

No. 26-_____

IN THE SUPREME COURT OF THE UNITED STATES

THOMAS RUTTER WOOLLACOTT,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

Joshua Michael Reho
Counsel of Record
Angela M. Rea
Office of the Federal Defender
200 Theatre Building
629 Fourth Avenue
Louisville, Kentucky 40202
(502) 584-0525
Josh_Reho@fd.org

Counsel for Petitioner

QUESTION PRESENTED

For a conviction in a true threats case, the First Amendment requires that the speaker had some subjective understanding that the statement could be interpreted as threatening violence. *Counterman v. Colorado*, 600 U.S. 66, 69 (2023).

Title 18 U.S.C. § 115(a)(1)(B) prohibits “threaten[ing] to assault, kidnap, or murder” a qualifying federal official “with intent to impede, intimidate, or interfere with such official... or with intent to retaliate against such official... on account of the performance of official duties[.]”

The question presented is:

Does a jury finding that a speaker made an objectively threatening statement with the specific intent to impede, intimidate, interfere with, or retaliate against a federal official mean that the jury did not need to also find that the speaker had some subjective understanding that the statement could be understood to threaten violence?

PARTIES TO THE PROCEEDINGS

Petitioner Thomas Woollacott was the defendant in the district court and the appellant in the Court of Appeals. Respondent United States of America was the plaintiff in the district court and the appellee in the Court of Appeals.

RELATED PROCEEDINGS

United States Court of Appeals for the Sixth Circuit:

United States v. Thomas Rutter Woollacott, Case 25-5723
(6th Cir. June 10, 2026) (available at 2026 WL 1683743)

United States District Court for the Western District of Kentucky:

United States v. Thomas Rutter Woollacott, Case 5:24-CR-00022
(judgment entered July 28, 2025)

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
RELATED PROCEEDINGS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASON FOR GRANTING THE WRIT	6
I. The district court’s instructions did not require the jury to find that Thomas Woollacott had some subjective understanding that his recorded message for a Congressman would be interpreted as threatening violence. The Sixth Circuit panel’s ruling that the instructions did not need to because the jury found that he left this message with the intent to impede, intimidate, interfere with, or with the intent to retaliate against the Congressman merits review.	6
CONCLUSION	19

TABLE OF CONTENTS

APPENDIX

Appendix A	Sixth Circuit Court of Appeals Opinion	1a
Appendix B	Western District of Kentucky Judgment	13a
Appendix C	II. Rules of Law Section of Jury Instructions, <i>United States v. Thomas Rutter Woollacott</i> , Case 5:24-CR-00022	21a

TABLE OF AUTHORITIES

Cases	Page
<i>Counterman v. Colorado</i> , 600 U.S. 66 (2023)	i, 8, 9, 10, 13-15, 17-18
<i>Elonis v. United States</i> , 575 U.S. 723 (2015)	11, 13
<i>Elonis v. United States</i> , 575 U.S. 723 (2015) (Alito, J., concurring in part and dissenting in part)	9
<i>United States v. Cope</i> , 283 Fed. Appx. 384 (6th Cir. 2008)	13
<i>United States v. Garnes</i> , 102 F.4th 628 (2d Cir. 2024)	14
<i>United States v. Hunt</i> , 82 F.4th 129 (2d Cir. 2023)	15
<i>United States v. Stewart</i> , 420 F.3d 1007 (9th Cir. 2005)	12-13
<i>United States v. Taylor</i> , 148 F.4th 896 (7th Cir. 2025)	15
<i>United States v. Turner</i> , 720 F.3d 411 (2d Cir. 2013)	13
<i>United States v. Unocic</i> , 135 F.4th 632 (8th Cir. 2025)	15-16
<i>United States v. Veach</i> , 455 F.3d 628 (6th Cir. 2006)	13
<i>United States v. White</i> , 810 F.3d 212 (4th Cir. 2016)	12-13
<i>United States v. Thomas Rutter Woollacott</i> , No. 25-5723 (6th Cir. June 10, 2026) (2026 WL 1683743)	1
<i>United States v. Wynn</i> , 827 F.3d 778 (8th Cir. 2016)	12
<i>Virginia v. Black</i> , 538 U.S. 343 (2003)	8
<i>Watts v. United States</i> , 394 U.S. 7055 (1969)	17

