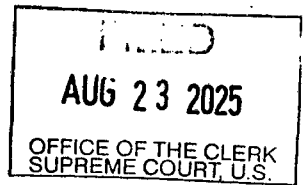


25-6303

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Anthony Unocic — PETITIONER
(Your Name)

vs.

United States Of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Anthony Unocic #72815-509
(Your Name)

FBI - Cumberland
PO Box 1000
(Address)

Cumberland, MD 21501
(City, State, Zip Code)

n/a
(Phone Number)

QUESTION(S) PRESENTED

- 1) Does a conviction for violating 18 USC §115(a)(1)(B) require proof of two mens rea elements, recklessness for the true threat element and specific intent to retaliate, or does the specific intent element "subsume" the mens rea for the threat element?
- 2) When a district court clearly errs by instructing a jury that a true threat may be made negligently, does correct instruction on the "intent to retaliate" element cure that error?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- * United States v. Unocic District of Nebraska Case No: 4:23-cr-03019-
JMG-1
- * United States v. Unocic 8th Circuit Appellate No: 24-1057

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at 135 F.4th 632 (8th Cir. 2025); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 28, 2025.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 24, 2025, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

Statement Of The Case

- 1) The facts presented at trial in this matter, which were largely uncontested by Unocic's counsel, were these:

"While incarcerated in a Nebraska detention center, Unocic told two fellow inmates that he wanted to kill a federal agent named Tabbs who had investigated Unocic. The inmates took the threats seriously because Unocic bragged about a previous violent standoff with police, told the inmates he would use his training with explosives and knives, and spent eight minutes demonstrating stabbing techniques that he would use to murder the agent. Unocic boasted that he would have no problem walking up to Agent Tabbs with a grenade and blowing up both of them. The inmates, concerned that Agent Tabbs' life was at risk, reported Unocic's threats to federal agents."

United States v Unocic 135 F.4th 632 (8th Cir. 2025)

- 2) On February 22, 2023, Unocic was indicted and charged with one count of violating 18 USC §115(a)(1)(B) and (c)(1), threatening to assault, kidnap or murder a federal law enforcement officer with intent to retaliate.

United States v Unocic D Ne Case No. 4:23-cr-03019-JMG-CR2-1 Docket

("Dec") 1. While this matter was pendant, on June 27, 2023, this Court decided the matter of Counterman v. Colorado 600 US 66 (2023), in which it found that, to convict a person of transmitting a "true threat", a jury must find that the accused made an objectively threatening statement with at least a mens rea of recklessness. Defense counsel raised in limine

Statement Of The Case (cont.)

the issue that a mens rea of recklessness was necessary to find Unocic guilty of the "true threat" element (Doc 48), and the Court stated at the "informal pretrial conference" (Docs 63, 99) that it would so instruct the jury, Doc 99 p. 6-7.

3) At trial, however, the district court did not so instruct the jury. Doc 162 p. 344-345. Instead, it first gave the jury this instruction about the elements of a violation of 18 USC § 115(a)(1)(B) and (c)(1):

"One, Mr. Unocic made a threat to assault Agent Tubbs,

"Two, Mr. Unocic either knew or intended that others would regard his communications as threatening violence, or recklessly disregarded a substantial risk that others could regard his communications as threatening violence;

"Three, at the time Unocic issued the threat, Agent Tubbs was a federal law enforcement officer; and,

"Four, Mr. Unocic made the threat with intent to retaliate against Agent Tubbs on account of the performance of his official duties

Unocic (8th Cir 2025)

It then instructed the jury, as regards element two, that:

"A person 'recklessly disregards' a substantial risk within the meaning of this offense when he is aware of the risk, but consciously, deliberately or carelessly ignores it and decides to act anyway."

Unocic (8th Cir 2025)

Statement Of The Case (cont.)

4) Unocic's counsel at trial missed the error in the definition of "recklessly disregards" and failed to object. Instead, the Eighth Circuit found that he made a different objection to element two, that Unocic had to know or intend that Agent Tubbs would regard his communication as threatening violence, not just "others." Unocic (8th Cir 2025); Dec 102 p 342-344. This was the culmination of an argument that Unocic's counsel made throughout the proceedings, that because not a threat of retaliation but a threat that is itself the retaliation is a necessary element of the offense, Unocic must have intended that the threat be conveyed to Tubbs. Decs 48, 63, 99 p 4-8. Unfortunately, Unocic's appellate counsel abandoned this argument on appeal.

