

(ORDER LIST: 591 U.S.)

MONDAY, JUNE 22, 2020

ORDERS IN PENDING CASES

19M143 ROJAS, ALBERTO V. MEINSTER, ANN G., ET AL.

19M144 SESZTAK, JULIUS, ET UX. V. GREAT NORTHERN INS. CO., ET AL.

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

19M145 IN RE LINDA A. WRIGHT

19M146 IN RE LINDA A. WRIGHT

19M147 ALBRITTON, JOSH V. BRNOVICH, ATT'Y GEN. OF AZ

The motions for leave to proceed as a veteran are denied.

19-7597 WAZNEY, ROBERT W. V. NELSON, WARDEN

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

CERTIORARI DENIED

19-601 COLLABO INNOVATIONS, INC. V. SONY CORPORATION, ET AL.

19-868 MINER, AARON, ET AL. V. PICATTI, STEVEN L.

19-924 INDIANA V. RUIZ, ERNESTO

19-937 CHEROKEE NATION V. BERNHARDT, SEC. OF INTERIOR, ET AL.

19-939 GUSTUS, STEPHEN V. UNITED STATES

19-980 ARIANA M. V. HUMANA HEALTH PLAN OF TX, INC.

19-1001 COOPER, NOBLE, ET AL. V. FLAIG, OLIVER, ET AL.

19-1008 HODGE, JIM C., ET AL. V. UNITED STATES

19-1009 ALTERA CORP. & SUBSIDIARIES V. CIR

19-1037 ) BUN, SOK V. UNITED STATES

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19-8000 ) PETERSON, JAMES R. V. UNITED STATES

19-1062 CJ CHEILJEDANG CORP., ET AL. V. ITC, ET AL.  
19-1074 CELGENE CORPORATION V. PETER, LAURA A.  
19-1134 BALEY, LONNY E., ET AL. V. UNITED STATES, ET AL.  
19-1153 SUZUKI, RUSSELL A., ET AL. V. DEEDY, CHRISTOPHER  
19-1173 COMCAST CORPORATION, ET AL. V. INT'L TRADE COMM'N, ET AL.  
19-1177 AM. INT'L. STEEL, ET AL. V. UNITED STATES, ET AL.  
19-1216 BOTOFAN-MILLER, LOREDANA E. V. MILLER, BRETT R.  
19-1222 DUCKWORTH, NATHAN V. UNITED STATES  
19-1224 MANNING, JEREMIAH F. V. KIM, LUCY J.  
19-1229 MULCAHY, EDWARD L. V. ASPEN SKIING CO.  
19-1230 KNIGHT, BOBBY V. CHENEGA SECURITY, INC., ET AL.  
19-1232 BANK, TODD C. V. AL JOHNSON'S SWEDISH RESTAURANT  
19-1233 DOYLE, ROBERT V. PALMER, CLERK, USNY ED  
19-1235 CLARK, BRIAN H. V. VIRGINIA  
19-1237 WHEELER, LeROY K. V. NORTH DAKOTA, ET AL.  
19-1243 ARMSTRONG, ARTHUR O. V. WILSON COUNTY, NC, ET AL.  
19-1256 LEVIN, JENNIFER M. V. FLORIDA  
19-1262 GREER, STEVEN E. V. MEHIEL, DENNIS, ET AL.  
19-1266 H. B. V. TORRANCE, CA, ET AL.  
19-1313 DIXON, DONOVAN D. V. UNITED STATES  
19-7260 KAUFMANN, DARIN V. UNITED STATES  
19-7310 SMITH, MICHAEL C. V. FLORIDA  
19-7382 JOHNSON, TYRONE J. V. UNITED STATES  
19-7544 WAGGY, ROBERT M. V. UNITED STATES  
19-7699 CARR, ANTHONY V. MISSISSIPPI  
19-7743 LANGLEY, ROBERT P. V. OREGON  
19-7794 FOGLEMAN, JEREMY S. V. MISSISSIPPI  
19-7834 SOTO, TRAVIS V. OHIO