TABLE OF AUTHORITIES

Constitutional Provision

U.S. Const. Amend. I.	i, 2, 9, 15, 18
-----------------------	-----------------

Statutes

18 U.S.C. § 115(a)(1)(B)	i, 2-3, 6-7, 10-18
--------------------------	--------------------

18 U.S.C. § 115(b)(4)	3
-----------------------	---

18 U.S.C. § 875(b)	12
--------------------	----

18 U.S.C. § 875(c)	11, 14
--------------------	--------

28 U.S.C. § 1254	1
------------------	---

Rule

Supreme Court Rule 10(c)	18
--------------------------	----

PETITION FOR A WRIT OF CERTIORARI

Petitioner Thomas Woollacott respectfully petitions this Court to issue a writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit panel's unpublished opinion in *United States v. Thomas Rutter Woollacott*, No. 25-5723 (6th Cir. June 10, 2026) is available at 2026 WL 1683743, and is reproduced in the appendix at App. 1a-12a.

The District Court for the Western District of Kentucky, Paducah Division, judgment imposing sentence is *United States of America v. Thomas Rutter Woollacott*, Case 5:24-CR-00022, Record (R.) 69, Judgment, Page ID# 351-358, entered July 28, 2025, and is reproduced in the appendix at App. 13a-20a.

JURISDICTION

The Sixth Circuit panel issued its decision on June 10, 2026. App. 1a. On August 27, 2026, Justice Kavanaugh granted an application to extend the time to file this petition, to and including October 8, 2026. Sup. Ct. No. 26A248. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution states in relevant part that:

Congress shall make no law ... abridging the freedom of speech[.]

Title 18 U.S.C. § 115 says in relevant part that:

(a)(1) Whoever—

(A) assaults, kidnaps, or murders, or attempts or conspires to kidnap or murder, or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under section 1114 of this title; or

(B) threatens to assault, kidnap, or murder, a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section,

with intent to impede, intimidate, or interfere with such official, judge, or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties, shall be punished as provided in subsection (b).

(Bold removed).

STATEMENT OF THE CASE

Law enforcement charged Thomas Woollacott with two counts of threatening a federal official under 18 U.S.C. § 115(a)(1)(B) and (b)(4). App. 4a. It did so because of two voicemails that he left with a United States Congressman's office. App. 4a.

The Sixth Circuit panel that heard his appeal described the first recording, left in March 2024, as follows:

In the two-and-a-half-minute message, Woollacott told Congressman Barr and his staff that “you all should quit if you have any f***ing integrity.” He complained about Barr's representation and congressional spending, adding, “You're dead Andy Barr, you worthless, traitorous piece of shit. Vest the f*** up.” “Where [are] you . . . going to hide?” He continued, “So now we're going to have to do things the hard way. Vest the f*** up. The Second Amendment's all we got.” He stated, “You're all done.” “You're all enemies of the state.” He warned Congressman Barr that “I don't care what badge asshole you send You understand, you're all f***ed.”

App. 1a-2a (footnote omitted, asterisks in Sixth Circuit opinion).

Mr. Woollacott left the second message the next month, in April 2024. App.

2a. The Sixth Circuit panel described that recording this way:

In this two-minute message, Woollacott again complained about Congressman Barr's representation, saying that Barr was “an enemy of the Constitution,” and “we the people will not stand for it.” He stated, “It will not be tolerated. You will be hunted and found and removed from the face of this f***ing earth.” He told Barr that “you can run, but you can't f***ing hide.” He stated, “We're coast to coast,” and “we'll f***ing find you.” He added: “You can hide in your caves, in your tunnels, in your hardened homes. But guess what? All those things need supplies. Every person needs water. Every person needs air.” The message ended with Woollacott stating, “You motherf***ers are about to find out. It's over for you. It's over. Vest up.”