5) Unocic was convicted and sentenced to 33 months imprisonment on January 4, 2024. Decs 71, 84. On January 9, 2024, Unocic timely noted his appeal.

6) On appeal, Unocic's counsel raised two issues:

"I. When the First Amendment requires a mental state of recklessness to convict a defendant of making a true threat, did the district court err by instructing the jury it could find Unocic guilty if he ¹⁷carelessly disregarded a risk that others would consider his statements threatening?"

"II. Was the error in Unocic's jury instruction harmless?"

Unocic (8th Cir 2025) "Brief Of Appellant" p. 2.

The University Of Nebraska's College Of Law's First Amendment Clinic

Statement Of The Case (cont)

then filed an amicus brief arguing the same issue

- 7) Ultimately, on April 28, 2025, the Eighth Circuit decided this matter adversely to Unocic. Unocic (8th Cir 2025). First, it found that, because defense counsel failed to object to the district court's definition of recklessness, it reviewed the question raised for plain error. Then, citing Boyce v California, 494 US 370 (1990), the Eighth Circuit found that it had to consider the clear error in the jury instruction on recklessness "in the context of the overall charge to the jury," meaning that "whether there is a reasonable likelihood that the jury instructions, taken as a whole, misled the jury to convict the defendant based on an incorrect standard." Unocic (8th Cir 2025).
- 8) Applying the law, the Eighth Circuit began by admitting that Counter-man requires a finding of recklessness to satisfy the "true threat" element of 18 USC 815(a)(1)(B). Unocic (8th Cir 2025). It then agreed with Unocic that "the term 'carelessness' connotes a different mens rea than does recklessness," citing to Florida v United States 575 US 723 (2015) (Alito, concurring in part and dissenting in part), and admitted that, in this case, the language was erroneously borrowed "from a model jury instruction for sex trafficking offenses." Unocic (8th Cir 2025).
- 9) However, the Eighth Circuit found that "the jury instructions as a

Statement Of The Case (cont)

whole" cured the error. Unocic (8th Cir 2025). First, the Eighth Circuit found that the jury instruction required a finding that Unocic "was aware of the substantial risk that others would regard his statements as a threat," and that he "decided to act anyway." Sufficient to inform the jury of the recklessness standard, even though "carelessly" was inserted between those two phrases. Unocic (8th Cir 2025).

10) Second, the Eighth Circuit ruled that the correct instruction on the specific intent element of "intent to retaliate," made it, without any discussion of why or how, "unlikely that a jury would have focused on the word 'carelessly.'" Unocic (8th Cir 2025).

11) On May 27, 2025, Unocic sought rehearing en banc from the Eighth Circuit. Unocic (8th Cir 2025) "Petition For Rehearing En Banc." His petition was denied June 24, 2025.

12) Because the Eighth Circuit erred in finding that an instruction on negligence conveys recklessness, and that the specific "intent to retaliate" subsumes the recklessness of the intent to truly threaten, assault, kidnap or murder, Unocic will petition for Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

Reasons For Granting The Petition

- 13) This is a case where the Eighth Circuit misapplied this Court's relatively recent ruling in Casterman to negate an essential element of mens rea which the United States needed to prove to obtain Unsub's conviction under 18 USC §115(a)(1)(B). Because there is a lot of muddled confusion in the courts about what the mens rea elements of a violation of 18 USC §115(a)(1)(B) are, this Court should grant certiorari to clarify this matter.
- 14) In Watts v. United States 394 US 705 (1969), this Court first opined that a conviction for violating a federal threat standard required the utterance of a "true threat". In the wake of this ruling, the Courts universally (except for DC, which never decided) adopted an objective standard based on a "reasonable listeners' understanding of a statement to determine what is or is not a "true threat." United States v. Palmer 105 F3d 1486 (1st Cir. 1997); United States v. Malik 16 F3d 45 (2nd Cir. 1994); United States v. Kosma 951 F2d 549 (3rd Cir. 1991); United States v. Mawsonet 454 F2d 1356 (4th Cir. 1973); United States v. Rogers 488 F2d 512 (5th Cir. 1974); re: Doe & others 422 US 35 (1975); United States v. De Andino 955 F2d 146 (6th Cir. 1992); United States v. Schneider 916 F2d 1569 (7th Cir. 1990); Martinez v. United States 691 F2d 1235 (8th Cir. 1982); United States v. Grecco-Santillan 903 F2d 1262 (9th Cir. 1990); United States v. Dysart 105 F2d 1247 (10th Cir. 1983); United States v. Callahan 706 F2d 964 (11th Cir. 1983).