19-7865 MECHAM, CLIFFORD L. V. UNITED STATES  
19-7991 GARCIA, OSCAR V. UNITED STATES  
19-8037 RUTTKAMP, SHLOMIT V. BANK OF NEW YORK MELLON  
19-8229 HARRIS, DONNIE L. V. OKLAHOMA  
19-8272 TATE, NICHOLAS C. V. FORD, WARDEN  
19-8280 JIMENEZ, JESUS J. V. DAVIS, DIR., TX DCJ  
19-8281 ABDULLAH, LUQMAN V. NEW JERSEY  
19-8283 TONEY, JAMES L. V. DICKSON, HEATH, ET AL.  
19-8288 TRUONG, MAC, ET AL. V. BARNARD, R. KENNETH, ET AL.  
19-8289 YEYILLE, JOSE V. ALTONAGA, CECILIA M., ET AL.  
19-8292 TINSLEY, RUSSELL V. YATES, SHERRY, ET AL.  
19-8298 KISSI, DAVID M. V. USDC MD  
19-8299 PATTIOAY, MATTHAN J. V. HAWAII  
19-8303 METOYER, WADRESS V. FUDGE, DELYNN, ET AL.  
19-8305 ONONUJU, KINSLEY V. VIRGINIA  
19-8306 NWAGU, MARCEL V. DAVIS, DIR., TX DCJ  
19-8307 LOPEZ, JOSE V. COOK, COMM'R, CT DOC  
19-8309 FISHER, CYNTHIA V. FRONTLINE NATIONAL  
19-8313 TULLY, THOMAS M. V. CLARKE, DIR., VA DOC  
19-8314 WARD, REGINALD V. CROW, DIR., OK DOC  
19-8320 TALLEY, QUINTEZ V. PA DOC, ET AL.  
19-8321 CARNEY, CHARLIE R. V. VIRGINIA  
19-8323 COODEY, WILLIAM G. V. OKLAHOMA  
19-8324 HORNSBY, JAMES W. V. DAVIS, DIR., TX DCJ  
19-8331 RODRIGUEZ, JOSE A. V. GRIFFIN, SUPT., GREEN HAVEN  
19-8343 ALLEN, KENAN V. VANNOY, WARDEN  
19-8360 PARRA-INTERIAN, JUAN C. V. OBENLAND, MIKE  
19-8369 HOSKINS, LaLANGIE V. GE AVIATION

19-8404 GITTENS, JAMAAL V. KELLY, JUDGE, ETC., ET AL.  
19-8413 POPE, TROY V. DUNN, COMM'R, AL DOC  
19-8445 CURRY, FREDDIE L. V. UNITED STATES  
19-8459 BECKER, TODD E. V. UNITED STATES  
19-8474 THOMAS, BRITTANY D. V. UNITED STATES  
19-8477 KENDRICK, TIMOTHY M. V. UNITED STATES  
19-8493 STINSON, MARK V. HENDRIX, WARDEN  
19-8503 WILLIAMS, DARIEUS M. V. UNITED STATES  
19-8504 GARCIA, JOSE A. V. UNITED STATES  
19-8508 VILLAR, JAVIER V. UNITED STATES  
19-8509 GONZALES, JOAQUIN V. CALIFORNIA  
19-8510 GARCIA TORRES, JUAN C. V. UNITED STATES  
19-8512 MHLANGA, ALEXANDER P. V. HICKS, JENNIFER  
19-8513 LOPEZ, EDWARD J. C. V. UNITED STATES  
19-8515 MUNDAY, MICHAEL V. UNITED STATES  
19-8530 CLARK, SACOREY L. V. UNITED STATES  
19-8535 JOHNSON, COURTNEY R. V. UNITED STATES  
19-8537 SU, SUSAN X. V. UNITED STATES  
19-8543 BURDICK, CARL L. V. UNITED STATES  
19-8544 CARTER, HUBERT V. UNITED STATES  
19-8546 ANNAMALAI, ANNAMALAI, ET AL. V. UNITED STATES  
19-8558 HARDMAN, DAVID V. UNITED STATES

The petitions for writs of certiorari are denied.