App. 2a-3a (asterisks in Sixth Circuit opinion).

The Congressman's staff reacted with concern and alarm to the recordings. *See* App. 2a-3a. Capitol Police determined that Mr. Woollacott was the caller after the second message, App. 4a, and decided not to charge him. App. 4a. The Congressman's Chief of Staff, however, contacted the House Administration Committee; the Louisville, Kentucky FBI Office opened an investigation; and Mr. Woollacott was ultimately charged. App. 4a.

Mr. Woollacott elected to go to trial. *See* App. 5a. He argued through counsel "that the Government had not proven that the messages were criminal threats or that he had acted recklessly as to whether they would be perceived as threatening." App. 5a. Additionally, as the Sixth Circuit panel explained, "[t]he district court discussed its proposed instructions with the parties, adjusting the wording until both parties were satisfied and stated that they had no further objections. The district court then issued the final jury instructions, and Woollacott did not object to those instructions." App. 5a.

The substantive offense instructions informed the jury that it must find three elements to convict Mr. Woollacott of each charge:

...

For you to find the Defendant guilty, you must be convinced that the Government has proved each of the following elements, beyond a reasonable doubt, for a given charge:

1. The Defendant threatened to assault or murder Andy Barr;
2. At the time of the alleged threat, Andy Barr was a United States official, specifically a Member of Congress; and
3. The Defendant did so with the intent to impede, intimidate, or interfere with Andy Barr while he was engaged in the performance of his official duties as a Member of Congress, or that the Defendant did so with the intent to retaliate against Andy Barr on account of the performance of his official duties.

...

App. 21a-22a. When providing additional instruction regarding the first element, the district court told the jury, in part, that:

The Government must prove that the Defendant conveyed that he meant to commit an act of unlawful violence or consciously disregarded a substantial risk that his communication would be viewed as threatening violence.

App. 22a.

The jury acquitted Mr. Woollacott of Count 1 in the indictment – the charge related to the March message. App. 5a. It returned a guilty verdict, however, for Count 2 – the charge for the recording that he left in April. App. 5a. After the district court sentenced Mr. Woollacott to 30 months’ imprisonment, followed by three years of supervised release, he appealed to the Sixth Circuit Court of Appeals. *See App. 5a.*

He raised two issues on appeal. *See App. 6a.* Relevant here, he argued that the district court committed plain error when it did not instruct the jury that to convict

him it must find that, if he had conveyed a true threat in the April voicemail, he had the necessary culpable mental state to be guilty of the offense. *See* App. 6a.

In an unpublished opinion, the Sixth Circuit panel disagreed that the instruction was improper. App. 12a. It found that, even if the instruction allowed the jury to only find that he had “‘conveyed his intent’ to commit violence” – and so did not require a specific finding that he had a culpable mental state as to how his statement could be understood – “the jury necessarily found that [he] acted with more than recklessness because it had to find that he had the ‘intent to impede, intimidate, interfere with such official . . . while engaged in the performance of official duties’ or the ‘intent to retaliate against such official.’” *See* App. 12a (quoting 18 U.S.C. § 115(a)(1)(B) (ellipsis in opinion)).

REASON FOR GRANTING THE PETITION

I.

The district court’s instructions did not require the jury to find that Thomas Woollacott had some subjective understanding that his recorded message for a Congressman could be interpreted as threatening violence. The Sixth Circuit panel’s ruling that the instructions did not need to because the jury found that he left this message with the intent to impede, intimidate, interfere with, or with the intent to retaliate against the Congressman merits review.

Thomas Woollacott respectfully requests that this Court grant this petition to address whether a jury finding that a speaker made an objectively threatening statement with the intent to impede, intimidate, interfere with, or with the intent to

retaliate against a qualifying federal official necessarily means that the jury also concluded that the speaker had a subjective understanding that the statement could be interpreted as threatening violence. This important question that touches on the First Amendment and mens rea is one that should be answered by this Court. Mr. Woollacott respectfully asks that it do so.

