No. 25-5072

IN THE SUPREME COURT OF THE UNITED STATES

KHALED MIAH, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the indictment alleged sufficient facts for a reasonable jury to find that certain social-media posts made by petitioner contained "threat[s] to injure the person of another," in violation of 18 U.S.C. 875(c).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-19a) is reported at 120 F.4th 99. The opinion of the district court denying petitioner's motion to dismiss is reported at 546 F. Supp. 3d 407.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1a-2a) was entered on September 20, 2024. A petition for rehearing was denied on March 28, 2025 (Pet. App. 32a-33a). The petition for a writ of certiorari was filed on June 26, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Pennsylvania, petitioner was convicted on five counts of transmitting through interstate commerce a threat to injure the person of another, in violation of 18 U.S.C. 875(c); one count of threatening to assault Federal Bureau of Investigation (FBI) agents, in violation of 18 U.S.C. 115(a)(1)(B) and (b)(4); and one count of falsifying records, in violation of 18 U.S.C. 1519. Pet. App. 153a-154a. He was sentenced to 72 months of imprisonment, to be followed by three years of supervised release. Id. at 155-156a. The court of appeals affirmed. Id. at 3a-19a.

1. Petitioner drew the FBI's attention by posting communications on several social-media platforms suggesting that he believed in a particular violent extremist ideology. Pet. App. 4a-5a. Those social-media posts included a call to attack Jews, encouragement of violence against Christians, and glorification of the September 11, 2001, terrorist attacks. Id. at 5a n.1. In September 2020, FBI Special Agent Nick Edquist and an officer from the Joint Terrorism Task Force traveled to petitioner's apartment to interview him. Id. at 4a.

Petitioner was uncooperative with the agents and subsequently created a Twitter account in the name of Special Agent Edquist's wife that contained personal information about her. Pet. App. 5a; see Pet. 2 (acknowledging that petitioner "posted offensive tweets of a sexual nature about the agent and his wife"). The next day,

agents executed a search warrant at petitioner's home. Pet. App. 5a. At that time, petitioner admitted to creating the social-media posts, but claimed that "they were a joke" and that he would not post such content again. Ibid.

In December 2020, petitioner created a new Twitter account and began posting on it. Pet. App. 5a-6a, 63a-68a. Two of the posts on the new account addressed Edquist and other agents by name, a third addressed "boys," and a fourth referenced the agents' search of petitioner's home and warned that "[n]ext time you come in * * * the hardwood will collapse beneath your feet." Id. at 68a. A fifth post threatened that "[t]he zero hour is approaching," while a sixth contained the precise coordinates of the FBI's headquarters. Ibid.; see id. at 66a. Petitioner later deleted various posts. Id. at 64a; see id. at 62a (noting that petitioner had also previously deleted another social-media account entirely).

2. A federal grand jury in the Western District of Pennsylvania returned an indictment charging petitioner with five counts of transmitting through interstate commerce a threat to injure the person of another, in violation of 18 U.S.C. 875(c); two counts of threatening to assault FBI agents, in violation of 18 U.S.C. 115(a)(1)(B) and (b)(4); and one count of falsifying records, in violation of 18 U.S.C. 1519. Pet. App. 6a.

Among other things, petitioner moved to dismiss three of the five Section 875(c) charges on the theory that the communications

identified in those counts did not constitute threats to injure the agents within the meaning of the statute, which prohibits "transmit[ting] in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another," 18 U.S.C. 875(c). Pet. App. 6a. The district court denied the motion, finding that the indictment provided sufficient context for a reasonable jury to find that the charged communications expressed an intent to injure the agents. Ibid.; see 546 F. Supp. 3d 407, 419-421.

After a seven-day trial, the jury found petitioner guilty on all five Section 875(c) charges, one of the two Section 115 charges, and the Section 1519 charge. Pet. App. 7a; Gov't C.A. Br. 19. The district court sentenced petitioner to 72 months of imprisonment, consisting of 60-month sentences for each of the Section 875(c) counts running concurrently with 72-month sentences for each of the other counts, to be followed by three years of supervised release. Pet. App. 155a-156a.

3. The court of appeals affirmed. Pet. App. 3a-19a. After examining de novo the particular communications and the relevant context, the court of appeals agreed with the district court that "the indictment provided sufficient context to present the threat charges to the jury." Id. at 8a.

The court of appeals explained that petitioner's tweet asserting that "'the zero hour is approaching'" could "be deemed a threat by a reasonable jury given that it was posted the day

after [a] tweet referencing the September 11, 2001 terrorist attack." Pet. App. 8a. The court of appeals agreed with the district court that petitioner's posting of "the coordinates of the FBI's headquarters, when viewed through the lens of [petitioner]'s conduct and preceding tweets, could be found to constitute a threat to injure agents at that location." Ibid. (brackets, citation, and internal quotation marks omitted). And the court of appeals found that the district court "was also correct to conclude that the tweet telling the 'boys,' who were agents named in a prior tweet, that 'yellow tapes will flow,' which appears to reference crime scene tape, could reasonably be interpreted as a threat to inflict harm." Id. at 8a-9a (citation omitted).

