

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

ROBERT ALVIN JUSTUS, Jr., PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

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

**MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS**

VICKI MAROLT BUCHANAN
Vicki Marolt Buchanan, P.C.
19201 Sonoma Highway, #243
Sonoma, CA 95476
(707) 343-1907

*Counsel for Petitioner
Robert Alvin Justus, Jr.*

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The Petitioner, ROBERT ALVIN JUSTUS, Jr., by his undersigned counsel, asks leave to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, without prepayment of costs and to proceed *in forma pauperis*. Vicki Marolt Buchanan was appointed counsel for Mr. Justus in the court of appeals under the Criminal Justice Act, 18 U.S.C. § 3006A(b).

* * *

This motion is brought pursuant to Rule 39.1 of the Rules of the
Supreme Court of the United States.

Dated: July 17, 2026

Respectfully submitted,

s/ Vicki Marolt Buchanan

Vicki Marolt Buchanan
19201 Sonoma Highway, #243
Sonoma, CA 92660
(707) 343-1907

*Counsel for Petitioner
Robert Alvin Justus, Jr.*

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QUESTIONS PRESENTED

In a first-degree murder case, was the Ninth Circuit's approval of the admission of social media posts and "likes" of posts, specifically intended to prejudice the jury by highlighting petitioner's political beliefs, the kind of egregious error that brings the judicial system into disrepute and results in a miscarriage of justice, warranting this Court's exercise of its institutional interest in ensuring that the legal proceeding was fair to all who observed it?

Given a defendant's Sixth Amendment right to present testimony in his own words in his defense at trial, should the court be permitted to instruct the jury to ignore his state-of-mind defense if the words he chose could also describe an unavailable duress defense?

PARTIES TO THE PROCEEDING

Petitioner, Robert Alvin Justus, Jr., is an individual. The Respondent is the United States of America.

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PETITION FOR WRIT OF CERTIORARI

ROBERT ALVIN JUSTIS, JR. petitions this Court for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

On December 19, 2025, the Ninth Circuit Court of Appeals issued a Published Opinion that affirmed Petitioner’s Conviction and Sentence. (Appendix A.)

JURISDICTION

The Ninth Circuit Court of Appeals judgment is dated December 19, 2025. (Appendix A.) Petitioner timely filed a Petition for Rehearing and a Petition for Rehearing En Banc, which were denied on April 21, 2026. (Appendix B.) Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. CONST. amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

Jurisdiction of the Court Below

The district court had jurisdiction under 18 U.S.C. § 3231. The Court of Appeals had jurisdiction under 28 U.S.C. § 1291.

Background and District Court Proceedings

Robert Justus was involved in an incident on May 29, 2020, the night of the George Floyd protests in Oakland, California, when Steven Carrillo, whom Justus had met a few hours earlier, shot two federal security officers at a guard shack at the Oakland federal courthouse. Patrick Underwood died, and Sombat Mifkovic was seriously injured. Justus was indicted on two counts of aiding and abetting first-degree murder and attempted first-degree murder of an employee of the United States government.

Justus was driving a van through an intersection across from the federal courthouse in Oakland when Steven Carrillo opened a sliding door and shot two federal security officers, killing one and injuring the other. Justus met Carrillo three hours earlier when Carrillo offered him a ride to a George Floyd protest. Justus did not know Carrillo was paranoid, delusional, and had poor impulse control. He had a van full of weapons and was prepared to shoot anyone he thought was a threat.

The issue in the case was what Justus intended when he drove through the intersection. Was it to help Carrillo commit murder, or was it to prevent him from doing so?

Justus testified at trial, and the government did not challenge his testimony or his version of events. His trial testimony was identical to the testimony he voluntarily gave to the FBI a few days after the incident.

Justus was 31 years old and had a minor, non-violent criminal history. He had two sons and had been continuously employed as a locksmith since high school. He had Facebook and Instagram accounts. He joined Facebook groups focused on motorcycles, aquariums, hiking, camping, and fathers' rights. Politically, he considered himself a Libertarian. In 2019, he joined a Facebook group for the Boogaloo Boys, a right-wing, anti-government group known for wearing Hawaiian shirts as part of its uniform. According to the government's expert, at the time of the shooting, despite some violent talk and memes, the Boogaloo Boys were not involved in any significant violence.

