

No. 13-983

IN THE
Supreme Court of the United States

ANTHONY D. ELONIS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

**BRIEF OF *AMICI CURIAE*
THE NATIONAL NETWORK TO END
DOMESTIC VIOLENCE, ET AL.
IN SUPPORT OF RESPONDENT**

[Additional *Amici* Listed On Inside Cover]

PAULETTE SULLIVAN
MOORE

NATIONAL NETWORK TO
END DOMESTIC VIOLENCE
1400 16th Street, N.W.
Suite 330
Washington, DC 20036
(202) 543-5566

HELEN GEROSTATHOS GUYTON
Counsel of Record

SANDRA J. BADIN
TIMOTHY J. SLATTERY
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, DC 20004
(202) 434-7300
hgguyton@mintz.com

Counsel for Amici

Additional Amici Curiae

Arizona Coalition to End Sexual and Domestic Violence, California Partnership to End Domestic Violence, Colorado Coalition Against Domestic Violence, Delaware Coalition Against Domestic Violence, Georgia Coalition Against Domestic Violence, Guam Coalition Against Sexual Assault & Family Violence, Hawaii State Coalition Against Domestic Violence, Illinois Coalition Against Domestic Violence, Indiana Coalition Against Domestic Violence, Inc., Jane Doe Inc., Kansas Coalition Against Sexual and Domestic Violence, Maine Coalition to End Domestic Violence, Missouri Coalition Against Domestic and Sexual Violence, Montana Coalition Against Domestic and Sexual Violence, Nevada Network Against Domestic Violence, New Hampshire Coalition Against Domestic and Sexual Violence, New Jersey Coalition for Battered Women, New Mexico Coalition Against Domestic Violence, New York State Coalition Against Domestic Violence, Ohio Domestic Violence Network, Pennsylvania Coalition Against Domestic Violence, Rhode Island Coalition Against Domestic Violence, South Carolina Coalition Against Domestic Violence and Sexual Assault, Vermont Network Against Domestic and Sexual Violence, Virginia Sexual and Domestic Violence Action Alliance, Washington State Coalition Against Domestic Violence, West Virginia Coalition Against Domestic Violence, End Domestic Abuse WI: the Wisconsin Coalition Against Domestic Violence, Inc., Wyoming Coalition Against Domestic Violence and Sexual Assault

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INTEREST OF *AMICI CURIAE*¹

Amici include numerous non-profit organizations devoted to remedying domestic violence through legal, legislative, and policy initiatives, as well as organizations providing advocacy and legal and counseling services to survivors of domestic violence. *Amici* collectively have hundreds of years of experience working with survivors of domestic violence, including undertaking extensive efforts to improve the justice system's response to victims of domestic violence. *Amici* also represent clients that are threatened and stalked through the use of technology, including social media.

Amici are deeply concerned that interpreting Section 875(c) to require proof of a subjective intent to threaten will make it more difficult to protect victims of abuse from threats of violence made by their current and former intimate partners, who increasingly use easily accessible but sophisticated technology to track their victims and to threaten them wherever they are, even after they manage to escape their abusers, and from the crippling fear and disruption such threats cause. For these reasons *Amici* are submitting this brief in support of Respondent.

¹ No counsel representing a party authored this brief in whole or in part, and no person or entity other than the *Amici Curiae* or their counsel made a monetary contribution to the preparation or submission of this brief. The parties have lodged blanket letters of consent to the filing of *amicus* briefs in this case. The identities and interests of the individual *Amici* are described in the Appendix to this brief.

SUMMARY OF ARGUMENT

This case is not about political speech. It is not about ideological, religious, or social speech. It is not even about distasteful or offensive speech. This case is just about threatening speech—words that threaten violence.

Threats of violence are hallmarks of intimate partner violence, and are used by perpetrators to gain and maintain power over their victims. Advances in technology give perpetrators of intimate partner violence an ever-increasing array of tools to threaten their victims, and to continue to threaten them even after they manage to escape their abusive partners. Advances in technology also provide perpetrators with ever-more sophisticated tools to track their victims' movements, making their threats that much more potent and credible.

Threats of violence have never enjoyed First Amendment protection, and for good reason: threats cause fear and they force victims to change their lives, sometimes quite drastically. This is particularly true in the context of intimate partner violence. As this Court has long recognized, the government has a compelling interest in protecting people from such harm.

The harm caused by threats of violence does not depend on the subjective intent of the person making the threats; it depends on the content of the threats and on the context in which they are delivered. Just as a cry of “fire” in a crowded theater will cause the same panic whether the speaker intended only a prank or actually intended to cause fear, so too with threats of violence. An objectively threatening message will predictably cause fear and disruption

regardless of whether the speaker actually intended to threaten, or intended only to harass or annoy, or simply had no regard for how its recipient might react.

A standard that requires proof of the speaker's subjective intent—what he “really” intended in his heart of hearts—for conviction of threatening another person would fail to protect victims of intimate partner violence and stalking from the real and predictable harm caused by the threats of violence they face daily.

The objective, reasonable person standard strikes the appropriate balance: it protects victims from threats of violence, and from the fear and disruption such threats cause, while at the same time ensuring that First Amendment boundaries are not transgressed. By focusing the inquiry on whether a reasonable person would understand a given statement as expressing a serious intention to injure another person, the objective standard reaches only true threats, not idle or careless talk, exaggeration, or statements made in jest. It reaches only speech that a reasonable person would, in light of the speech's content and the context in which it was delivered, regard as conveying a threat to injure or kill. As such, it protects victims of intimate partner violence and stalking from the fear and disruption caused by objectively threatening speech, without chilling, much less criminalizing any protected speech.

ARGUMENT

I. TECHNOLOGY HAS GIVEN PERPETRATORS OF DOMESTIC VIOLENCE EVER MORE SOPHISTICATED AND POTENT TOOLS TO THREATEN THEIR VICTIMS.

A. Women Across the United States Are Being Threatened By Perpetrators Who Misuse Social Media and Other Online Technologies; the Consequences are Deeply Damaging.

In every jurisdiction across the country, *Amici* have seen the victims they represent suffer the devastating psychological and economic effects of threats of violence, which their abusers deliver more and more often via social media. These threats are not artistic expression. They are not performance art or fantasy violence. They are a key part of the in-person abuse to which the victims have been subjected, sometimes for years, and from which they have tried desperately to escape. And they have very real and very damaging consequences on the victims' daily lives. Their stories are chilling. Here are just a few:

- In Arizona, one victim moved 9 times in an 18 month period, changed phone numbers and providers multiple times, changed employers 4 times, and moved 2,000 miles away from her abuser after he repeatedly threatened her on social networking sites including Facebook and Twitter, created pages and profiles using pseudonyms designed to harass and intimidate her, and created false Facebook profiles of her

loved ones in a further effort to control her and place her in fear.²

- In Illinois, another victim felt terrorized and fearful after her abuser posted publicly on Facebook pictures of her, her house, and their children from a distance with captions such as, “You think you can hide from me?” and thinly veiled death threats that soon he would have custody of the children because their mother would be “*no more*.” Her abuser also created fake accounts with her name and friended her friends and family using these fake profiles.³
- In Pennsylvania, a woman described being unable to sleep and eat and feeling extremely frightened and anxious upon seeing her abuser’s Facebook page where he publicly announced that he planned to hogtie her, put her in a trunk, pull out her teeth one by one, then pull off her finger and toe nails, and chop her into pieces, but keep her alive long enough to feel all the hurt and pain.⁴
- Elsewhere in Pennsylvania, another woman described feeling harassed, terrorized, and threatened by her abuser after he publicly posted a series of threats

² Statement provided by *Amicus* Arizona Coalition Against Domestic Violence on September 19, 2014.

³ Statement provided by *Amicus* Illinois Coalition Against Domestic Violence on September 19, 2014.