19-1020 BIKUNDI, FLORENCE V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kavanaugh took no part in the consideration or decision of this petition.

19-1031 CAPRON, ERIN, ET AL. V. OFFICE ATT'Y GEN. OF MA, ET AL.

The petition for a writ of certiorari is denied. Justice Breyer took no part in the consideration or decision of this petition.

19-1097 ENZO LIFE SCIENCES, INC. V. BECTON, DICKINSON & CO., ET AL.

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

19-8327 IBEABUCHI, IKEMEFULA C. V. BRNOVICH, ATT'Y GEN. OF AZ

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

19-8365 LOPEZ, ARTHUR V. CALIFORNIA

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

19-8506 WARD, DAVID J. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

19-8540 SPENCER, ANTWOYN, ET AL. V. UNITED STATES

The petition for a writ of certiorari before judgment is

denied.

19-8548 HARRISON, SHAWNDELL L. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

**HABEAS CORPUS DENIED**

19-8575 IN RE ANDREW ROBINSON

19-8578 IN RE KHAYREE SMITH

The petitions for writs of habeas corpus are denied.

**MANDAMUS DENIED**

19-8276 IN RE LEVAR L. SPENCE

19-8278 IN RE LEVAR L. SPENCE

The petitions for writs of mandamus are denied.

**REHEARINGS DENIED**

18-9554 IN RE BILLIE J. ALLEN

19-955 HIRSHAUER, SHIRLEY V. AQ HOLDINGS, LLC, ET AL.

19-6961 NAVARRO, HERNAN V. UNITED STATES

19-7349 OSORNIO, ANGEL V. SUPREME COURT OF U.S., ET AL.

19-7405 GRANT, FRANCIENNA B. V. WILLIAMS, MARSHALL L.

19-7461 CHEEKS, DERRICK L. V. JOYNER, ALFORD

19-7576 DAVIS, JAMES A. V. ANGLETON SCHOOL DISTRICT, ET AL.

19-7749 BRIDGES, ANDREY L. V. GRAY, WARDEN

19-8148 COLE, BRENT D. V. UNITED STATES

The petitions for rehearing are denied.

THOMAS, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

KANSAS *v.* TIMOTHY C. BOETTGER

KANSAS *v.* RYAN ROBERT JOHNSON

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF KANSAS

No. 19–1051. Decided June 22, 2020

The motion of respondents for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

JUSTICE THOMAS, dissenting from the denial of certiorari.

Kansas asks us to decide whether the First Amendment prohibits States from criminalizing threats to “[c]ommit violence . . . in reckless disregard of the risk of causing . . . fear.” Kan. Stat. Ann. §21–5415(a)(1) (2018). Respondent Timothy Boettger was convicted for telling the son of a police detective that he “was going to end up finding [his] dad in a ditch.” \_\_\_ Kan. \_\_\_, \_\_\_, 450 P. 3d 805, 807 (2019). Respondent Ryan Johnson was separately convicted for telling his mother that he “wish[ed] [she] would die,” that he would “help [her] get there,” and that he was “going to f\*\*\*ing kill [her] a\*\*\*.” \_\_\_ Kan. \_\_\_, \_\_\_, 450 P. 3d 790, 792 (2019). The Kansas Supreme Court overturned both convictions and held that reckless threats are protected by the First Amendment, relying on *Virginia v. Black*, 538 U. S. 343 (2003).

In my view, the Constitution likely permits States to criminalize threats even in the absence of any intent to intimidate. See *Elonis v. United States*, 575 U. S. 723, 760–767 (2015) (dissenting opinion). It appears to follow that threats of violence made in reckless disregard of causing fear may be prohibited. The Kansas Supreme Court reached the opposite conclusion by overreading our decision in *Black*, which did not answer the question presented here.