It was on this site that Justus met Carrillo. Justus wanted to attend the George Floyd protest. None of his family or friends were

interested, so he asked on Facebook whether anyone was going.

Carrillo said he was interested. Justus confirmed with a mutual friend on Facebook that Carrillo was okay. As it turns out, he was not okay. He was a master sergeant in the Air Force who was later diagnosed with “major depression, hypomania, paranoid delusions, and poor impulse control.”

Carrillo arranged to pick up Justus at the San Leandro BART station near Justus's workplace. Justus brought a backpack containing a sweater, a bottle of water, a first-aid kit, small firecrackers, and baby oil for his eyes in case of pepper spray. Carrillo arrived at 7:00 pm in a white van. When Justus got in the van, the front and back were separated by black curtains.

Carrillo pulled open the curtains. The back of the van was filled with boxes, blankets, and weapons. He pulled out an AR-type rifle and began grabbing ammunition. He offered Justus a gun. When Justus refused, Carrillo pointed the gun at him and asked whether he was a cop or a rat.

Carrillo saw a bus driver walking around the parking lot, talking on his cell phone. He grew fidgety and paranoid, thinking the driver was calling the cops and that he had to stop him. He was ready

to shoot the driver when Justus convinced him to “leave the guy alone.”

Justus considered “getting out of there,” but he feared that if he tried to leave, Carrillo would shoot him in the mostly empty parking lot. He said he was “scared as hell” and did not know what to do.

He stayed in the van and drove as instructed toward Oakland. At one point, Carrillo ordered him to pull off the road and remove the van’s license plates. Carrillo remained behind the curtain in the back of the van, peeking out the back window.

Over the next hour or so, Justus looked for parking. He was able to stop Carrillo from shooting a couple who were arguing, a police helicopter, and three police officers in a plaza.

At one point, Justus was able to leave the van. He considered not returning, but after seeing a group of children about the same age as his own children, he changed his mind. He was afraid that if he left Carrillo alone, Carrillo would start shooting people. He decided to return, get back in the van, get on the freeway, and just get him and Carrillo “the hell away” from everyone.

When he got back, Carrillo was talking about shooting a man in a suit in the car behind them. Justus convinced him the man was not a

threat. Then Carrillo started talking about shooting the security guards across the street. Once again, Justus thought he had convinced Carrillo to back off.

As he had done in response to Carrillo's threat against the police in the plaza, Justus pulled out of the parking space and headed down the street. Surveillance video shows that within a few seconds, Carrillo opened the van door and began spraying bullets at the guard shack. Justus said he was shocked, scared, and sick.

At first, Carrillo wanted Justus to drive to an empty parking lot in Antioch. Justus refused, fearing Carrillo would shoot him and throw him in a ditch. Finally, Carrillo agreed that Justus could drive to his home in Millbrae. He got out a few blocks from his apartment because he did not want Carrillo to know where he lived.

In the morning, Justus told his father what happened. He wanted to wait for his mother to return from Oregon so he could get her advice on what to do. In the meantime, he threw his jacket and backpack in a dumpster and deleted Facebook messages with Carrillo and a couple of Facebook friends. He exchanged a few messages with Carrillo to avoid making him paranoid. On Monday, he went to work.

On June 6, 2020, Justus learned that Carrillo was involved in a shootout in Ben Lomond, killing a Santa Cruz Sheriff's Deputy and injuring another. A few days later, after receiving a message from the Santa Cruz County District Attorney, Justus, his father, and mother went to the San Francisco FBI office, where he gave a six-hour interview.

He gave the FBI permission to search his phone and apartment. The government obtained 6,500 pages of social media posts, the vast majority of which concerned his family, hobbies, and sports. In the apartment, the FBI found no firearms and no Boogaloo paraphernalia. It also found the type of small firecrackers Justus said he took to the protests.

Decision Below

Petitioner was indicted for aiding and abetting First Degree Murder of a Person Assisting an Officer or Employee of the United States Government. The case was presided over by a District Court Judge whose courtroom was in the building where the crime occurred. Stephen Corrillo pleaded guilty to lesser charges and was sentenced to 41 years, with the possibility of release.

Petitioner chose to go to trial and was convicted on both counts. On December 2, 2024, he was sentenced to a mandatory life sentence without the possibility of release. (Appendix C.) He appealed his conviction and sentence, which were affirmed in a published opinion dated December 19, 2025. (Appendix A.) Petitioner filed a Petition for Rehearing and Rehearing en banc, both of which were denied on April 21, 2026. (Appendix B.)