⁴ Statement provided by the Law Offices of Women in Need, Pennsylvania, on September 19, 2014.

against her on Tumblr and Facebook, including the following statement after she obtained a protective order against him: *“You stupid fucking cunt you will never get away with this, I don’t care if I have to wait years, I will always remember what you did to me—no one fucks me over and gets away with it. EVER. And you will NOT be the first.”*⁵

- In Colorado, one victim described checking her ex’s Facebook page daily to see where he was, what he was doing, and what he was posting after he threatened her and used the site to post a fairly large reward to anyone who told him where she was staying. When he posted his intentions to fly to her state, she told the police and an officer followed him from the airport to her residence where he was arrested for violation of the protection order and later, for cyberstalking.⁶
- In New York, after experiencing continued threats on her Facebook page from her ex-boyfriend and his family, one woman described being hyper-vigilant and fearful, particularly after her abuser tagged her baby’s picture on Facebook and made threatening statements.⁷

⁵ Statement provided by A Woman’s Place Legal Assistance Program, Pennsylvania, on September 22, 2014.

⁶ Statement provided by *Amicus* Colorado Coalition Against Domestic Violence on September 19, 2014.

⁷ Statement provided by the NYC Housing and Veterans Initiatives, New York, on September 23, 2014.

- In Guam, victims reported feeling afraid, anxious, scared, and humiliated by threatening Facebook posts made by their abusers, and several victims recently moved to domestic violence shelters because of that fear.⁸

These victims, and thousands more like them, have experienced real-life terror caused by increasingly graphic and public posts to Facebook and other social media sites—terror that is exacerbated precisely because abusers now harness the power of technology, “enabling them to reach their victims’ everyday lives”⁹ at the click of a mouse or the touch of a screen.

B. Threats of Violence Have Always Been an Integral Part of Domestic Violence, and Often Precede Physical Violence.

Domestic violence is an epidemic that claims 7 million new victims every year across all age, race, and socioeconomic groups.¹⁰ At its core, “domestic violence is about gaining control of another person.”¹¹ It is an

⁸ Summaries of recent cases involving social media threats against their clients provided by *Amicus* Guam Coalition Against Sexual Assault & Family Violence on September 18, 2014.

⁹ Cynthia Fraser, et al., *The New Age of Stalking: Technical Implications for Stalking*, *Juv. & Fam. Ct.* 61, no. 4 (Fall 2010), at 1.

¹⁰ *Location Privacy Protection Act of 2014: Hearing on S. 2171 Before the Subcomm. on Privacy, Technology, and the Law of the S. Comm. on the Judiciary*, 113th Cong. (June 4, 2014) (herein, “*Location Privacy Protection Act of 2014 Hearing*”) (testimony of Cindy Southworth, Vice President of Development and Innovation, National Network to End Domestic Violence).

¹¹ Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 *Geo. Wash. L. Rev.* 552, 569 (2007); see Evan Stark, *Coercive Control: How Men*

“ongoing strategy of intimidation, isolation, and control that extends to all areas of a woman’s [or man’s] life, including sexuality; material necessities; relations with families, children, and friends; and work.”¹² The reality of domestic violence may include such conduct as verbal threats directed at the victim herself or at her family, children and friends; stalking behaviors, including cyberstalking, which involves the use of the Internet or other electronic means to stalk or harass an individual; excessive monitoring of a woman’s movements and activities, repeated accusations of infidelity, and various actions aimed at controlling with whom she has contact.¹³

Entrap Women in Personal Life 5 (2007) (hereinafter, “Stark, *Coercive Control*”) (articulating “coercive control” theory of domestic violence, which frames “woman battering . . . as a course of calculated, malevolent conduct deployed almost exclusively by men to dominate individual women by interweaving repeated physical abuse with three equally important tactics: intimidation, isolation, and control”).

¹² Evan Stark, *Re-Representing Woman Battering: From Battered Woman’s Syndrome to Coercive Control*, 58 *Alb. L. Rev.* 973, 986 (1995); see also *Domestic Violence*, U.S. Dep’t of Justice, Office on Violence Against Women, <http://www.ovw.usdoj.gov/domviolence.htm> (last visited Oct. 1, 2014) (hereinafter, “USDOJ Office on Violence Against Women”) (defining “domestic violence” as “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner”).

¹³ See Anne L. Ganley, *Understanding Domestic Violence*, in *Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers* 14, 18-24 (2d ed. 1996), available at http://www.futureswithoutviolence.org/userfiles/file/HealthCare/improving_healthcare_manual_1.pdf (last visited Oct. 1, 2014); see also Michele C. Black et al., Nat’l Ctr. for Injury Prevention and Control, Ctrs. for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report* 37 (Nov. 2011) (measuring broad

Threats and stalking behaviors are not just terrifying in themselves; they are also frightening because they are reliable predictors of physical violence. The incidence of threats is strongly correlated with the likelihood of physical violence.¹⁴ Indeed, direct threats of violence lead to significant physical violence for more than half of victims.¹⁵ Researchers have also found that “leakage”—a perpetrator’s communications with third parties expressing an intent to harm the victim—is a leading indicator of escalation from threats to physical violence.^{16, 17}

range of conduct in national survey on prevalence of intimate partner violence).

¹⁴ Lorraine Sheridan & Karl Roberts, *Key Questions to Consider in Stalking Cases*, Behav. Sci. Law 29:255-270 (2011) (finding that threats of physical assault are a reliable and statistically significant predictor of serious domestic violence, “specific written or verbal threats . . . should be taken particularly seriously”); Kris Mohandie et al., *The RECON Typology of Stalking: Reliability and Validity Based Upon a Large Sample of North American Stalkers*, J. Forensic Sci., Jan. 2006, Vol. 51, No. 1 (stating that threats of physical violence are strong indicators of forthcoming physical violence); Mary P. Brewster, *Stalking by Former Intimates: Verbal Threats and Other Predictors of Physical Violence*, Violence and Victims, Vol. 15, No. 1 (2000) (“[W]hen verbal threats occurred, the likelihood of violence occurring significantly increased.” and “Threats of violence were significantly correlated with actual physical violence in every model.”).

¹⁵ See Brewster, *supra* note 14.

¹⁶ Mario J. Scalora, *Electronic Threats and Harassment* (2014) in *International Handbook of Threat Assessment*, Chapter 13 (J. Reid Meloy & Jens Hoffman, eds.) (2014).

¹⁷ In fact, one in three women will be assaulted by an intimate partner in her lifetime—that is over 50 million women alive in the United States today. See Brewster, *supra* note 14. One in 12 women will be stalked by an intimate partner in her lifetime. See

It is not surprising, then, that nearly half of intimate partner stalking victims report that their worst fear is “not knowing what would happen next”—a crippling terror that damages a victim’s ability to sleep, eat, and work, let alone thrive.¹⁸ These women change jobs, uproot themselves, avoid contact with family and friends who know their abusers, and

TK Logan & Robert Walker, *Toward a Deeper Understanding of the Harms Caused by Partner Stalking*, Violence and Victims, Vol. 25, No. 4 (2010). Among stalking victims, about 63% will face direct threats from their stalker and almost 30% will suffer some form of physical violence. See Sheridan & Roberts, *supra* note 14 at 29:255-270 (29.3% of stalking victims are physically assaulted, and of those assaulted, 29.6% required hospital or emergency room treatment for their resulting injuries); Karl Roberts, *Women’s Experience of Violence During Stalking by Former Romantic Partners: Factors Predictive of Stalking Violence*, Violence Against Women, Vol. 11, No. 89 (2005). Women stalked by former husbands are at an even higher risk: 81% risk have been physically assaulted and 31% have been sexually assaulted. See Patricia Tjaden and Nancy Thoennes, *Stalking in America: Findings From the National Violence Against Women Survey*, U.S. Department of Justice, National Institute of Justice and Centers for Disease Control and Prevention (Apr. 1998), available at <https://www.ncjrs.gov/pdffiles/169592.pdf> (last visited Oct. 1, 2014). And 76% of all women killed by intimate partners had been previously stalked by that partner. See Andrew King-Ries, *Teens, Technology, and Cyberstalking: The Domestic Violence Wave of the Future?*, 20 Tex. J. Women & L. 131 (2011). Some reports suggest that this number could be as high as 90 percent. See, e.g., Beth Bjerregaard, *An Empirical Study of Stalking Victimization*, Violence and Victims, Vol. 15, No. 4 (2000).