At Thomas Woollacott's trial for allegedly threatening a federal official in violation of 18 U.S.C. § 115(a)(1)(B), the district court instructed the jury that to convict him, it must find beyond a reasonable doubt that:

...

1. The Defendant threatened to assault or murder Andy Barr;
2. At the time of the alleged threat, Andy Barr was a United States official, specifically a Member of Congress; and
3. The Defendant did so with the intent to impede, intimidate, or interfere with Andy Barr while he was engaged in the performance of his official duties as a Member of Congress, or that the Defendant did so with the intent to retaliate against Andy Barr on account of the performance of his official duties.

...

App. 21a-22a.

When further instructing the jury regarding the first element, the district court said in part that:

The Government must prove that the Defendant conveyed that he meant to commit an act of unlawful violence *or* consciously disregarded a substantial risk that his communication would be viewed as threatening violence.

App. 22a (*italics added here*). The “or” in this sentence allowed the jury to choose between two paths.

The clause before the “or” – that Mr. Woollacott “conveyed that he meant to commit an act of unlawful violence[.]” App. 22a – describes a “true threat.” These “threats are ‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’” *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (quoting *Virginia v. Black*, 538 U.S. 343, 359 (2003)). “[A] statement can count as such a threat based solely on its objective content.” *Id.* at 72. On the other hand, the clause following the “or” addresses Mr. Woollacott’s subjective state of mind. It says that he “consciously disregarded a substantial risk that his communication would be viewed as threatening violence[.]” App. 22a.

The upshot to this “or” is that the instructions allowed the jury to conclude that the Government had proven the first element of the crime – that Mr. Woollacott “threatened to assault or murder Andy Barr[.]” App. 21a – if it found *either* that he had issued an objectively defined “true threat” *or* that he was subjectively, recklessly aware that his statements could be interpreted as threatening violence. If the jury chose the first option, then it could convict him without ever determining that he had some subjective understanding that his statements could be understood to threaten violence. Such a conviction runs headlong into the First Amendment.

“Congress shall make no law... abridging the freedom of speech.” U.S. Const. Amend. I. Though “[t]rue threats of violence are outside the bounds of First Amendment protection and punishable as crimes[.]” *Counterman*, 600 U.S. at 69, “the First Amendment still requires proof that the defendant had some subjective understanding of the threatening nature of his statements.” *Id.* “[A] mental state of recklessness is sufficient.” *Id.* Consequently, for a conviction in a true threats case, there must be a “show[ing] that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence.” *Id.* That is to say that the “speaker is aware ‘that others could regard his statements as’ threatening violence and ‘delivers them anyway.’” *Id.* at 79 (quoting *Elonis v. United States*, 575 U.S. 723, 746 (2015) (Alito, J., concurring in part and dissenting in part) (footnote omitted)). In this case, the jury did not have to make this Constitutionally mandated finding as to Mr. Woollacott’s subjective state of mind because the instructions placed it after an “or” in a sentence where the first clause described a “true threat[.]” something that is objectively defined.

Nonetheless, the Sixth Circuit panel concluded that the jury “instruction... was not improper.” App. 12a. When doing so, it did not contest that the jury could have found under the first element that Mr. Woollacott had simply “‘conveyed his intent’ to commit violence,” and thus did not also find that he had some subjective

understanding that his statement could be interpreted as threatening violence. *See* App. 12a.

Instead, it pointed to the third element of the jury instruction. That element addressed what Mr. Woollacott was supposedly seeking to accomplish with his message. *See* App. 22a. The Sixth Circuit panel decided that the jury's finding that he had left the recording for a purpose that is forbidden under § 115(a)(1)(B) meant that the jury found that he had acted with the required mental state to commit the offense. Specifically, the panel stated that:

But even if we assume that the jury found, with regard to the first element, that Woollacott was guilty only because he “conveyed his intent” to commit violence, the jury necessarily found that Woollacott acted with more than recklessness because it had to find that he had the “intent to impede, intimidate, interfere with such official ... while engaged in the performance of official duties” or the “intent to retaliate against such official.” 18 U.S.C. § 115(a)(1)(B).