ARGUMENT

Petitioner challenges the sufficiency of the indictment's allegations that certain of his social-media posts constituted threats against FBI agents. The court of appeals correctly rejected petitioner's factbound arguments, and its decision does not conflict with any decision of this Court or another court of appeals. No further review is warranted.

1. The court of appeals correctly rejected petitioner's challenges to the sufficiency of the charges under 18 U.S.C. 875(c) that are the sole focus of his petition for a writ of certiorari. Section 875(c) prohibits "transmit[ting] in interstate or foreign commerce any communication containing any threat to kidnap any

person or any threat to injure the person of another." As the court of appeals recognized, "'whether a statement constitutes a threat under § 875(c) is based on the context and totality of the communication,' which means the indictment must include sufficient context for the District Court 'to determine that a reasonable jury could find that [the charged] statement expressed an intent to injure in the present or future.'" Pet. App. 8a (quoting United States v. Stock, 728 F.3d 287, 301 (3d Cir. 2013)) (brackets in original). And here, both lower courts correctly recognized that "the indictment provided sufficient context to present the threat charges to the jury." Ibid.

In particular, the court of appeals correctly observed that "the District Court properly ruled [petitioner]'s tweet 'the zero hour is approaching,' which it found indicated 'the occurrence of a significant event,' could be deemed a threat by a reasonable jury given that it was posted the day after the tweet referencing the September 11, 2001 terrorist attack." Pet. App. 8a (quoting 546 F. Supp. 3d 407, 421). The court of appeals likewise correctly observed that the district court had "properly concluded the coordinates of the FBI's headquarters, when viewed through the lens of [petitioner]'s conduct and preceding tweets, could be found to 'constitute[] a threat to injure agents at that location.'" Ibid. (quoting 546 F. Supp. 3d at 421) (second set of brackets in original). And the court of appeals correctly observed that the district court "was also correct to conclude that the tweet telling

the 'boys,' who were agents named in a prior tweet, that 'yellow tapes will flow,' which appears to reference crime scene tape, could reasonably be interpreted as a threat to inflict harm." Id. at 8a-9a (quoting 546 F. Supp. 3d at 421).

Moreover, all of those posts were part of a series clearly aimed at the conduct of the FBI and specific agents whom petitioner knew to be investigating him and monitoring his online activity. See 546 F. Supp. 3d at 414-417. The focus on specific agents was bolstered by additional allegations in the indictment regarding other troubling conduct that "established [petitioner]'s antipathy for specific agents." Pet. App. 9a; see 546 F. Supp. 3d at 419-421. And the threat to a particular building -- namely, the FBI headquarters in Washington, D.C. -- would naturally, and could at least reasonably, be viewed as a threat to the FBI agents who worked at that location -- just as a threat to bomb a specific home or business would be a threat to the individuals who live or work there. See Pet. App. 6a; 546 F. Supp. 3d at 421. Thus, as both lower courts recognized, "charges alleging a violation of Section 875(c) were properly put to the jury." Pet. App. 9a; see 546 F. Supp. 3d at 421.

2. Petitioner does not show that the lower courts were wrong to interpret the posts as threats to the FBI agents who investigated him -- much less that that no "reasonable jury" could read them that way, Pet. App. 8a, as he would be required to establish in order to prevail on a sufficiency challenge. To the

extent that he is asserting (Pet. 9, 13) that a communication must explicitly "contain [a] threat target," meaning that a "particular natural person" must be "named in the tweets," in order to violate Section 875(c), that assertion has no grounding in the text of Section 875(c). The statutory text requires a communication to "contain[]" a "threat to kidnap any person or any threat to injure the person of another," but does not specify that the communication must identify the person by name or by any other particular means.

Nor does petitioner meaningfully justify -- let alone ground in the statutory text -- his view that "context cannot be used" by a reasonable jury to help identify the target of a threat under Section 875(c). Pet. 9. In general, the threatening nature of a communication not only can, but properly should, be assessed "in context," Counterman v. Colorado, 600 U.S. 66, 74 (2023) (noting that context can illuminate whether a statement should be construed as a true threat). And petitioner's extratextual preclusion of context is at odds with this Court's recognition that "Congress meant to proscribe a broad class of threats in Section 875(c)." Elonis v. United States, 575 U.S. 723, 734 (2015).