¹⁸ Katrina Baum et al., *Stalking Victimization in the United States*, Bureau of Justice Statistics Special Report, National Crime Victimization Survey (Jan. 2009); see also Shannan Catalano, *Stalking Victims in the United States—Revised*, Bureau of Justice Statistics Special Report, National Crime Victimization Survey (Sept. 2012) (updating 2009 report).

isolate themselves in response to the invasive and threatening actions of their abusers. They also suffer from high global stress scores, which measure the degree to which a person appraises situations in her life as stressful, high rates of post-traumatic stress disorder, continuing fear of ongoing harassment, physical injury, and public humiliation,¹⁹ and high rates of anxiety and depression.²⁰

The impact is not only psychological and emotional, but also economic. More than half of victims reported losing at least one week of work and about 130,000 reported being fired or asked to leave their positions because stalking had affected their work.²¹ From the perspective of the national economy, the lost productivity is enormous; from the perspective of the individual victim who is desperately trying to escape her abuser, the lost financial stability is crippling.

C. Current Technologies Give Abusers Sophisticated Tools to Threaten Violence in Ever More Potent and Far-Reaching Ways.

The Internet has given stalkers and abusers “more tools and a wider audience, which makes it more

¹⁹ This includes incidents where the abuser creates mock public social media profiles of the victim and posts inappropriate or lewd comments or pictures, typically sexual in nature, and poses as the victim on social media, disrupting the victim’s communications and relationships with family and friends and further isolating the victim.

²⁰ See Logan & Walker, *supra* note 17.

²¹ *Location Privacy Protection Act of 2014 Hearing, supra* note 10 (testimony of Cindy Southworth, Vice President of Development and Innovation, National Network to End Domestic Violence).

dangerous for victims.”²² In particular, these perpetrators are increasingly posting to social media with descriptions of what they intend to do to their victims and disclosures of personal, damaging, or humiliating information or pictures of them.²³

This is not a surprising development. A new generation is growing up on digital communication. Facebook boasts 1.3 billion users;²⁴ Gmail, one of the web’s most popular e-mail services, has over 425 million active users;²⁵ and the number of active mobile phones may exceed the world’s population by the end of 2014.²⁶ Young women ages 18-24 are experiencing electronic stalking through e-mail, text messaging, and social media at levels well beyond any other

²² Fraser, *supra* note 9.

²³ *Id.* See also King-Ries, *supra* note 17 (“An entire generation is normalizing ‘boundarylessness’ and incorporating technology use into their relationships. . . . Additionally, a greater use of technology in engaging in intimate relationships means greater risk of being cyberstalked as adults.”).

²⁴ Facebook, Inc., Quarterly Report (Form 10-Q), at 21 (July 24, 2014).

²⁵ Dante D’Orazio, *Gmail Now Has 425 Million Total Users*, The Verge, June 28, 2012, available at <http://www.theverge.com/2012/6/28/3123643/gmail-425-million-total-users> (last visited Oct. 1, 2014).

²⁶ *World to Have More Cell Phone Accounts Than People by 2014*, Silicon India, Jan. 2, 2013, available at http://www.siliconindia.com/magazine_articles/World_to_have_more_cell_phone_accounts_than_people_by_2014-DASD767476836.html (last visited Oct. 1, 2014). See also International Telecommunication Union, *The World in 2014: ICT Facts and Figures* (May 5, 2014), available at <http://www.itu.int/en/ITU/Statistics/Documents/facts/ICTFactsFigures2014-e.pdf>.

demographic group.²⁷ The exponential growth of technology and its impact on the way we communicate will only increase the incidence of “high-tech” stalking as more digitally-native generations mature.²⁸

Social media have become a dominant feature of the new technological landscape. Social networks are a way to stay in touch and share life’s moments with others. Facebook, for instance, allows its users to connect, communicate, and share media with one another. Facebook users can become “friends” with other users, a relationship that grants additional access to each other’s profiles, photos, and postings. When posting a message, link, video, or photo to Facebook, a user has the option to limit who can see the post by only sharing it with friends or a select group of friends, but the Facebook default is to share that post with all 1.3 billion active users. Logging on to Facebook brings the user to her News Feed, a constantly-updating collection of stories chronicling friends’ activities, such as pictures of their vacation, thoughts on the most recent political scandal, or a map showing where some friends had dinner last night.

²⁷ *Location Privacy Protection Act of 2014 Hearing, supra* note 10 (testimony of Bea Hanson, Principal Deputy Director, Office on Violence Against Women, Department of Justice). Youth violence is also increasingly occurring on social media with about 20% of youth in 2010 reportedly experiencing cyberbullying. *See, e.g.,* Desmond Upton Patton et al., *Social Media as a Vector for Youth Violence: A Review of the Literature*, 35 *Computers in Hum. Behav.* 548-553 (2014). Patton et al. also note that adolescents who made online threats of school massacres were more likely to have made preparations to carry out those acts than adolescents who made in-person threats.

²⁸ *Location Privacy Protection Act of 2014 Hearing, supra* note 10 (testimony of Bea Hanson, Principal Deputy Director, Office on Violence Against Women, Department of Justice).

Facebook posts that are not directly sent to a victim will often find their target. If a friend of the victim comments on the abuser's post, that comment (and, thus, the post) is likely to show up on the victim's News Feed. A victim, then, could see her abuser's posts not just directly but also through a mutual friend's comments or activity.²⁹ And, if the post is public, a victim can access it, as can her friends, coworkers and family, and any other Facebook user.

In a survey of victim service agencies conducted by NNEDV in 2012, almost ninety percent of the 759 agencies reported that victims had been intimidated or threatened via technology.³⁰ Threatening text messages were used more than half of the time, Facebook and social media were used at least one-third of the time, and e-mail was used a quarter of the time.³¹ The immediacy of new communication

²⁹ Facebook Help Center, Sharing, *available at* <https://www.facebook.com/help/www/418076994900119> (last visited September 29, 2014).

³⁰ Fifty-five of the fifty-six states and several U.S. territories (American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands) participated in the survey. The agencies surveyed included Dual Domestic Violence/Sexual Assault Programs: 350 (46%), Domestic Violence Programs: 328 (43%), Sexual Assault Programs: 27 (4%), Programs that help victims of all crimes, including DV/SA/ Trafficking/Stalking: 22 (3%), and Other (including government, LE, attorney, prosecutor offices, housing): 32 (4%). "Technology Abuse in Intimate Partner Violence," NNEDV Survey (2012), *available at* <http://techsafety.org/blog/2014/4/29/new-survey-technology-abuse-experiences-of-survivors-and-victim-services> (last visited Oct. 1, 2014).

³¹ *Id.* These percentages add up to more than 100% because many victims were threatened via multiple forms of technology. Half of the agencies also reported that victims requested assistance with safety on social media, almost seventy percent reported that perpetrators had posted pictures of the victim

methods has reduced the cost and effort required for abusers to escalate their actions from internal thoughts to verbal threats and physical assaults. Emotional impulses that in the past were often tempered by distance and time can now immediately be turned into easily-communicated threats.

Contemporary technology also makes stalking easier. Once, stalking required an almost obsessive effort from perpetrators to call, drive by, follow, and track their victims incessantly. Today, there are a variety of applications that allow stalkers to track their victims' movements.³² Increasingly, perpetrators are turning to mobile applications and social media sites to infiltrate every aspect of their victims' lives.

online or on social media without consent, and almost three quarters reported abusers had created mock social media profiles impersonating the victim, or had accessed the victim's social media account or e-mail. *Id.*

³² *Location Privacy Protection Act of 2014 Hearing, supra* note 10 (opening statement of Chairman Franken) (describing mobile applications designed for spying on spouses, including FlexiSPY and quoting its marketing materials: "FlexiSPY gives you total control of your partner's phone without them knowing it . . . See exactly where they are, or were, at any given date and time."); Fraser, *supra* note 9. See also Department of Justice, *Pakistani Man Indicted for Selling 'StealthGenie' Spyware App*, available at <http://www.justice.gov/opa/pr/pakistani-man-indicted-selling-stealthgenie-spyware-app> (last visited Oct. 2, 2014) (describing "StealthGenie" mobile application that allows users to spy on and to track their intimate partners without their partners' knowledge or consent); Craig Timberg and Matt Zapposky, *Maker of StealthGenie, an app used for spying, is indicted in Virginia*, The Washington Post, Sept. 29, 2014, available at http://www.washingtonpost.com/business/technology/make-of-app-used-for-spying-indicted-in-virginia/2014/09/29/816b45b8-4805-11e4-a046-120a8a855cca_story.html (last visited Oct. 2, 2014) (same).