REASONS FOR GRANTING THE WRIT

I. Without Requiring an Explicit Balancing of Prejudice Versus Probative Value, the Ninth Circuit’s Decision Approving the Wholesale Admission of Social Media Posts, So the Jury Would Judge Petitioner by “What He Believed,” Rather than by What He Intended on the Night of the Murder, Is the Type of Egregious Error that Should be Remedied by this Court.

The published Opinion approves admitting extensive, politically charged speech and “likes” as proof of intent when no plan, agreement, or imminent violent action is shown, and it expressly does so to allow juries to judge “who the person is” and “what he believed.” The Ninth Circuit’s Opinion conflicts with core First Amendment principles and this Court’s precedent cautioning against conviction based on character or beliefs rather than conduct. The decision below authorizes life imprisonment not for what a defendant

planned, intended, or did, but for what he believed, what he said, and what he “liked” online.

Justus did not shoot anyone, plan to shoot anyone, or encourage Carrillo to shoot anyone. Instead, the record shows a frightened man trying to deal with an armed, unstable person to keep him from harming others. Yet the jury never meaningfully evaluated that evidence. Instead, it was invited to convict Justus because of his political beliefs. None of his beliefs and none of the social media involved Justus personally planning to commit murder with Carrillo or anyone else.

The government’s evidence in this case came mostly from Justus’ phone, which he voluntarily gave to the FBI. The FBI obtained over 6,500 pages of material. The vast majority of it pertained to other interests and to photos of family and friends. The government selected 175 strategically advantageous posts and “likes” of other people’s posts, as well as six conversations, as evidence.

Such social media, including emails, tweets, and Facebook posts, offer a capacity for communication and are protected by the First Amendment. *Packingham v. North Carolina*, 582 U.S. 98, 104-105 (2017). This Court explained,

[o]n Facebook, for example, users can debate religion and politics with their friends and neighbors or share vacation photos. On LinkedIn, users can look for work, advertise for employees, or review tips on entrepreneurship. And on Twitter, users can petition their elected representatives and otherwise engage with them in a direct manner. Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this purpose. See Brief for Electronic Frontier Foundation 15–16. In short, social media users employ these websites to engage in a wide array of protected First Amendment activity on topics “as diverse as human thought.” *Reno, supra*, at 870, 117 S. Ct. 2329 (internal quotation marks omitted).

Id. at 104-105. See also, *Reno v. Am. Civ. Liberties Union*, 521 U.S. 844, 851 (1997), holding that emails are protected speech.

The admission of political social media statements is often discussed in the context of “true threats,” which are exempt from First Amendment protections. In *Thunder Studios, Inc. v. Kazal*, 13 F.4th 735, 746 (9th Cir. 2021), the Ninth Circuit recognized that “even a statement that appears to threaten violence may not be a true threat if the context indicates that it only expressed political opposition or was emotionally charged rhetoric.” Justus’s failure to follow through on any of his statements with action shows that they were emotionally charged rhetoric expressing his political opposition and beliefs.

In *Bland v. Roberts*, 730 F.3d 368, 386 (4th Cir. 2013), the Fourth Circuit held that “liking” something on Facebook is protected

speech. In *Bland*, Daniel Ray Carter, Jr., worked for the Hampton, Virginia, Sheriff's Office. B.J. Roberts was the Sheriff. Carter claimed his First Amendment rights were violated when he was fired for "liking" the Sheriff's political opponent's Facebook page. *Id.* at 372. The court treated his likes as political speech, "which is entitled to the highest level of protection." *Id.* at 387. The case was remanded for fact-finding to determine whether his firing was improper because of his lack of political allegiance to the Sheriff. Much of what Justus "liked" consisted of posts and memes expressing his political beliefs, and he should not have been convicted because of them.

When conduct or political belief is at issue before a court regarding an actor's state of mind, this Court cautioned that such evidence cannot be offered solely to prove character. *Huddleston v. United States*, 485 U.S. 681, 687-688 (1988). Even if the evidence has a proper purpose, the court must determine whether the danger of undue prejudice outweighs its probative value. *Id.* at 688.

In this case, the government wanted to admit 198 of Justus' social media posts and six conversations. Justus objected under Fed. R. Evid. 401, 402, 403, and 404(b) and provided a detailed chart listing each post and the corresponding objection.