THOMAS, J., dissenting

Other courts looking to *Black*, however, have upheld similar statutes. *State v. Taupier*, 330 Conn. 149, 193 A. 3d 1 (2018); *Major v. State*, 301 Ga. 147, 800 S. E. 2d 348 (2017). I would grant the petition for certiorari to resolve the split on this important question.

## I

The Fourteenth Amendment provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” §1. As I have previously explained, “[t]he evidence overwhelmingly demonstrates that the privileges and immunities of such citizens included individual rights enumerated in the Constitution.” *McDonald v. Chicago*, 561 U. S. 742, 823 (2010) (opinion concurring in part and concurring in judgment). One of those rights is “the freedom of speech” in the First Amendment. See, e.g., Cong. Globe, 39th Cong., 1st Sess., 2765 (1866) (speech of Sen. Howard).

It does not appear that the ratifiers of the First or Fourteenth Amendments understood the freedom of speech to protect reckless threats. In 1754, Parliament passed a statute making it a crime to “knowingly send any Letter without any Name subscribed thereto, or signed with a fictitious Name . . . threatening to kill or murder any of his Majesty’s Subject or Subjects, or to burn their [property], though no Money or Venison, or other valuable Thing shall be demanded.” 27 Geo. 2, ch. 15. English courts interpreted this statute to require what is known today as general intent—“that is, that the defendant posses[s] knowledge with respect to the *actus reus* of the crime.” *Carter v. United States*, 530 U. S. 255, 268 (2000). As the trial court instructed the jurors in one leading case, “if they were of the opinion that” the “terms of the letter conveyed an actual threat to kill or murder . . . and that the prisoner knew the contents of it, they ought to find him guilty.” *King v. Girdwood*, 1 Leach 142, 143, 168 Eng. Rep. 173 (1776). Only “if



THOMAS, J., dissenting

they thought [the defendant] did not know the contents, or that the words might import any thing less than to kill or murder” should they acquit. *Ibid.* The Court of Crown approved this instruction. *Ibid.*, 168 Eng. Rep., at 174; see also *Rex v. Boucher*, 4 Car. & P. 562, 563, 172 Eng. Rep. 826, 827 (N. P. 1831).

More than a dozen States and Territories enacted “copies” of this statute between the founding and Reconstruction. *Elonis, supra*, at 761 (THOMAS, J., dissenting). New Jersey, for example, made it a crime to “knowingly send or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, . . . threatening to maim, wound, kill or murder any person, or to burn his or her [property], though no money, goods or chattels, or other valuable thing shall be demanded.” 1796 N. J. Laws §57, p. 108; see also Colo. Rev. Stat., ch. 22, §112 (1868); 1864 Mont. Laws p. 205; 1864 Idaho Sess. Laws ch. 8, §116; 1860 Pa. Laws p. 390; 1859 Neb. Laws p. 64; 1850 Cal. Stats. ch. 99, §110; Mo. Rev. Stat. ch. 47, Art. 7, §16 (1845); 1839 Iowa Acts p. 161; 1832 Fla. Laws §34, pp. 68–69; 1827 Ill. Laws p. 145; 1816 Mich. Pub. Acts p. 24; 1816 Ga. Laws p. 178. The founding and Reconstruction generations would have understood these statutes to require a mental state of general intent. *Girdwood* and other English decisions were familiar to American lawyers. See, e.g., 7 N. Dane, A General Abridgement and Digest of American Law 31–32 (1824). And “where English statutes . . . have been adopted into our own legislation; the known and settled construction of those statutes by courts of law, has been considered as silently incorporated into the acts, or has been received with all the weight of authority.” *Pennock v. Dialogue*, 2 Pet. 1, 18 (1829); see also *Elonis, supra*, at 760–763 (THOMAS, J., dissenting). The prevalence of statutes from the founding through Reconstruction that did not require intent to intimidate provides strong evidence of the meaning of the freedom of speech protected by the Fourteenth

THOMAS, J., dissenting

Amendment.