With a few taps, an abuser can listen in on all calls, read all text messages, track location in real-time, and even remotely activate the mobile device's camera—all from the couch, the office, or while waiting for the morning train. Using this information, abusers are tailoring their threats to include specific details to signal they know where their victims are and what they are doing at all times, and even arriving at their victims' locations unannounced. These types of advanced threats instill in victims a deep and abiding fear of what their abusers will do next and prevent them from living normal, healthy lives.³³

II. REQUIRING PROOF OF SUBJECTIVE INTENT WILL UNDERMINE THE CENTRAL PURPOSE OF PROHIBITING THREATS OF VIOLENCE.

It is well settled that the government may proscribe true threats of violence without regard to whether the speaker actually intends to carry them out. *Virginia v. Black*, 538 U.S. 343, 359-60 (2003). This is because threats of violence are, in themselves, harmful—they cause fear and all its attendant damaging and disruptive psychological, emotional, and physical effects. And, as this Court reaffirmed in *Black*, the government has a compelling interest in protecting people from such fear and disruption, and not just from the possibility that the threatened violence will occur. *Id.* at 360 (citing *R.A.V. v. City of St. Paul*, 505 U.S., 377, 388 (1992)).

For the same reason—because threats of violence cause fear and disruption regardless of the speaker's actual motivation in making them—proof of subjective intent should not be required for conviction of

³³ Fraser, *supra* note 9.

threatening under Section 875(c). Particularly with respect to intimate partner violence and stalking, proscribing only those statements in which the speaker subjectively intended to convey a threat will be “dangerously underinclusive” with respect to the principal rationale of protecting individuals from the harm caused by threats of violence, and will undermine the central purpose of prohibiting threats in the first instance. *United States v. Mabie*, 663 F.3d 322, 333 (8th Cir. 2011) (quoting *New York v. Cain*, 418 F. Supp. 2d 457, 479 (S.D.N.Y. 2006)); cf. *United States v. White*, 2010 U.S. Dist. LEXIS 9603, at *27 (W.D. Va. Feb. 4, 2010) (“If the prohibition on true threats is meant to protect listeners from the ‘fear of violence’ and the corresponding ‘disruption that fear engenders,’ then the subjective intent of the speaker cannot be of paramount importance.”) (quoting *Black*, 538 U.S. at 360), *aff’d*, 670 F.3d 498 (4th Cir. 2012).

A. The Harm Caused By Threats of Violence Depends on Their Content And The Context In Which They are Made, Not On The Speaker’s Subjective Intent.

Like fighting words, true threats of violence are words that “by their very utterance inflict injury.” *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). They do so simply by virtue of their threatening character, *i.e.*, because the expressions convey an intention to cause bodily harm or death, thereby naturally creating in their recipients a sense of fear and disturbing their sense of security. *United States v. Manning*, 923 F.2d 83, 86 (8th Cir. 1991) (“The threat alone is disruptive of the recipient’s sense of personal safety and well-being and is the gravamen of the offense.”).

The fear and disruption caused by threats of violence do not derive from the speaker's private motivation—whether he actually *intended* to convey a threat, or intended just to have a bit of fun or to vent his frustration. A statement that a reasonable person would interpret as a threat to hurt or to kill causes fear and disruption regardless of the speaker's motivation. *Cf. United States v. Castagana*, 604 F.3d 1160, 1164 (9th Cir. 2010) (“Even if a perpetrator does not intend that his false information be believed as indicative of terrorist activity, the false information will nevertheless drain substantial resources and cause mental anguish when it is objectively credible.”). This is just a function of the way language works. “[W]ords or phrases take their character as threatening or harmless from the context in which they are used, measured by the common experience of the society in which they are published,” *United States v. Prochaska*, 222 F.2d 1, 2 (7th Cir. 1955), and not from the speaker's personal reasons for using them in the way that he did.

Of course, this is not to say that the speaker's intent is divorced from his audience's interpretation of what he meant to convey, for “it will usually be the case that a person intends the ordinary meaning and natural consequences of the words he uses.” Frederick Schauer, *Intentions, Conventions, and The First Amendment: The Case of Cross-Burning*, 2003 Sup. Ct. Rev. 197, 220. Were it otherwise, communication would be very difficult, if not impossible. But a speaker's private reasons for expressing himself in the way that he did—whether he really meant to convey a threat or instead had other undisclosed reasons for making the statement in question—are never directly accessible to his audience. They can only be inferred from the content of his words and the context in which

he uttered them, interpreted in light of his audience's shared understandings and expectations of what particular words mean when they are used in a particular way, in a particular context.

Contextual factors affecting how particular words are likely to be understood, and whether a reasonable person would interpret them as threatening include the identity of the speaker and that of his listener(s), the nature of the relationship between them, and where and how the communication is made. Statements made in the context of a relationship marked by a history of abuse, for example, are inevitably interpreted in light of that history and against the backdrop of an ever-present awareness of the correlation between threats of violence and the likelihood the threats will one day be carried out.³⁴

Take, for example, Petitioner's threats against his estranged wife. One of the statements that formed the basis for his conviction of threatening his wife read in relevant part:

Fold up your PFA [protection-from-abuse order]
and put it in your pocket
is it thick enough to stop a bullet?

Pet. Br. at 12. The objectively threatening character of this statement derives in large part from the historical context in which it was made: only days before Petitioner posted the statement, a state court awarded his wife a protection-from-abuse order in part

³⁴ See note 14, *supra*. And, indeed, victims are often the best assessors of the risk that the threats of violence they face will be carried out. See Sheridan & Roberts, *supra* note 14.

because of other threatening statements Petitioner had posted to the same Facebook page (as well as other abuse his wife reported). J.A. 148-51. Whatever Petitioner says were his private reasons for making the statement, it scared his wife. J.A. 156 (“It made me extremely afraid for my life. I mean I got the protection order to protect myself and my children and he was still making the threats for everyone to see . . .”). Her fear was reasonable. In light of the parties’ history and more recent events, Petitioner’s statement is one that a reasonable person would regard as conveying an intent to injure or kill.

Similarly, the objectively threatening character of Petitioner’s statements describing the best place from which to fire a mortar launcher at his wife’s house derives at least in part from Petitioner’s inclusion of a diagram accurately depicting the house in which his wife was living since she had left him a few months earlier and the surrounding area. J.A. 153-54.

Under the circumstances, these statements reasonably caused Petitioner’s wife to fear for her life. J.A. 153 (testifying that she felt like she was being stalked and that she was afraid for her and her children’s lives). That Petitioner later claimed he intended only to vent his frustration is of no moment. The harm was done—and predictably so—when he posted the objectively threatening statements online. The government should be permitted to prevent such harm, and to punish those who inflict it.

B. To Prevent the Real Harm Caused by Threats of Violence, the Focus of the Inquiry Must be on the Objectively Threatening Character of the Message.

The recipient of a threatening message does not—and indeed cannot—know the private motivations the speaker had for sending it. She can only react to the message based on its objective character. If it is objectively threatening, she will predictably fear for her life and will likely take various precautions in order to protect herself. The harm is created by the threat itself.

Because threats of violence cause real harm regardless of the speaker's private intentions, the focus of the inquiry must be on whether, taking all the relevant facts and circumstances into account, the statement is objectively threatening—that is, whether, in light of the statement's content and the context in which it was transmitted, a reasonable person would have foreseen that his audience would regard it as threatening.

The objective, reasonable person standard is fitted to the task of protecting people from the harms caused by threats of violence—the fear of violence, the disruption it engenders, and the risk that the threatened violence will occur. *Black*, 538 U.S. at 360. It allows the government to prosecute abusers and stalkers who make objectively threatening statements that genuinely and reasonably cause fear and all the disruption such fear engenders, without also having the difficult task of proving beyond a reasonable doubt that the perpetrators made the statements with the specific intent to threaten and not, as they often later claim, for some other purpose—*e.g.*, to vent their frustration, to make a joke, to express themselves

artistically, or to harass and annoy, but not to threaten.

Requiring the government to prove beyond a reasonable doubt that the speaker subjectively intended to convey a threat (and did not have some other private purpose) is not adequate to the task of protecting people from the harms threats of violence cause. Such a rule would leave too many victims of threats without any meaningful protection. It would also effectively decriminalize conduct that predictably and reasonably creates a genuine fear of violence with all its attendant psychological, emotional, economic, and social disruptions.