Justus agreed that some posts surrounding his and Carrillo's virtual introduction through Boogaloo-related groups were relevant. He also agreed that posts and "likes" between Carrillo and Justus around May 29, 2020, were admissible to show Justus' state of mind on the day of the shooting.

He objected to all six conversations because none were between him and Carrillo. The conversations were with a Facebook friend he had met in a motorcycle group, and they occurred six months before the shooting. These were personal conversations about their children, born of frustration and anger with family courts, the government, and the use of excessive force by law enforcement.

The defense argued that many of the social media posts and memes were highly prejudicial. It further argued that the purpose of the social media evidence was to elicit an emotional reaction to Justus's posts. Some posts reflect Justus's anger and frustration with the government, law enforcement, and the family courts. Some statements express what he wishes would happen.

At one point, during the argument on the admissibility of the evidence, the defense noted that one of the posts Justus "liked" addressed "horrible events" such as Ruby Ridge, Waco, and

September 11. The court countered, “Well, horrible events that he apparently liked. Right?” The court continued, “This is something that he actually, for whatever reason, chose to – to give it a thumbs up...The jury needs to understand who the person is in front of them to understand whether or not they believe he had the appropriate state of mind.”

The Ninth Circuit cautioned against this type of evidence, which reflects a person’s character or beliefs, because it “carries with it the inherent potential to see defendant simply as a bad person and then to convict because of who he is rather than what he did.” *United States v. Curtin*, 489 F.3d 935, 958 (9th Cir. 2007). The court stated that a court abuses its discretion when, “as a matter of law, a court does not properly exercise its balancing discretion under Rule 403 when it fails to place on the scales and personally examine and evaluate all that it must weigh.” *Curtin*, 469 F.3d at 958; *see also Huddleston*, 485 U.S. at 691. In this case, the court did not “balance” the prejudicial effect of admitting 175 social media exhibits. Instead of balancing probative value against prejudicial effect, the court chose prejudice.

One of Petitioner's main appellate arguments was that the district court failed to conduct a balancing test. In its Opinion, the Ninth Circuit mischaracterized the record, claiming that the District Court "did not explicitly discuss Rule 403 in its written order regarding the social media evidence, the record shows that it engaged in this analysis" (Opinion at 12). The record shows no such thing.

The court never used the word "prejudice" in the transcripts of the arguments or in its ruling on the in limine motion regarding social media evidence. It also never used the word "balance." The only time it mentioned "balancing" in relation to social media was when the government offered two new social media exhibits during the trial. In fact, the social media in limine motion was the only in limine motion in which the court did not mention "prejudice" or Rule 403 in its order.

The court did not mention prejudice of Rule 403 because it failed to perform its essential evidentiary function to evaluate the admission of inflammatory evidence. The Ninth Circuit brushed off the error by claiming that the court "implicitly conducted a 403 analysis" because it admitted the evidence. (Opinion at 12.)

The prejudice from this evidence was profound. Over two days, the government read and published 80 posts, “likes” of posts and memes without context or comment. The government described its presentation of the social media evidence as a “long slog.” Some posts reflect Justus’s anger and frustration with the government, law enforcement, and the family courts. Some statements express what he wishes would happen. Some of the memes, none of which he created, are disturbing and depict violence against police.

The purpose of the social media evidence was to elicit an emotional reaction to Justus’s posts. It is likely that a jury concluded that Justus deserved punishment for his beliefs and the memes he “liked,” regardless of whether he intended to help Carrillo murder anyone. In the jurors’ minds, Justus was the “type of person” who could form the state of mind to help Carrillo commit murder.

During its closing, the government emphasized that the jury should judge Justus on what he believed rather than what he did or intended

So coming back to Dr. Perliger for a moment, his testimony helps you understand the special terms that Robert Justus used as someone who was participating in Boogaloo, the depth of his convictions because you have the weight of so many communications over so many months. And his testimony – Dr. Perliger's testimony

gives you a better idea of who Robert Justus is and what he believed in.

Who he was and what he believed in the night that he chose to go with Steven Carrillo.

Who he was and what he believed in when he returned to the van the first time on that night.

Who he was and what he believed in when he went back to the van a second time.

Who he was and what he believed in when he drove the van in just the right way to allow Steven Carrillo to shoot the two Protective Security Officers.