Reasons For Granting The Petition (cont.)

15) 18 USC §115(a)(1)(B) prohibits making a "threat[]" to assault, kidnap or murder... a Federal law enforcement officer... with intent to retaliate. The Circuits which have considered the issue have almost all found that the "intent to retaliate" element requires a mens rea of specific intent. United States v. Turner 720 F3d 411 (2nd Cir 2013); United States v. Veach 455 F3d 628 (6th Cir 2006); United States v. Watkins 1998 US App LEXIS 13536 (7th Cir 1998); United States v. Stewart 420 F3d 1007 (9th Cir 2005); see also, United States v. D'Amaro 330 Fed Appx 401 (3rd Cir 2004) (approving of Stewart's formulation of the elements of 18 USC §115(a)(1)(B)), United States v. Rendelman 495 Fed Appx 727 (7th Cir 2012) (approving of Veach's formulation). Only the Eleventh Circuit found that "intent to retaliate" is a "general intent" element. United States v. Berki 936 F2d 529 (11th Cir 1991).

16) Initially, most of the Circuits to consider the issue also found that the "threat[]" to assault, kidnap or murder element required a "true threat" as determined by an objective standard. United States v. Stefanik 674 F3d 71 (1st Cir 2012); Malik; D'Amaro; United States v. Roberts 915 F2d 889 (4th Cir 1996); United States v. Stevenson 126 F3d 662 (5th Cir 1997); United States v. Vincent 681 F2d 462 (6th Cir 1982); United States v. Saunders 166 F3d 907 (7th Cir 1999); United States v. Schiefel 139 F3d 836 (8th Cir 1998); United States v. Martin 163 F3d 1212 (10th Cir 1998).

Reasons For Granting The Petition (cont)

17) The one outlier opinion at this time, before 2015, was the Ninth Circuit's opinion in Stewart, which has lately borne such pernicious fruit. In Stewart, the Ninth Circuit stated that:

"proof that the speaker intended the speech to impede, intimidate, interfere with or retaliate against the protected official... seem[s] to subsume the subjective 'true threat' definition announced in [Virginia v] Black [538 US 343 (2003)] and recognized by [United States v] Cassel [408 F3d 622 (9th Cir 2005)]; one cannot have the intent [to retaliate]... without also intending to make the threat."

The Sixth Circuit, too, later agreed that the "intent to retaliate" element "seem[s] to subsume the subjective 'true threat' definition." United States v. Lope, 283 Fed Appx 384 (6th Cir 2008) citing Stewart.

18) In 2015, this Court decided Elonis v. United States, 575 US 723 (2015), deciding that, in a prosecution under 18 USC § 875(c), the United States must prove a mens rea of greater than negligence to sustain a conviction. This did not, however, persuade any of the Circuits to abandon their objective true threat standard for the "threat to assault, kidnap or murder" element of 18 USC § 115 (a)(1)(B). The Fifth Circuit found that Elonis applied only narrowly to 18 USC § 875(c), and that "our court uses an objective standard in deciding whether a statement is a threat under 18 USC § 115(a)(1)(B) and considers

Reasons For Granting The Petition (cont)

the intent of the speaker only to evaluate whether the threat was made intentionally or knowingly.

United States v. Polanco 2022 US App LEXIS 5219 (5th Cir 2022)

The Eighth Circuit, too, refused to find that a "true threat" under 18 USC §115(a)(1)(B) required a mens rea of recklessness. In United States v. Ivers 967 F3d 709 (8th Cir 2020), it reaffirmed prior rulings in United States v. Harper 869 F3d 624 (8th Cir 2017) and United States v. Wynn 827 F3d 778 (8th Cir 2016), to find that "the only mens rea requirement in 18 USC §115(a)(1)(B) is the intent to retaliate against [the federal judge] on account of the performance of official duties, and that the 'threat' element of 18 USC §115(a)(1)(B) did not carry with it any subjective mental requirement. The Third Circuit, meanwhile, declined to decide the issue, stating that "whether Elonis requires an additional mens rea beyond what the text of §115(a)(1)(B) itself requires is far from clear under current law." United States v. Cruz 713 Fed Appx 82 (3rd Cir 2017).