App. 12a.

So according to the Sixth Circuit panel, a specific finding that a “defendant had some subjective understanding of the threatening nature of his statements[,]” *Counterman*, 600 U.S. at 69, is unnecessary for a conviction so long as the jury finds that the defendant made an objectively threatening statement with the intent to accomplish something that is prohibited by the statute. Put another way, a finding that the statutorily-defined mental state – the speaker's goal in making the statement – is met inevitably includes a finding that the Constitutionally-required mental state

that the speaker had a subjective understanding that the statement could be understood to threaten violence is also met.

In its opinion, the Sixth Circuit panel discussed *Elonis*, *supra*. App. 9a. This Court decided *Elonis* on statutory interpretation grounds, not the First Amendment. *See Elonis*, 575 U.S. at 741. In *Elonis*, which predates *Counterman*, this Court considered 18 U.S.C. § 875(c), a statute that makes it a crime to ““transmit[] in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another’[.]” *Id.* at 732 (quoting § 875(c)). That “statute does not specify any required mental state.” *Id.* at 734. This Court concluded that “[t]here is no dispute that the mental state requirement in Section 875(c) is satisfied if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat.” *Id.* at 740 (citation to oral argument transcript omitted).

The Sixth Circuit panel then stated that, “[a]fter *Elonis*, several sister circuits have held that a subjective-intent jury instruction is required for statutes that have no specific mens rea requirement.” App. 10a (citations omitted). To support this, it cited two Courts of Appeals’ decisions with a *See, e.g.*, signal and four others with a *but see, e.g.*, signal. App. 10a. Two cases following the *but see* mention the statute at issue here, § 115(a)(1)(B).

In one, *United States v. Wynn*, 827 F.3d 778, 785 (8th Cir. 2016), the Eighth Circuit determined that “proof of criminal intent to threaten a federal employee” is not necessary for a conviction. It said that the district court did not err when it “instructed the jury that it must find that [Mr.] Wynn ‘made a threat to assault or murder’ a qualifying federal employee ‘with intent to retaliate against such employee...[,]’” and had separately defined “‘true threat’” elsewhere in the instructions. *Id.*

In the other, *United States v. White*, 810 F.3d 212, 215-216 (4th Cir. 2016), the Fourth Circuit addressed 18 U.S.C. § 875(b), a statute that prohibits interstate attempts to extort through threats. It rejected Mr. White’s argument on appeal that “the district court erred by failing to instruct the jury, consistent with *Elonis*, that he intended the e-mails charged in [three Counts] as extortionate threats, or knew or recklessly disregarded that those e-mails would be perceived as extortionate threats.” *Id.* at 222-223. When doing so, it explained that “to intend to extort one must necessarily intend to instill fear of harm (for purposes of 875(b), in the form of kidnapping or physical injury).” *Id.* at 223 (citations omitted).

In *White*, the Fourth Circuit cited *United States v. Stewart*, 420 F.3d 1007 (9th Cir. 2005). *Id.* In *Stewart*, the Ninth Circuit said that for § 115(a)(1)(B), “‘proof that the speaker intended the speech to impede, intimidate, interfere with, or retaliate against the protected official’ necessarily includes the subjective intent to threaten,”

as “‘one cannot have the intent’ to impede, intimidate, interfere, or retaliate through the use of a threat ‘without also intending to make the threat.’” *White*, 810 F.3d at 223 (quoting *Stewart*, 420 F.3d at 1017, 1019).