Who he was and what he believed in when he went home and continued to post his commitment to the cause.

The social media evidence was intended to cast Justus in a negative light. The government told the jury that his conviction should turn on “the depth of his convictions” and “the weight of so many communications over so many months,” i.e., his political beliefs rather than evidence that he intended to commit murder. Justus was likely convicted because of “who he is” and “what he believed” rather than “what he intended.”

This is not merely a discretionary evidentiary ruling in compliance with the rules of evidence. Here, both the district court and the court of appeals completely ignored the rules. The Ninth Circuit distorted the record to uphold the district court’s failure to

perform its essential duty to balance the prejudicial use of political speech against its probative value.

In *United States v. Mezzanatto*, 513 U.S. 196, 204 (1995), this Court recognized that “[t]here may be some evidentiary provisions that are so fundamental to the reliability of the factfinding process that they may never be waived without irreparably discrediting the federal courts.” *Id.* at 204 (citations omitted) (cleaned up). The failure to balance prejudice against probative value should be one of them. *Greenlaw v. United States*, 554 U.S. 237, 264 (2008) (ALITO, J., dissenting), recognized that this Court has “repeatedly stressed the importance” of “the interest of the public and the Judiciary in correcting grossly prejudicial errors of law that undermine confidence in our legal system.”

As this Court recognized in *Wheat v. United States*, 486 U.S. 153 (1988), federal courts have an independent institutional interest in ensuring that legal proceedings “appear fair to all who observe them.” *Id.* at 160; *Mezzanatto*, 513 U.S. at 204. The purposeful use of prejudicial evidence does not appear fair. The Ninth Circuit’s excusal of this grossly prejudicial error requires correction.

The situation is similar to what transpired in *New York Cent. R.*

Co. v. Johnson, 279 U.S. 310 (1929). In *Johnson*, the respondent’s counsel made numerous prejudicial statements in their closing arguments. This Court noted that the “obvious purpose and effect” of counsel’s statements was to improperly influence the verdict by appealing to passion and prejudice. *Id.* at 317. This Court found that “the quoted remarks of respondents’ counsel so plainly tended to excite prejudice as to be ground for reversal, is, we think, not open to argument. The judgments must be reversed, with instructions to grant a new trial.” *Id.* at 318. Once again, this Court emphasized

it is the duty of the court and counsel alike to uphold, is concerned that every litigation be fairly and impartially conducted and that verdicts of juries be rendered only on the issues made by the pleadings and the evidence. The public interest requires that the court of its own motion, as is its power and duty, protect suitors in their right to a verdict, uninfluenced by the appeals of counsel to passion or prejudice.

Id. at 318.

The prejudicial and improper purpose of the evidence was emphasized to the jury in the closing argument. The argument urged the jury six separate times to judge Justus not by what he intended when he drove through the intersection on May 29, 2020, but by “who he was” and “what he believed.” The jury was told that his fate should turn on “the

depth of his convictions” and the “weight of so many communications over so many months.”

The government was allowed to do so because the district court failed to conduct a prejudice analysis. It was a failure that the Ninth Circuit Court of Appeals papered over by mischaracterizing the record. If left uncorrected, this is “the kind of egregious error that would bring the judicial system into disrepute,” resulting in a miscarriage of justice. *Hunter v. United States*, 608 U.S. ___, 146 S. Ct. 1702, 1708 (2026). As in *Johnson*, this Court should exercise its institutional authority, reverse the case, and remand for a new trial.

II. The Ninth Circuit Opinion Approves of an Instruction Violating the Sixth Amendment, Depriving a First-Degree Murder Defendant of Their State-of-Mind Defense Because the Words He Used in His Trial Testimony Might Have Described a Legally Unavailable Duress Defense.

After having allowed prejudicial social media evidence, the district court compounded Justus’s inability to get a fair trial. It gave an instruction that effectively prevented the jury from considering his testimony about the circumstances leading to Carrillo murdering and attempting to murder two federal security guards.

Based on Justus's voluntary FBI interview, the government filed a motion to bar him from telling his story to the jury. Justus testified that throughout the night, despite being scared and feeling threatened, he repeatedly intervened to stop Carrillo from shooting a bus driver, civilians, police officers, and others he perceived as threats. The government sought to prevent him from testifying about his state of mind, characterizing it as "duress-like" evidence.