Of course, even under the objective, reasonable person test, the government must still prove the objectively threatening character of the statement beyond a reasonable doubt. In order to qualify as threats under the objective test, statements have to be serious expressions of an intention to inflict bodily harm on another. *See, e.g., United States v. Elonis*, 730 F.3d 321, 332 (3d Cir. 2013) (a threat is a statement foreseeably interpreted as “a serious expression of an intention to inflict bodily harm.”); *United States v. Jeffries*, 692 F.3d 473, 479 (6th Cir. 2012) (a threat is a statement a reasonable person would take “as a serious expression of an intention to inflict bodily harm”), *cert. denied*, 134 S. Ct. 59 (2013); *United States v. White*, 670 F.3d 498, 509 (4th Cir. 2012) (defining “threat” in light of this Court’s discussion in *Black* as a “serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals”); *United States v. Martinez*, 736 F.3d 981, 983 (11th Cir. 2013) (a threat is a statement that “would be construed by a reasonable person as a serious expression of an intent to inflict

bodily harm or death.”); *Mabie*, 663 F.3d at 330 (a threat is a “statement that a reasonable recipient would have interpreted as a serious expression of an intent to harm or cause injury to another”) (internal quotation marks omitted); *United States v. Stewart*, 411 F.3d 825, 828 (7th Cir. 2005) (a threat is a statement foreseeably interpreted “as a serious expression of an intention to inflict bodily harm upon or to take the life of another individual.”) (internal quotation marks and brackets omitted).

Under this definition, two important criteria must be met. First, the expression must be serious. Jokes do not count. Neither does political hyperbole. *Watts v. United States*, 394 U.S. 705, 708 (1969) (per curiam).³⁵

³⁵ *Watts* involved statements made against the President in the context of a political rally against a war—the kind of speech implicating our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” 394 U.S. at 708 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). Even though the case dealt with core political speech, the *Watts* Court did not require proof of subjective intent to threaten as an element of the offense. Indeed, it made no reference to the defendant’s subjective intent at all. Instead, the Court focused on the meaning of the words used in the context in which they were delivered, concluding that, under the circumstances, Watts’s statement could only be characterized as political hyperbole: “Taken in context, and regarding the expressly conditional nature of the statement and the reaction of the listeners, we do not see how it could be interpreted otherwise.” *Id.*

Second, the serious expression in question must convey an intention to inflict injury to another.³⁶ Unlike the political hyperbole at issue in *Watts*, serious expressions of an intention to inflict injury do not implicate that most “profound national commitment” to “uninhibited, robust, and wide-open’ debate” on public issues at the heart of the First Amendment. 394 U.S. at 708.

Proscribing threats of violence against private persons under the objective test does not raise the specter of illegitimate government interference with the deliberative process at the foundation of our democracy, nor does it implicate any of the other concerns animating the Court’s First Amendment jurisprudence. We are far from the political arena here. The speech at issue in this case involves no social or political criticism; it constitutes no expression of shared ideology or of social solidarity, or of a commitment to any social cause or group. And the language at issue here is proscribable not because it is “vituperative” or “caustic” or “sharp,” (*Watts*, 394 U.S. at 708)—indeed, it may be none of those things—but because it threatens violence and scares people where

³⁶ Relying on Judge Sutton’s dubitante opinion in *United States v. Jeffries*, Petitioner argues that proof of subjective intent is required as a matter of statutory construction because the term “threat” at the heart of Section 875(c) has always meant “an expression of an intention to injury,” and such expression, in turn, connotes a subjective intent to threaten. Pet. Br. at 23 (citing *Jeffries*, 692 F.3d at 483 (Sutton, J., concurring dubitante)). Not so. A speaker’s expressions are not the same thing as, and should not be confused with, his private motivations for speaking. If a person’s intentions were always the same as (or at least always reliably reflected in) their expressions, it would not be possible to lie.

they live, where they work, and where they sleep, and it does so objectively and predictably.

CONCLUSION

For the foregoing reasons, this Court should hold that proof of subjective intent to threaten is not required for conviction of threatening. Accordingly, the judgment below should be affirmed.

Respectfully submitted,

PAULETTE SULLIVAN
MOORE
NATIONAL NETWORK TO
END DOMESTIC VIOLENCE
1400 16th Street, N.W.
Suite 330
Washington, DC 20036
(202) 543-5566

HELEN GEROSTATHOS GUYTON
Counsel of Record
SANDRA J. BADIN
TIMOTHY J. SLATTERY
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, DC 20004
(202) 434-7300
hgguyton@mintz.com

Counsel for Amici

APPENDIX

APPENDIX

**IDENTITIES AND INTERESTS OF
*AMICI CURIAE***

The following organizations respectfully submit this brief as *Amici Curiae* in support of Respondent:

The **National Network to End Domestic Violence (NNEDV)** is a non-profit membership and advocacy organization dedicated to ending domestic violence through legal, legislative, and policy initiatives. The leading voice for domestic violence victims and their advocates, NNEDV comprises a network of 56 state and territorial coalitions against domestic violence representing over 2,000 local organizations that provide shelter, advocacy, and counseling and legal services to victims and survivors of domestic violence and their families.

Working with federal, state, and local policy makers and domestic violence advocates throughout the nation, NNEDV helps identify and promote policies and best practices to advance victim safety. NNEDV was instrumental in promoting Congressional enactment and eventual implementation of the Violence Against Women Act of 1994 and subsequent reauthorizations. NNEDV's broad expertise in the nature and dynamics of domestic violence and its impact on victims, as well as its work on the Safety Net technology project, which focuses on the intersection of technology and intimate partner abuse and stalking and how technology impacts the safety, privacy, accessibility, and civil rights of victims, inform its position on the criminal use of technology as a means of perpetrating domestic violence, sexual assault, and stalking.

NNEDV is deeply concerned that interpreting Section § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse from threats of violence by their current and former intimate partners—who often use easily accessible but sophisticated technology to track their victims and threaten them from afar—and from the crippling fear and disruption such threats cause.

The **Arizona Coalition to End Sexual and Domestic Violence (ACESDV)** was formed in 1980 as the Arizona Coalition Against Domestic Violence to unite concerned citizens and professionals to increase public awareness about the issue of domestic violence, enhance the safety of and services for victims of domestic violence, and reduce the incidents of domestic violence in Arizona families. In 2013, the organization expanded its focus and now also addresses the issue of sexual violence in our communities, state and world. Our mission is to lead, to advocate, to educate, to collaborate, to prevent and end sexual and domestic violence in Arizona.

ACESDV is based in Arizona and has significant, statewide presence. We are a non-governmental, non-profit membership organization that works with more than 170 formal members and allies to carry out our mission and objectives. Our objectives are to:

- promote quality services for victims that focus on safety and self-determination;
- advocate and educate on behalf of survivors, their children, and their advocates;

- facilitate partnerships among victim advocates, allied organizations, and state agencies;
- mobilize a statewide voice on sexual and/or domestic violence;
- connect local, state and national work; and
- engage in prevention and social change efforts that challenge the social, economic and political conditions that sustain a culture of violence in which domestic and sexual violence is condoned.

ACESDV is deeply concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will incentivize abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

The **California Partnership to End Domestic Violence (the Partnership)** is the federally recognized State Domestic Violence Coalition for California. Like other Domestic Violence Coalitions throughout the U.S. States and territories, the Partnership is rooted in the battered women's movement and the values that define this movement, including working toward social justice, self-determination and ending the oppression of all persons. The Partnership has a 30-year history of providing statewide leadership, and has successfully passed over 100 pieces of legislation to ensure safety and justice for domestic violence survivors and their children. We believe that by sharing expertise,

advocates and legislators can end domestic violence. Every day we inspire, inform and connect all of those concerned with this issue, because together we're stronger.

The Partnership's mission and work is focused on protecting the safety of domestic violence victims and their children and holding batterers accountable. Protection orders are important tools intended to protect survivors physically and emotionally. Violations committed over social media threaten survivor safety and should be seriously considered. By requiring proof of subjective intent to threaten, there is an incentive for abusers to use technology, including social media to further victimize survivors. As technology and social media becomes more prevalent and pervasive in our daily lives, it is imperative that our judicial system continues to provide safety for victims by upholding protection orders.

