effect of a standard that is unclear, under-protective, or both.

As this Court recently acknowledged, there is a real "risk that some police officers may exploit the arrest power as a means of suppressing speech." *Lozman*, 138 S. Ct. at 1953. That concern is nothing new. As Justice Douglas noted in his concurrence in *Watts*, "[s]uppression of speech as an effective police

measure is an old, old device, outlawed by our Constitution." 394 U.S. at 712. And this Court has "repeatedly invalidated laws that provide the police with unfettered discretion to arrest individuals for words or conduct that annoy or offend them." *Hill*, 482 U.S. at 465-66.

Without an objective backstop, police would have virtually unfettered discretion to arrest an individual for offensive or politically unpopular speech based solely on what the officer believes the person truly intended. Imagine, for example, a protestor outside an abortion clinic who tells a woman entering the clinic, "You'll get what's coming to you! You better watch out!" While that statement probably would not satisfy the objective standard set forth in *Watts*, a police officer could nevertheless find probable cause that the protestor intended to place the woman in fear of bodily harm, and arrest the protestor on that basis. Allowing arrests in such circumstances risks silencing constitutionally protected speech. *Cf. Lewis v. City of Tulsa*, 775 P.2d 821, 822 (Okla. Crim. App. 1989) (reversing disorderly conduct conviction for "picketing an abortion clinic" and yelling at people entering the clinic that "it was murder. You should feel guilty about what you're doing").

The risk of suppressing speech is not mitigated by the possibility that a prosecutor would decline to prosecute or that a jury might not convict. Even without further proceedings, arrests themselves are enormously disruptive to individuals' lives and more than sufficient to chill protected speech. *See generally* Eisha Jain, *Arrests as Regulation*, 67 Stan. L. Rev. 809 (2015) (detailing consequences of arrests); *Ford v. City of Yakima*, 706 F.3d 1188, 1193 (9th Cir. 2013) (recognizing that an arrest "would chill a person of

ordinary firmness from engaging in future First Amendment activity").

And, as this Court has recognized, the "reality" is that "criminal justice today is for the most part a system of pleas, not a system of trials." *Lafler v. Cooper*, 566 U.S. 156, 169-70 (2012). The percentage of federal criminal cases culminating in a plea of guilty or nolo contendere has risen since 1980, as many cases that previously would have gone to trial are now resolved through guilty pleas instead—including cases that would have resulted in acquittals. *See* Ronald F. Wright, *Trial Distortion and the End of Innocence in Federal Criminal Justice*, 154 U. Pa. L. Rev. 79, 90-91, 105-06 (2005). Guilty pleas account for 97% of federal convictions.[6] Similarly, approximately 94% of state felony convictions resulted from pleas of guilty or nolo contendere.[7] In resolving difficult constitutional questions, courts should thus take account of "the central role plea bargaining plays in securing convictions and determining sentences." *Lafler*, 566 U.S. at 170; *see also Missouri v. Frye*, 566 U.S. 134, 143-44 (2012); *Padilla v. Kentucky*, 559 U.S. 356, 373-74 (2010).

Defendants plead guilty at such high rates because broad criminal statutes and severe sentences give prosecutors enormous leverage over them. *See*

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[6] *See* University at Albany, Sourcebook of Criminal Justice Statistics Online, Table 5.34.2010, https://www.albany.edu/sourcebook/pdf/t5342010.pdf (last visited Mar. 1, 2019).

[7] Sean Rosenmerkel et al., Bureau of Justice Statistics, Felony Sentences in State Courts, 2006—Statistical Tables, at 1 (rev. 2010), https://www.bjs.gov/content/pub/pdf/fssc06st.pdf.

Wright, *supra*, at 85-86. Prosecutors have the power to determine the length of a defendant's likely sentence through their charging decisions—and are free to invoke the threat of greater punishment to induce a plea of guilty. *See Bordenkircher v. Hayes*, 434 U.S. 357, 364-65 (1978); *see also, e.g.*, *United States v. Doggart*, 906 F.3d 506, 508 (6th Cir. 2018) (explaining that after the district court rejected defendant's attempt to plead guilty to making a threat in interstate commerce, a crime carrying a sentence of no more than five years, the government added charges and obtained convictions for multiple solicitation offenses resulting in a sentence of almost 20 years). Indeed, one of the very purposes of longer statutory sentences is to enhance the already-significant power of prosecutors by giving them more "plea-bargaining chips." Stephanos Bibas, *Regulating the Plea-Bargaining Market: From Caveat Emptor to Consumer Protection*, 99 Cal. L. Rev. 1117, 1128 (2011); *see also* Rachel E. Barkow, *Separation of Powers and the Criminal Law*, 58 Stan. L. Rev. 989, 1034 (2006) ("[L]onger sentences exist on the books largely for bargaining purposes.").

And federal prosecutors are required to use every chip at their disposal. In May 2017, the Attorney General issued a memorandum announcing that "it is a core principle that prosecutors should charge and pursue the most serious, readily provable offense." Dep't of Justice, Memorandum from the Attorney General for All Federal Prosecutors, *Department Charging and Sentencing Policy* (May 10, 2017), https://www.justice.gov/opa/press-release/file/965896/download. In 2018, the Department of Justice incorporated that memorandum into its new Justice Manual. *See* U.S. Dep't of Justice, *Justice Manual*

§ 9-27.300 (updated Feb. 2018), https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.300.

On the other side of the ledger, significant sentencing discounts are available to defendants who comply with prosecutors' demands. *See, e.g.*, *U.S. Sentencing Guidelines Manual* § 3E1.1(a) (U.S. Sentencing Comm'n 2018), https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2018/GLMFull.pdf (decreasing the offense level where the defendant "clearly demonstrates acceptance of responsibility for his offense"); *id.* § 5K1.1 (providing for departure from the guidelines recommendation "[u]pon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person"). These developments have made it extraordinarily costly for a criminal defendant to refuse a guilty plea. It is therefore unsurprising that "fewer [have] paid the price each year." Wright, *supra*, at 85.

Particularly in the context of unpopular or offensive speech, how many defendants are going to risk trial, and the attendant possibility of a substantially higher sentence, on the chance that a jury might believe that he or she did not intend to place anyone in fear? Without the additional protection of an objective baseline, there is a meaningful risk that constitutionally protected speech will be punished or that speakers will instead choose not to speak at all. And the risk of silence is that much more pronounced because the existing state of the law provides more confusion than guidance, depriving speakers of the breathing room needed to exercise their First Amendment rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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