Here, after the Sixth Circuit panel’s citations and parenthetical descriptions of cases rendered after *Elonis* (and before *Counterman*), it stated that § 115(a)(1)(B) has a specific intent element because it “requires ‘that the defendant made such a threat for the specific purpose of interfering with the performance of official duties or of retaliating for the performance of such duties.’” App. 10a (quoting *United States v. Veach*, 455 F.3d 628, 633 (6th Cir. 2006)). It also cited, along with the Ninth Circuit’s opinion in *Stewart*, *supra*, and a Second Circuit decision, *United States v. Turner*, 720 F.3d 411 (2d Cir. 2013), the Sixth Circuit’s unpublished opinion in *United States v. Cope*, 283 Fed. Appx. 384 (6th Cir. 2008). See App. 10a-11a.

In affirming Mr. Cope’s § 115(a)(1)(B) conviction under plain error review, *Cope*, 283 Fed. Appx. at 389, the Sixth Circuit noted that the jury found “that the evidence showed that [he] intended his threat as an act of retaliation[.]” *Id.* at 388. The Sixth Circuit stated that, by doing so, “[i]t found that his threat was a ‘true threat’ in a subjective sense. Surely a defendant who ‘intend[s]’ a ‘threat as an act of retaliation’ subjectively ‘intends’ the threat to be a real one.” *Id.*

“Surely” is not good enough after *Counterman*. And the Sixth Circuit panel did not cite any decision that any Circuit has issued following this Court’s opinion in *Counterman* to support its ruling. See App. 9a-11a. That matters. Indeed, other Courts of Appeals seem to have recognized after *Counterman* the need for proof in § 115(a)(1)(B) prosecutions “that the defendant had some subjective understanding of the threatening nature of his statements.” *Counterman*, 600 U.S. at 69,

To start, the Second Circuit has. In *United States v. Garnes*, 102 F.4th 628, 636 (2d Cir. 2024), Mr. Garnes had been “charged with violating 18 U.S.C. §§ 115(a)(1)(B) and 875(c).” In an opinion finding “that the district court erred in excluding... evidence[.]” *Id.* at 635, the Second Circuit explained that to convict Mr. Garnes under these statutes, “the government must show both that the statements he made would, objectively, convey to the listener that the threatening language represented a genuine threat, and in making his statements, he ‘consciously disregarded a substantial risk that his communications would be viewed as threatening violence[.]’” *Id.* at 637 (quoting *Counterman*, 600 U.S. at 69). It went on to say that, “[m]oreover, in the case of 18 U.S.C. § 115(a)(1)(B), the statute requires an *additional*, even more demanding mental element – the intent to impede, intimidate, interfere with, or retaliate against [the federal] officials.” *Id.* (italics and bracketed modification added here). So under *Garnes*, and unlike the Sixth Circuit panel’s opinion in this case, the specific intent requirement in the statute that goes

to why the statement was made does not subsume the First Amendment requirement that the speaker had some subjective understanding that the statement could be understood as a threat.

Additionally, the Second Circuit has explained, when addressing the sufficiency of the evidence, that the statutory element to § 115(a)(1)(B) that “[w]however ... threatens to assault, kidnap, or murder, a Federal official[,]” *United States v. Hunt*, 82 F.4th 129, 134 (2d Cir. 2023) (quoting § 115(a)(1)(B)), is met when the threat is “a ‘true threat’ [definition of true threat and citation omitted], and [is] one that the defendant made at least recklessly” aware that it could be understood to threaten violence. *Id.* (italics added, bracketed modifications added, citation omitted).