The **Colorado Coalition Against Domestic Violence (CCADV)** is a non-profit statewide membership organization whose mission is to inspire Colorado to end domestic violence. CCADV was established in 1978 by twelve domestic violence service providers in order to offer a strong statewide voice for survivors of domestic violence, their families, and advocates and currently represents over 60 domestic violence shelters and programs, allied organizations and individuals. Through training, technical assistance and public policy advocacy, CCADV provides comprehensive supports that enhance member's ability to effectively assist diverse survivors of domestic violence (over 25,000 individuals each year).

CCADV recognizes the critical role that the criminal justice system plays in holding domestic violence

offenders accountable and increasing victim safety. CCADV's Public Policy Program has a long history of advocating for and supporting laws and policies that affect survivors of domestic violence, their dependents, and domestic violence offenders.

CCADV shares NNEDV's concerns regarding the Petitioner's interpretation of 18 USC § 875(c). The statements made by the Petitioner were undoubtedly viewed by the victim as a credible threat on her life. Distinctions made between the seriousness and response accorded a threat being made through social media or any other online platform and other forms of communication are arbitrary. Fundamental to their intent, protection orders must hold restrained parties accountable for threats made against protected parties' life and safety. It is imperative that the integrity of provisions to not threaten or harass within protection orders be upheld regardless of the method of communication used lest victims lose faith in these vital legal tools and courts give license to domestic abusers to continue terrorizing their victims.

The **Delaware Coalition Against Domestic Violence** is a statewide, non-profit organization of domestic violence (DV) programs, allied organizations and individuals working to eliminate DV through public education, training, prevention and advocacy efforts. DCADV works with criminal justice, health care, business and social service systems and communities throughout Delaware to improve services for victims of DV.

The Delaware Coalition also partners with local, state and national organizations on a variety of initiatives designed to foster a broad and comprehensive understanding of the impact of domestic violence on individuals, communities and

societies. These initiatives range include supporting vital federal legislation such as the Violence Against Women Act, engaging in primary prevention efforts using a public health approach and joining in a national collaborative designed to foster use of a trauma informed approach in systems and services.

DCADV is deeply concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will incentivize abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

The Georgia Coalition Against Domestic Violence (GCADV) is a not-for-profit organization incorporated in the state of Georgia representing 52 local-level domestic violence shelters and non-residential programs throughout the state. Tracing our roots back to 1980, GCADV brings together member agencies, allied organizations and supportive individuals who are committed to ending domestic violence. Guided by the voices of survivors, we work to create social change by addressing the root causes of this violence. GCADV leads advocacy efforts for responsive public policy and fosters quality, comprehensive prevention and intervention services throughout the state. As a part of its public policy and systems advocacy efforts, GCADV works with law enforcement, advocates and prosecutors to ensure that victims can call upon our criminal justice system when they are threatened and or stalked by abusers. Interpreting 18 USC § 875(c) in the manner suggested

by Petitioner would expose victims to unending threats without any criminal justice recourse.

The **Guam Coalition Against Sexual Assault & Family Violence (GCASAFV)** is a non-profit organization comprised of member agencies representing public/private service providers, community partners, and other government allies. GCASAFV focuses on addressing sexual assault and family violence on Guam at a community level; providing education, outreach and training; identifying and addressing gaps in services to victims of sexual assault and family violence; and assisting in building the capacity of community organizations and networks to meet Guam's sexual assault and family violence needs.

GCASAFV is deeply concerned that abusers will be given license to threaten victims, without recourse, if the subjective test is adopted rather than the appropriate objective standard which requires the prosecution to only provide and prove all available and credible evidence including the content of Petitioner's communications and the context in which those communications were transmitted. To adopt Petitioner's argument would embolden abusers and yank jurisprudential protections from under victims' very feet.

The **Hawaii State Coalition Against Domestic Violence (HSCADV)** is a not-for-profit organization and a statewide partnership of domestic violence programs and shelters, incorporated in the state of Hawaii in 1980. HSCADV is comprised of the director of spouse abuse shelters and psycho-educational counseling programs for victims and perpetrators of spouse abuse on each of the islands, as well as the Victim Witness Assistance Division of the Honolulu

Prosecutor's Office, Legal Aid Society, Hawaii Immigrant Justice Center, and the Domestic Violence Action Center. HSCADV is troubled that the lives of victims of domestic violence will forever be at the crippling mercy of abusers' threats if the Court adopts Petitioner's interpretation of 18 USC § 875(c).

The **Illinois Coalition Against Domestic Violence (ICADV)** is a membership organization consisting of 53 domestic violence programs throughout the state of Illinois. The ICADV provides technical assistance, training, and advocacy to and on behalf of our programs and the victims they serve. The general purpose of the Illinois Coalition Against Domestic Violence is: to eliminate violence against women and their children; to promote the eradication of domestic violence across the state of Illinois; to ensure the safety of survivors, their access to services, and their freedom of choice; to hold abusers accountable for the violence they perpetrate; and to encourage the development of victim-sensitive laws, policies and procedures across all systems that impact survivors of domestic violence.

ICADV is deeply concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will incentivize abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

The **Indiana Coalition Against Domestic Violence, Inc. (ICADV)** is a non-profit organization incorporated in 1980 (www.icadvinc.org) to end domestic violence. The Indiana Coalition Against

Domestic Violence is a statewide alliance of domestic violence and sexual assault programs law enforcement, prosecutors, criminal justice agencies, faith-based organizations, and concerned individuals. We provide technical assistance, resources and training to those who serve victims of domestic violence and sexual assault; and advocate for social and systems change through public policy, public awareness, and prevention.

The ICADV specifically provides training and technical assistance to Indiana shelters, advocates and criminal justice providers around the identification, documentation and intervention of technology-facilitated intimate partner violence. Our work focuses on understanding the different ways in which technology, specifically social media and other forms of electronic communication, is used to stalk, harass, and further control survivors of intimate partner violence. This work is done in partnership with the National Network to End Domestic Violence's Safety Net project which focuses on the intersection of technology and intimate partner abuse and how technology impacts the safety, privacy, accessibility, and civil rights of victims, inform its position on the criminal use of technology as a means of perpetrating domestic violence and other state coalitions.

ICADV is concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will incentivize abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

Jane Doe Inc. (JDI), the Massachusetts Coalition Against Sexual Assault and Domestic Violence, is a statewide organization of fifty-seven programs that provide direct services to victims and survivors of sexual and domestic violence. Guided by the voices of survivors, JDI brings together organizations and people committed to ending domestic violence and sexual assault, creating social change by addressing the root causes of this violence, and promoting justice, safety and healing for survivors. JDI advocates for responsible public policy, promotes collaboration, raises public awareness, and supports its member organizations to provide comprehensive prevention and intervention services.

JDI is deeply concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will incentivize abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

The **Kansas Coalition Against Sexual and Domestic Violence (KCSADV)** is a statewide non-profit organization aimed at eliminating and preventing sexual and domestic violence. KCSADV's membership is the 29 sexual and domestic violence programs serving survivors of domestic violence and sexual assault across the state. For the last 30 years, KCSADV has been Kansas's leading voice on sexual and domestic violence. We enhance response and prevention efforts through training, public policy advocacy, public awareness programs, and support to professionals and local crisis centers.

KCSDV is deeply concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will incentivize abusers to use technology, the internet or other electronic or social media platforms to threaten, taunt, isolate, frighten, and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

The **Maine Coalition to End Domestic Violence (MCEDV)** is a non-profit membership and advocacy organization dedicated to ending domestic violence through prevention, training and policy initiatives. The leading voice for domestic violence victims and their advocates in Maine, MCEDV has eight domestic violence resource centers that provide shelter, advocacy, and counseling and legal services to adults, children and communities impacted by domestic violence and abuse.

MCEDV helps identify and promote policies and best practices to advance victim safety and to hold abusers accountable for their actions. MCEDV has been instrumental in establishing a homicide and serious assault reduction program state wide in Maine, including risk assessment and enhanced safety planning teams in each county. MCEDV also took part in early cyber abuse trainings with the Safety Net Project, resulting in our providing training on Abuse in the Digital Age statewide for advocates, law enforcement and prosecutors over the past four years. This focus on the intersection of technology and intimate partner abuse and how technology impacts the safety, privacy, accessibility, and civil rights of victims, inform our position on the criminal use of technology as a means of perpetrating domestic

violence. Our Law Court has recently considered the issue of threats via digital media in the issuance of a protection order, (*Clark v. McLane*), finding that the issuance of the protection order was appropriate in that case. MCEDV coordinated the preparation of amicus briefs on behalf of the victim and in doing so became even more aware both the increasing prevalence of cyber-threats in our state, as well as the negative impact of cyber-threats on victims' lives.