This evidence is reinforced by the fact that many of these States also guaranteed the freedom of speech in their constitutions. See, *e.g.*, Fla. Const., Art. I, §5 (1838); Mich. Const., Art. I, §7 (1835); Mo. Const., Art. XIII, §16 (1820); Ill. Const., Art. VIII, §22 (1818); N. J. Const., Art. I, §5 (1844); Pa. Const., Art. IX, §7 (1790). If statutes criminalizing reckless threats violated the freedom of speech, one would expect these States not to have such laws, but many of them did. At the very least, one would expect state courts to hold such laws unconstitutional, but it appears that none did. Near the end of the 19th century, one court observed that these laws had “never been supposed to be obnoxious to freedom of speech.” *State v. McCabe*, 135 Mo. 450, 459, 37 S. W. 123, 126 (1896).

Finally, none of this Court’s precedents have held that the First Amendment requires States to include intent to intimidate as an element in criminal threat statutes. The Court’s decision in *Watts v. United States*, 394 U. S. 705 (1969) (*per curiam*), “expressly declined to address the mental state required under the First Amendment for a ‘true threat.’” *Elonis*, 575 U. S., at 765 (THOMAS, J., dissenting). The state statute in *Black* required “intent to intimidate,” Va. Code Ann. §18.2–423 (1996), so the Court did not decide whether such intent was required to make the law comport with the First Amendment, *Elonis, supra*, at 765 (THOMAS, J., dissenting).

## II

The Kansas Supreme Court, however, concluded that *Black* prohibited the State from criminalizing reckless threats. In reaching that conclusion, the court created a split with the Supreme Courts of Connecticut and Georgia. We should resolve this conflict and provide clear guidance to the lower courts.

In *Black*, a majority of the Court stated in passing that

THOMAS, J., dissenting

“[t]rue threats’ encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” 538 U. S., at 359. The majority also stated in passing that “[t]he speaker need not actually intend to carry out the threat.” *Id.*, at 359–360. Four Members of the majority added that “[t]he First Amendment does not permit” state law to “ignor[e] all of the contextual factors that are necessary to decide whether [an act] is intended to intimidate.” *Id.*, at 367 (plurality opinion).

State courts of last resort have divided over the meaning of this language. The Kansas Supreme Court held the State’s reckless threat statute unconstitutional, relying on *Black*’s statement that “[i]ntimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or a group of persons with the intent of placing the victim in fear of bodily harm or death.” \_\_\_ Kan., at \_\_\_, 450 P. 3d, at 818 (quoting *Black, supra*, at 360; emphasis deleted). But two other state courts of last resort have read *Black* differently. The Supreme Court of Connecticut found that “nothing in *Black* itself suggests that the [C]ourt intended to overrule the preexisting consensus among the federal circuit courts of appeals that threatening speech may be punished under the [F]irst [A]mendment when a reasonable person would interpret the speech as a serious threat.” *Taupier*, 330 Conn., at 173, 193 A. 3d, at 18–19. And the Supreme Court of Georgia likewise read *Black* to allow States to prohibit threats made with reckless disregard. *Major*, 301 Ga., at 151, 800 S. E. 2d, at 352.

This split regarding the mental state required by the First Amendment for these offenses will only deepen with time. Sixteen States and the District of Columbia filed an *amicus* brief representing that numerous statutes would be subject to challenge under the reasoning of the Supreme

THOMAS, J., dissenting

Court of Kansas. Brief for Virginia et al. as *Amici Curiae* 11–12. If state high courts hold even a fraction of these statutes unconstitutional, we will have no choice but to intervene. I would do so now to address the problem caused by our language in *Black*.

\* \* \*

The decisions in these cases—and the split among state courts of last resort—resulted from the lack of clarity in *Black*. Because the Court should squarely decide whether the Constitution permits States to criminalize threats of violence made in reckless disregard of causing fear, I respectfully dissent from the denial of certiorari.