The Seventh Circuit appears to agree. In *United States v. Taylor*, 148 F.4th 896, 898 (7th Cir. 2025), it addressed evidentiary rulings and the sufficiency of the evidence for one of two § 115(a)(1)(B) convictions. In the opinion, it said that “[a] section 115(a)(1)(B) charge requires proof of a true threat,” *Id.* at 899, and that “[p]ursuant to *Counterman* [remainder of citation omitted], the test for whether the defendant has actually threatened the victim is not objective but rather depends on proof of how the defendant subjectively understood his conduct.” *Id.*

The same seems to be true for the Eighth Circuit. In *United States v. Unocic*, 135 F.4th 632, 634 (8th Cir. 2025), a jury had convicted Mr. Unocic of violating §

115(a)(1)(B). The jury instructions had used “the word ‘carelessly’ in defining ‘recklessly disregards’[.]” *Id.*, and he argued that this “impermissibly allowed a conviction without a showing that he had a subjective understanding of the threatening nature of his statements.” *Id.* at 635. The Eighth Circuit did not grant plain error relief. *Id.* at 636. It did not “[b]ecause the instruction still required proof that the defendant (1) was aware of the substantial risk that others could regard his statement as a threat and (2) decided to act anyway[.]” *Id.* at 635-636.

The Eighth Circuit further noted that the jury had also been instructed that it must find that Mr. Unocic ““made the threat with intent to retaliate against” the federal official. *Id.* at 636. It stated that “this additional requirement of a subjective mental state” made it “even more unlikely that a jury would have focused on the word ‘carelessly’ in isolation to conclude that it could convict [Mr.] Unocic for intending to retaliate against the federal agent by making a ‘careless’ threat without a subjective understanding of the true threat.” *Id.* Thus, while the “*additional requirement*” that Mr. Unocic “made the threat with intent to retaliate” contributed to the unlikelihood that the jury convicted him without finding that he had a subjective understanding that his statements could be understood as threats, *Id.* (italics added), the Eighth Circuit did not determine that this meant that the jury “necessarily found” the required mental state for the speaker’s subjective state of mind, as the Sixth Circuit panel did in Mr. Woollacott’s appeal. *See* App. 12a.

To be sure, the Sixth Circuit panel acknowledged that the defendant must have “a subjective understanding of and disregarded a substantial risk that his communication would be viewed as threatening violence” to be convicted in a true threats case. App. 8a (citing *Counterman*, 600 U.S. at 69). But what does that mean if, as happened at Mr. Woollacott’s trial, the jury could convict by simply finding that the speaker issued a “true threat” with the intent to accomplish something that is prohibited by statute? This case presents an opportunity for this Court to answer that question. And to do so in the context of political speech.

“The language of the political arena, like the language used in labor disputes, [citation omitted] is often vituperative, abusive, and inexact.” *Watts v. United States*, 394 U.S. 705, 708 (1969). As set out above, Mr. Woollacott’s messages were left on the voicemail of an elected official and were directed at that official’s actions in office. See App. 1a-3a. Mr. Woollacott, or anyone else, may speak “with intent to impede, intimidate, or interfere with such official... or... retaliate against such official... on account of the performance of official duties,” § 115(a)(1)(B), without committing a crime. For example, he may protest outside the official’s office; organize a campaign of calls to influence the official’s vote; work to support a rival candidate if the official takes or does not take particular actions; encourage voters to oust the official in a primary election; post sharp criticism of an official in a public forum; and he may communicate extreme displeasure directly to that official. Under

§ 115(a)(1)(B), what makes the intent to impede, intimidate, interfere, or retaliate against a public official unlawful is attempting to achieve these things by making “true threats.” In a true threats prosecution, however, some subjective understanding that the statement could be perceived as a threat is necessary for a conviction. *Counterman*, 600 U.S. at 69. Clarifying legal from illegal speech in this setting warrants this Court’s review.

In sum, whether the First Amendment requirement that the speaker “had some subjective understanding of the threatening nature of his statements[,]” *Counterman*, 600 U.S. at 69, is a finding that the jury must make to convict a defendant of threatening a federal official under § 115(a)(1)(B) is “an important question of federal law” that this Court should address. Sup. Ct. R. 10(c). Mr. Woollacott respectfully requests that this Court grant this petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Joshua Michael Reho

Counsel of Record

Angela M. Rea

Office of the Federal Defender

200 Theatre Building

629 Fourth Avenue

Louisville, Kentucky 40202

(502) 584-0525

Josh_Reho@fd.org

Counsel for Petitioner