MCEDV echoes NNEDV's concern that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will incentivize abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

The **Missouri Coalition Against Domestic and Sexual Violence (MCADSV)** is a not-for-profit organization incorporated in Missouri in 1980. As a membership organization of 125 programs providing domestic and sexual violence services, MCADSV serves as the statewide advocacy, education and communications network to advance the prevention of violence against women and to address the needs of those victimized by the violence. MCADSV is recognized for its successes during the past 30 years in advocacy work with state, local and national policy makers to identify and promote policies and best practices to address victim lethality, advance victim safety and establish best practices for victimless and evidence-based prosecution of domestic violence offences. MCADSV's current CEO worked with advocates and Congress members to draft the original

Violence Against Women Act of 1994 and continues to participate in national policy leadership for the implementation of all subsequent reauthorizations of the Act.

Therefore, MCADSV, on behalf of domestic violence victims in Missouri and all of the Missouri advocates and programs who serve them, is deeply concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will encourage abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

The Montana Coalition Against Domestic and Sexual Violence (MCADSV) is a not-for-profit organization incorporated in the state of Montana in 1986 (www.mcadsv.com). MCADSV is a statewide coalition of individuals and organizations working together to end domestic and sexual violence through advocacy, public education, public policy, and program development. Our mission is to support and facilitate networking among our member organizations while advocating for social change in Montana. MCADSV represents a majority of the state's domestic and sexual violence service providers and is the primary statewide organization providing training and technical assistance to these programs. MCADSV is deeply concerned that the Petitioner's reading of 18 USC § 875(c) will permit abusers to threaten and stalk victims with impunity.

The Nevada Network Against Domestic Violence (NNADV), a nonprofit organization founded in 1980 and incorporated in the State of

Nevada, serves as the professional association for the state's thirteen member domestic violence organizations and as the primary representative of battered women and their children in the public policy arena. NNADV members share the goal of ending domestic violence through community education, public policy development, and services for victims.

NNADV's broad expertise in the nature and dynamics of domestic violence and its impact on victims, as well as its recent work on the intersection of technology and intimate partner abuse and how technology impacts the safety, privacy, accessibility, and civil rights of victims, inform its position on the criminal use of technology as a means of perpetrating domestic violence.

NNADV shares the concern that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will encourage abusers to use technology, including social media, to continue to control and threaten their victims. It will decrease a victim's options to respond to electronic abuse.

The New Hampshire Coalition Against Domestic and Sexual Violence (NHCADSV) is a not-for-profit organization committed to creating safe and just communities through advocacy, prevention and empowerment of anyone affected by sexual violence, domestic violence and stalking in New Hampshire. This mission is accomplished by the Coalition, which includes 14 independent community-based member programs, a board of directors, and a central staff working together to influence public policy on the local, state and national levels; ensure that quality services are provided to victims; promote

the accountability of societal systems and communities for their response to sexual violence, domestic violence and stalking; and prevent violence and abuse before they occur. In 2013, NHCADSV member programs provided services to over 15,000 victims. NHCADSV has an interest in this case because it is critically important to our work to ensure that abusers are prohibited from using the Internet or other electronic or social media platforms as a means to perpetuate the abuse of their victims, and it is crucial that when this abuse occurs, victims have recourse and protection in the justice system.

The New Jersey Coalition for Battered Women (NJCBW) is a statewide coalition of domestic violence service programs and concerned individuals whose purpose and mission is to end violence in the lives of women. Incorporated in 1979, NJCBW is a private, non-profit corporation whose members include 29 domestic violence programs in New Jersey, including the 23 lead domestic violence agencies. NJCBW advocates for victims of domestic violence with state level governmental and private agencies, the state legislature, judiciary and governor to support legislation and policies that will increase safety and options for victims of domestic violence.

NJCBW has expertise in providing information, resources, technical assistance and training to domestic violence programs, the public, and organizations involved with New Jersey's response to domestic violence. NJCBW advocates locally and statewide on a variety of policy matters, including legislation, to improve New Jersey's response to domestic violence and has previously served as amicus curiae on a number of cases before the New Jersey Supreme Court.

NJCBW shares the concern of the National Network to End Domestic Violence that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten will make it more difficult to protect victims of abuse and prosecute abusers. Such a requirement will not be effective in deterring abusers from using technology, including social media, to continue their abuse intimidation and abuse.

The **New Mexico Coalition Against Domestic Violence (NMCADV)** is a 501c3 organization that provides training, technical assistance, information, education, referrals and other support to domestic violence programs and stakeholders across New Mexico. We serve as the collective voice for victims of domestic violence and participate actively in systems change efforts statewide. The NMCADV proudly joins this *amicus* brief because requiring proof of a subjective intent to threaten will make it more difficult to protect victims of domestic violence and prosecute their abusers. With the skyrocketing rates of domestic violence we see across this country the last thing we need is a requirement which will embolden abusers to use technology to threaten and intimidate without recourse.

The **New York State Coalition Against Domestic Violence (NYSCADV)** is a not-for-profit organization incorporated in the State of New York in 1978 (www.nyscadv.org). NYSCADV works to create and support the social change necessary to prevent and confront all forms of domestic violence. As a statewide network of over 100 local domestic violence member programs, NYSCADV achieves our mission through activism, training, prevention, technical assistance, legislative development, advocacy, and leadership development.

Working with policy makers, coalitions, and domestic violence advocates across both New York State and the nation, NYSCADV monitors and provides input, guidance and leadership in policy and legislative matters affecting victims of domestic violence and their children. NYSCADV educates, trains, and advises members and other advocates on legislative and policy changes and processes, and encourages our members to communicate with their legislators. NYSCADV also provides input regarding various agency policies related to survivors and domestic violence programs.

Domestic violence offenders routinely use threats, both direct and indirect, as part of their pattern power and control over their partners. These threats have contextual meaning that cause victim's alarm and fear. NYSCADV is concerned that requiring proof of a subjective intent to threaten will allow abusers to remain unchecked in their pattern of abuse. And, in the context of this case, abusers will be incentivized to use technology, such as social media, to perpetrate this abuse with impunity.

The **Ohio Domestic Violence Network (ODVN)**, a not-for-profit membership organization incorporated in the state of Ohio and is comprised of 72 domestic violence programs and various other allied professionals representing batterers' intervention programs and other legal and social service agencies that provide services and advocacy to victims and perpetrators of domestic violence. The member agencies represent all regions of the state, including rural and urban areas. ODVN advances the principle that all people have the right to an oppression and violence free life; fosters changes in our economic, social and political system and brings leadership, expertise and

best practices to community programs. ODVN seeks individual, legislative and social change, produces and shares information, and educates the public and other agencies about domestic violence and resource options. As Ohio's largest and most comprehensive resource on domestic violence, ODVN represents the interests of and works arm in arm with domestic violence agencies and victims throughout Ohio. ODVN is a member of the National Network to End Domestic Violence.

ODVN's has considerable expertise in the dynamics of domestic violence and its impact on victims. This expertise includes an understanding of the intersection of technology and intimate partner abuse and how technology impacts the safety, privacy, accessibility, and civil rights of victims. In our work on behalf of domestic violence survivors ODVN has provided training to advocates and provided resources to survivors on the potential criminal use of technology as a means of perpetrating domestic violence.

ODVN is deeply concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will incentivize abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

The **Pennsylvania Coalition Against Domestic Violence (PCADV)**, is a private non-profit organization working at the state and national levels to eliminate domestic violence, secure justice for all victims, enhance safety for families and communities, and create lasting systems and social change. The first domestic violence coalition in the nation, PCADV was

established in 1976 when a handful of grassroots women's groups in the state joined together to lobby for legal protections and to develop a network of services for victims of domestic violence. The Coalition has grown to a membership of 60 organizations across Pennsylvania providing shelters, hotlines, counseling programs, safe home networks, legal and medical advocacy projects, and transitional housing for victims of abuse and their children. Over the past three decades, these programs have offered safety and refuge to close to 2 million victims and their children from every corner of the commonwealth.