- 19) In 2023, this Court further advanced First Amendment law in the context of "true threats" by finding a general Constitutional requirement that, for a statement to be viewed as a "true threat", it must be made with a mens rea of recklessness, i.e., "that a speaker is aware that others could regard his statements as threatening violence and delivers them anyway." Counterman

Reasons For Granting The Petition (cont)

20) Since Counterman was decided, only two Circuit courts have addressed its application to 18 USC § 115 (a)(1)(B). One is the Eighth Circuit in the instant case. The other is the Second Circuit in United States v. Gaines, 102 F.4th 628 (2nd Cir 2024). In Gaines, the Second Circuit found that there are two distinct mens rea elements that the United States must prove to obtain a conviction under 18 USC § 115 (a)(1)(B): the first is recklessness in making a true threat to assault, kidnap or murder, the second is specific intent to impede, intimidate, interfere with or retaliate.

21) While the Second Circuit has the analysis correct, many district courts are simply ignoring Counterman's application to 18 USC § 115 (a)(1)(B). The Middle District of Florida, Eastern District of New York and Southern District of Illinois have all ruled that the "threat" element of 18 USC § 115 (a)(1)(B) remains a general intent element, and that the only intent that must be proven is specific intent to impede, intimidate, interfere or retaliate. United States v. Gilmore, 2024 US Dist LEXIS 30115 (MD FL 2024) adopting 2023 US Dist LEXIS 235511 (MD FL 2023) (3:2), Rendelman v. United States, 2024 US Dist LEXIS 110209 (SD IL 2024) (adopting Gilmore); United States v. Ward, 2025 US Dist LEXIS 36744 (ED NY 2025). In contrast, only two district courts have correctly articulated that the "threat" element also carries a mens rea of recklessness. United States v. Dougherty

Reasons For Granting The Petition (cont.)

2025 US Dist LEXIS 50437 (ED Pa 2025); United States v. Rogers
2024 US Dist LEXIS 166606 (D Mt 2024).

22) In this case, the District Court agreed at the pretrial hearing (and the United States conceded) that the "threat" element required a showing of a mens rea of "recklessness", i.e., that Unocic knew that his words could be taken as a threat and recklessly disregarded that risk. It then found that there was a separate specific intent element, the "intent to retaliate". But, the Court ultimately erred in its instruction on the "threat" element, redefining recklessness as negligence.

23) The legal gymnastics the Eighth Circuit used to justify the clear error in the instruction on the "threat" element should be rejected by this Court. It first implicitly admitted the existence of the two distinct mens rea elements, as it must after Counterman, then nullified this, first by claiming that the negligence instruction was correct enough, which is clearly wrong, and then by claiming that the recklessness of the "threat" element is subsumed by the "intent to retaliate" element. This construction continues the "objective standard" and "general intent" requirement of Ivers which this Court found in Counterman to violate the First Amendment.

24) First, this Court needs to clarify for the lower courts that, post -

Reasons For Granting The Petition (cont)

Counterman, a violation of 18 USC §115(a)(1)(B) has two mens rea elements, one, recklessness in making a "threat to assault, kidnap or murder," and, two, specific intent to impede, intimidate, interfere or retaliate. As to the "intent to retaliate" at issue here, this Court has never parsed out what "intent to retaliate" means. But, Black's Law defines "retaliation" as "[t]he act of doing someone harm in return for actual or perceived injuries or wrong; an instance of reprisal, requital or revenge." Black's Law "retaliation" (10th ed) p 1510. This definition encompasses conduct much broader than "assault, kidnap or murder." Looking up "reprisal" in the same, it is defined as "[a]ny act or instance of retaliation, as by an employer against a complaining employee." Black's Law "reprisal" (10th ed) p 1495. So, an objective threat made with intent to retaliate can include a threat against the federal protectee's job, reputation, social standing, business dealings, property or even a threat of litigation. "Intent to retaliate" is much broader than and does not imply "assault, kidnap or murder" and thus cannot "subsume" or necessarily imply such a threat. These are distinct elements.

25) Once the Court rejects the view that 18 USC §115(a)(1)(B) requires proof of only one mens rea element because the "intent to retaliate" element "subsumes" the mens rea of the "threats" element, the second question, can correct instruction on the "intent to retaliate"

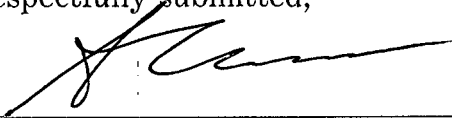
Reasons For Granting The Petition (cont.)

element cure a defective instruction on the "threats" element, is answered. Because they are distinct elements relating to different elements of the crime, correct instruction on one element has no effect on the incorrect instruction on the other.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: August 23, 2025