Justus assured the court that he would not present a duress defense because, as a matter of law, duress is not a defense to first-degree murder. *See United States v. LaFleur*, 971 F.2d 200, 206 (9th Cir. 1991). The court acknowledged that evidence of his state of mind was central to the trial. Thus, it stated,

Here, the same evidence that is going to be used where one could argue consent is also evidence of lack of intent. And it seems to me that the Defense should be able to offer evidence of intent, but they can't argue that the evidence suggests duress. And I can address the issue by instructing the jury explicitly that duress is not a defense.

Although the defense disputed the need for such an instruction, it proposed an instruction stating that "there isn't a defense of duress," but that "the evidence is admissible ... and the jury can consider it for state of mind."

The government's proposed instruction stated that duress is not a defense to the charged crimes and then set forth the elements of duress. Justus objected, arguing that the instruction would confuse the jurors and that it failed to inform the jury that the "duress-like" evidence could still be used to show Justus's state of mind, specifically whether he intended to commit murder. The parties argued over the formulation of this instruction for weeks.

After Justus testified that he felt "threatened," was "ordered," was "told," and was "afraid because he thought he was going to be shot," the court said, "as a consequence of the testimony, I do believe the [duress is not a defense] instruction is important." Although a defendant has a Sixth Amendment "right to present his own version of events in his own words," *Rock v. Arkansas*, 483 U.S. 44, 51-52 (1987), Justus's words prompted the court to give an instruction designed to neutralize those very words.

The resulting instruction was as follows:

The parties dispute the facts.

In general, the same evidence can be used to argue different factual conclusions.

Duress is not a defense to the particular crimes charged here. Duress is defined in the law to exist where, one, there was a present, immediate, or impending threat

of death or serious bodily injury to the defendant if the defendant did not participate in the commission of the crime; two, the defendant had a well-grounded fear that the threat of death or serious bodily injury would be carried out; and, three, the defendant had no reasonable opportunity to escape the threatened harm.

While duress is not a defense to the particular crimes charged here, the Government must still prove beyond a reasonable doubt that the defendant acted with the intent to help commit the charged crime.

In its Opinion, the Ninth Circuit says that the final sentence “ensured that the jury considered the duress-like evidence.” (Opinion at 16.) The sentence says no such thing. Nowhere in that sentence or in the rest of the instruction is the jury informed that it could consider Justus’s duress-like testimony for any purpose, including his state of mind.

The only case found that approved of an instruction stating that a defendant was not entitled to an affirmative defense was *United States v. Davidson*, 108 F.4th 706, 714 n.4 (8th Cir. 2024), which the government cited and the Ninth Circuit ignored.¹ In *Davidson*, the district court instructed the jury “[A]s a matter of law . . . self-defense is not a defense in this case. The testimony you have just heard can be

¹ Unlike the instruction here, the *Davidson* instruction does not include the elements of the defense.

considered by you for other purposes regarding intent, but not for self-defense.”

The *Davidson* instruction told the jury that the defendant was not, as a matter of law, entitled to claim self-defense. Here, the instruction did not tell the jury that duress was not a defense because it was prohibited by law. Instead, it listed the duress elements, leaving the jury to wonder whether Justus was not entitled to the duress defense because he failed to prove one or more elements, including whether Carrillo was a threat to him or others.

The *Davidson* instruction also told the jury that “testimony you have just heard can be considered by you for other purposes regarding intent.” Here, the jury was never told it could consider Justus’s testimony regarding intent.

The instruction evolved from Justus agreeing to an instruction almost identical to the one in *Davidson* to a version cobbled together after weeks of argument. The government drafted the instruction, and the court approved it to negate Justus’s testimony. The result was an incomprehensible instruction that deprived him of his state-of-mind defense.

This case is about words. Without review from this Court, Justus will spend the rest of his life in prison because of his words in his social media posts or because he “liked” others’ words. Further, the jury was prohibited from considering his state-of-mind defense because of the words he chose to describe what happened on the night of May 29, 2020, and his state of mind leading up to the moment Carrillo opened the van doors and began shooting toward the security guards at the Northern District Oakland courthouse.

CONCLUSION

For these reasons, the Court should grant the petition and consider this case.

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Respectfully submitted,

s/ Vicki Marolt Buchanan
Vicki Marolt Buchanan
Counsel for Petitioner
Robert Alvin Justus, Jr.