PCADV and its member programs view domestic violence perpetrators' use of social media including Facebook to stalk, harass and threaten acts of violence against their victims with apprehension and alarm. Interpreting 18 U.S.C. § 875(c) in a way that requires proof of a subjective intent to threaten, as proposed by the Petitioner, will only further empower abusers to employ their threatening and abusive tactics via Internet mediums and claim exercise of their freedom of speech. Meanwhile the victims live in fear and wait for the moment that the perpetrator will carry out his or her threats. Moreover, law enforcement's efforts to protect victims and communities from harm will be hampered if they must determine whether the subjective intent of a perpetrator is to indeed harm the persons or school children that their words indicate they want to injure.

The **Rhode Island Coalition Against Domestic Violence (RICADV)** is a non-profit membership and advocacy organization dedicated to ending domestic. We work to achieve this mission by providing leadership on the issue of domestic violence and supporting our member agencies. Together, our member agencies

provide services to over 10,000 victims of domestic abuse each year, and respond to over 15,000 calls for help and referrals.

RICADV is dedicated to helping identify and promote policies and best practices to advance victim safety. RICADV has been involved in promoting Congressional enactment and eventual implementation of the Violence Against Women Act of 1994 and subsequent reauthorizations. We have worked for 35 years to strengthen the laws in Rhode Island to protect victims of domestic violence and hold batterers accountable, and have seen firsthand the impact that new technologies have had on victims. Too often, victims are terrorized and threatened by their abusers using new technologies, and it is imperative that there be some means of legal recourse for them.

RICADV is incredibly concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will provide additional encouragement to abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

The **South Carolina Coalition Against Domestic Violence and Sexual Assault (SCCADVASA)** is a non-profit membership and advocacy organization dedicated to ending domestic violence through legal, legislative, and policy initiatives. The leading voice for domestic violence victims and their advocates in South Carolina, SCCADVASA comprises a network of 23 local non-profit organizations that provide shelter, advocacy, hospital

accompaniment and counseling and legal services to survivors of domestic and sexual violence.

Working with federal, state and local policy makers and domestic and sexual violence advocates throughout the state, SCCADVASA helps identify and promote policies and best practices to advance victim safety. SCCADVASA's broad expertise in the nature and dynamics of domestic and sexual violence and their impact on victims, as well as our trainings for advocates statewide about NNEDV's Safety Net project, which focuses on the intersection of technology and intimate partner abuse and how technology impacts the safety, privacy, accessibility, and civil rights of victims, inform its position on the criminal use of technology as a means of perpetrating domestic and sexual violence.

SCCADVASA is deeply concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will incentivize abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

The **Vermont Network Against Domestic and Sexual Violence** is a feminist organization committed to eradicating domestic and sexual violence through advocacy, empowerment and social change. The Vermont Network is a coalition of 14 Member domestic violence and sexual violence Programs located throughout Vermont, and a statewide office located in Montpelier.

VNADV is very concerned that if 18 USC § 875(c) is interpreted to require proof of a subjective intent to threaten, as Petitioner proposes, it will be so very difficult for victims to prove that it will embolden abusers and imperil victims across the country. Allowing this behavior from abusers to continue will also encourage the abuse and send the message that society finds this acceptable and indeed it makes it more likely that these abusers will go even further.

The **Virginia Sexual and Domestic Violence Action Alliance (VSDVAA)** is a not-for-profit organization incorporated in Virginia in 1981 (www.vsdvalliance.org) to create a Virginia free from sexual and domestic violence. We are Virginia's leading voice on sexual and domestic violence. Over the past 30 years, we built an extensive network of agencies and individuals to speak in a unified voice on issues related to sexual and domestic violence. Our membership includes advocates at local accredited domestic and sexual violence service agencies, survivors, attorneys, law enforcement officers, health professionals and community members.

Through our public policy work we strive to strengthen state laws that promote safety for victims and hold offenders accountable. We operate the statewide Virginia Family Violence and Sexual Assault Hotline, which answers thousands of calls each month and offers resources, support and safety planning to people in crisis, family and friends and allied professionals. And we are engaged in a variety of prevention initiatives to reduce risk factors and promote healthy communities and relationships-with the ultimate goal of reducing the incidence and prevalence of both sexual and domestic violence.

The Action Alliance is deeply concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as proposed by the Petitioner, will embolden abusers to use technology, such as social media, to continue to threaten, intimidate, and frighten victims—making it more difficult for victims to take action against abusive behavior and protect their safety.

Every day, technology becomes a larger part of all our lives—bringing both benefits and challenges. The same is true for victims of sexual violence, domestic violence, and stalking. While technology has created new ways for victims to reach out for support, it has also created new means for perpetrators of these crimes to threaten and inflict fear in their victims. It is critical that we protect a victims' ability to seek safety and justice through the law—even as we make advances in technology—so that we can continue to hold perpetrators of abuse accountable for their actions regardless of any means, no matter how new, they use to threaten, intimidate, control, or inflict fear in victims.

The **Washington State Coalition Against Domestic Violence (WSCADV)**, is a non-profit statewide membership organization comprised of over 70 organizations and individuals across Washington State committed to ending domestic violence across Washington State. The core commitment of WSCADV is to support domestic violence survivors and emergency shelter and advocacy programs by advocating for laws and public policies that promote safety, justice and autonomy for victims and their children. WSCADV is particularly concerned that if 18 USC § 875(c) is interpreted to require proof that a defendant specifically intended to threaten a victim,

perpetrators that use technology and social media to further their abuse will be able to stalk, abuse, and control their victims with impunity.

The **West Virginia Coalition Against Domestic Violence (WVCADV)** is a not-for-profit organization incorporated in the state of West Virginia (www.wvcadv.org). Founded in 1981, WVCADV's mission, along with the ultimate vision of social justice, is to work to end violence against women through partnerships, advocacy and direct services. The West Virginia Coalition Against Domestic Violence plays an instrumental role in advocating for laws and policies that affect battered women and their children, such as the Violence Against Women Acts of 1994, 2000, and 2005. WVCADV recognizes the critical importance that domestic violence statutes play in the struggle to end domestic violence.

WVCADV is troubled by the interpretation of 18 USC § 875(c) requiring proof of a subjective intent to threaten. Such a requirement will embolden abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

The **End Domestic Abuse WI: the Wisconsin Coalition Against Domestic Violence, Inc. (END ABUSE)** is a non-profit membership and advocacy organization dedicated to ending domestic violence through legal, legislative, and policy initiatives. The leading voice for domestic violence victims and their advocates in Wisconsin, END ABUSE serves the 73 primary purpose domestic violence programs through training and technical assistance.

END ABUSE is deeply concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will incentivize abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.

Through a collective voice, the **Wyoming Coalition Against Domestic Violence and Sexual Assault (WCADVSA)** is committed to provide leadership, education, and systems advocacy to advance social change and end violence. The WCADVSA is a non-profit organization representing the 24 domestic violence and sexual assault advocacy programs in Wyoming. As the leading voice for domestic violence victims and their advocates in Wyoming, the WCADVSA's work includes the following programs: AmeriCorps; Civil Legal Services an Access to Justice; Economic Justice; Organizational an Leadership Development; Primary Prevention; Public Policy; Silent Witness Initiative; Training and Technical Assistance; and Transitional Housing.

The WCADVSA has been an active member of the National Network to End Domestic Violence since the organization's inception. The WCADVSA, along with our sister coalitions, have worked alongside NNEDV for the 1994 enactment and implementation of the Violence Against women Act and subsequent reauthorizations.

The misuse of technology and intimate partner abuse greatly impacts the safety, privacy, accessibility, and civil rights of victims. For example, James Jebidiah Stipe, a former boyfriend of a

Wyoming woman used Craigslist to arrange for a violent rape of her in 2009. (<http://articles.latimes.com/2010/jan/11/nation/la-na-rape-craigslist11-2010jan11>) Mr. Stipe was sentenced to 60 years in prison.

The WCADVSA is deeply concerned that interpreting 18 USC § 875(c) to require proof of a subjective intent to threaten, as Petitioner proposes, will make it more difficult to protect victims of abuse and to prosecute abusers. Such a requirement will incentivize abusers to use technology, including social media, to taunt, isolate, frighten, threaten and intimidate their victims, forcing them to live a life of crippling fear without recourse to law.