This Court's decision in United States v. Powell, 469 U.S. 57 (1984) (cited at Pet. 14-15), does not support petitioner's claims. Powell reaffirmed precedent holding that "a criminal defendant convicted by a jury on one count could not attack that conviction because it was inconsistent with the jury's verdict of acquittal on another count." Id. at 58. Petitioner acknowledges that

nothing in Powell prevents the prosecution from "rely[ing] on the same evidence to prove" multiple counts. Pet. 14. And Powell in no way supports an approach under which the evidence underlying multiple counts must be viewed by the jury in isolation, with no consideration of the overall course of conduct, consisting of multiple criminal acts, to find a defendant guilty of multiple charges.

3. Contrary to petitioner's suggestion (Pet. 8-9), this case does not implicate any circuit split on whether the phrase "injure the person of another" in Section 875(c) refers to harming a natural person. The Third Circuit has read this phrase in Section 875(c) to refer to "inflict[ing] bodily injury on an individual." United States v. C.S., 968 F.3d 237, 244 (2020) (quoting United States v. Elonis, 841 F.3d 589, 597 (3d Cir. 2016), cert. denied, 583 U.S. 816 (2017)); see C.A. Doc. 62, at 24-25 (July 19, 2024) (government's attorney agreeing at oral argument below that the phrase refers to "a natural person"). In this case, the lower courts carefully applied the statute and determined based on the particular facts alleged in the indictment that a reasonable jury could find petitioner's communications contained threats to injure Special Agent Edquist, the other FBI "agents" who were investigating him, and the agents working at the FBI headquarters that petitioner indicated as a target -- i.e., particular natural persons. Pet. App. 6a-9a.

The decision below is consistent with the interpretation of the relevant language of 18 U.S.C. 875(c) in United States v. Havelock, 664 F.3d 1284 (9th Cir. 2012) (en banc). Although the government "did not charge Havelock with violating § 875(c)," id. at 1317 n.4 (Fisher, J., dissenting), and the case primarily involved other issues, the Ninth Circuit in fact recognized in passing that a letter mailed to media outlets stating "I will slay your children" -- without naming "any particular person whose children [Havelock] was going to slay" -- "[o]f course * * * qualifies as a threat made to the person 'of another,'" id. at 1296 & n.10 (majority opinion) (citation and emphasis omitted). Petitioner, however, focuses exclusively (Pet. 9-11) on Havelock's discussion of a different statutory requirement of the statute charged there, 18 U.S.C. 876(c), which has no analogue in Section 875(c).

Unlike Section 875(c)'s prohibition on transmitting a threatening communication "in interstate commerce," the neighboring statutory section 18 U.S.C. 876(c) prohibits a threat in a mailing "addressed to any other person." The portion of Havelock on which petitioner relies concerned the "addressed to" requirement in Section 876(c), which it found not to be satisfied by mailings addressed to "newspapers and websites" that were not natural persons. 664 F.3d 1296. As reflected by Havelock's comment on Section 876(c)'s separate requirement that the threat itself be to a "person," id. at 1296 n.10, the decision there does

not cast any doubt on the lower courts' determination, on the facts of this case, that petitioner's threats were directed at people.

The cases in other circuits that petitioner cites in support of a putative split (Pet. 8 n.6, 11) similarly involved Section 876, and nothing in their reasoning conflicts with the court of appeals' interpretation of Section 875(c) in this case. Like Havelock, the Second Circuit's decision in United States v. Davila, 461 F.3d 298 (2006), cert. denied, 549 U.S. 1266 (2007), involved the "'addressed to any other person'" requirement of Section 876(c), and even in that context rejected a claim that "the words 'Connecticut State's Attorney's Office'" could only be understood as a reference to an institution, rather than a person. Id. at 308; see United States v. Horton, 580 Fed. Appx. 380 (6th Cir. 2014) (comparable unpublished decision), cert. denied, 574 U.S. 1100 (2015). The Tenth Circuit's decision in United States v. Williams, 376 F.3d 1048 (2004), involved "addressed to any other person" language in a prior version of Section 876 and similarly recognized that a threat need not "mention[]" a targeted "individual's proper name." Id. at 1053; see id. at 1051-1052 & nn.4-5. And the Eighth Circuit's decision in United States v. Carlson, 787 F.3d 939 (2015), also involved phrases in Section 876 that do not appear in Section 875(c), and viewed itself to be akin to both Havelock and Williams -- neither of which expressly endorses petitioner's crabbed interpretation of Section 875(c). See id. at 942, 945-946.

At bottom, petitioner presents a factbound challenge to the sufficiency of the specific allegations in his indictment, which does not warrant this Court's review. This Court "do[es] not grant a certiorari to review evidence and discuss specific facts." United States v. Johnston, 268 U.S. 220, 227 (1925); see Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). Indeed, under "the 'two-court rule,' the policy has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires." Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) (citing Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 336 U.S. 271, 275 (1949)).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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