

No. 18-949

IN THE
Supreme Court of the United States

JAMAL KNOX,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

**On Petition for a Writ of Certiorari
to the Supreme Court of Pennsylvania**

**MOTION FOR LEAVE TO FILE BRIEF AS
AMICI CURIAE AND BRIEF OF AMICI CURIAE
MICHAEL RENDER (“KILLER MIKE”), ERIK
NIELSON, AND OTHER ARTISTS AND
SCHOLARS IN SUPPORT OF PETITIONER**

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March 6, 2019

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*AMICI CURIAE***

Pursuant to Rule 37.2 of the Rules of this Court, the undersigned rap artists, scholars, and music industry representatives move for leave to file the accompanying brief as *amici curiae* in support of the petition for a writ of certiorari. The petitioner has consented to the filing of this brief through the filing of a blanket letter of consent with the Court. The respondent has declined to consent to the filing of this *amicus* brief, and takes no position. *Amici* thus move for leave to file the accompanying brief.

Amici are scholars with expertise in rap music, a Grammy Award-winning rap musical artists with first-hand experience creating and performing rap music, experienced music industry figures, and other musical artists and scholars. *Amici* seek to put rap

music, which is a heavily stigmatized form of expression associated with negative stereotypes and often subject to misinterpretation, in the context of the history and conventions of the genre. The poetic nature of rap lyrics requires analysis of the multi-layered meanings attributable to such lyrics, viewed through the lens of the intended audience. *Amici* thus urge the Court to view rap music, through which the alleged threats in this case were purportedly communicated, as not only a form of artistic expression but as political expression that falls well within the scope of activity protected by the First Amendment.

Amici therefore should be granted leave to file the attached brief.

Respectfully submitted,

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INTEREST OF *AMICI CURIAE*¹

Amici rap artists, scholars, and music industry representatives seek to provide context as to the historical and artistic context through which to view rap lyrics, which are subject to misinterpretation in light of the negative stereotypes often associated with rap music.

Michael Render (“Killer Mike”) is a Grammy-award winning rapper, community activist, and highly regarded author and public speaker who lectures on a wide range of issues, particularly those related to race, social inequality, and police brutality. His father was an Atlanta police officer.

Erik Nielson is Associate Professor of Liberal Arts at the University of Richmond, where his research and teaching focus on hip hop culture and African American literature. He has published widely on African American music and poetry, with a particular emphasis on rap music, and has served as an expert witness or consultant in dozens of criminal cases involving rap music as evidence. He is co-editor of *The Hip Hop & Obama Reader* and co-author of the forthcoming book *Rap on Trial*.

Additional *amici* include musical artists Chancelor Bennett (“Chance the Rapper”), Robert

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici* state that no counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* made a monetary contribution intended to fund preparation or submission of this brief. Counsel of record for all parties were timely notified of *amici*’s intention to file this brief more than ten days prior to its filing.

Rihmeek Williams (“Meek Mill”), Mario Mims (“Yo Gotti”), Joseph Antonio Cartagena (“Fat Joe”), Donnie Lewis (“Mad Skillz”), Shéyaa Bin Abraham-Joseph (“21 Savage”), Jasiri Oronde Smith (“Jasiri X”), David Styles (“Styles P”), Simon Tam (member of *The Slants* and petitioner in *Matal v. Tam*, 137 S. Ct. 1744 (2017)), and Luther R. Campbell (member of 2 Live Crew and petitioner in *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)), as well as music industry representatives Alan Light (former Editor-in-Chief, *Vibe* and *Spin* magazines), Dina LaPolt, Patrick Corcoran, Peter Lewit, and the entertainment company Roc Nation, LLC.

Further *amici* include scholars Michelle Alexander (Union Theological Seminary), Jody D. Armour (University of Southern California Gould School of Law), Paul Butler (Georgetown Law), Andrea L. Dennis (University of Georgia School of Law), Murray Forman (Northeastern University), Kyra Gaunt (University at Albany, SUNY), Lily E. Hirsch (California State University, Bakersfield), Robin D.G. Kelley (UCLA), Walter Kimbrough (Dillard University), Rev. Emmett G. Price, III, (Gordon-Conwell Theological Seminary), and Eithne Quinn (The University of Manchester).

SUMMARY OF ARGUMENT

The rise of hip hop, and specifically rap music, is “the single most important event that has shaped the musical structure of the American charts” since the 1960s, leading to a musical revolution more influential than any other over the last half-century. Matthias Mauch et al., *The Evolution of Popular Music: USA 1960-2010*, 2 ROYAL SOCIETY OPEN SCIENCE 1, 6-7 (2015). Yet rap music has been the

subject of unique scrutiny in determining when speech constitutes a true threat of violence and thus falls outside the ambit of First Amendment protection, in part because of its close association with the black men who historically have created it. This Court recently granted certiorari on this issue in *Elonis v. United States*, 135 S. Ct. 2001 (2015), but chose to resolve the case on statutory grounds.

The need to resolve this issue, however, is critical. As Justice Sotomayor wrote in 2017, this Court should “decide precisely what level of intent suffices under the First Amendment.” *Perez v. Florida*, 137 S. Ct. 853, 855 (2017) (Sotomayor, J., concurring). Scholars have lamented this lack of clear guidance. See Clay Calvert & Matthew D. Bunker, *Fissures, Fractures & Doctrinal Drifts: Paying the Price in First Amendment Jurisprudence for a Half Decade of Avoidance, Minimalism & Partisanship*, 24 WM. & MARY BILL OF RTS. J. 943, 957 (2016) (“If one First Amendment doctrine screams out the loudest for clarification, it may well be true threats.”).

This case provides an opportunity to definitively resolve the question of whether the only consideration relevant to assess if a threat exceeds the scope of First Amendment protection is whether a subjective intent to threaten is present or, alternatively, whether the pertinent inquiry includes how a reasonable person would interpret the statement. The rap created by petitioner Jamal Knox provides a good vehicle for resolving these issues because the speech in question—taking the form of rap lyrics—not only is political in character, but is a complex form of expression characterized by multi-layered messages, which leads to the

possibility of misinterpretation. Indeed, “like the true threats doctrine itself, rap music is complex.” Clay Calvert, Emma Morehart & Sarah Papadelias, *Rap Music and the True Threats Quagmire: When Does One Man’s Lyric Become Another’s Crime?*, 38 COLUM. J. L. & ARTS 1, 4 (2014).

And just as Justice Sotomayor lamented in *Perez* that the speaker there may have been convicted and sentenced to prison for making a joke, petitioner was convicted and sentenced to prison for making a political statement in the form of a song that no reasonable person familiar with rap music would have interpreted as a true threat of violence.

This brief, focused on and grounded in the work of leading rap music scholars, demonstrates the interpretative problems associated with rap lyrics. The brief opens with a primer on rap music and hip hop. It illustrates how a person unfamiliar with what today is the nation’s most dominant musical genre or one who hears music through the auditory lens of older genres such as jazz, country, or symphony, may mistakenly interpret a rap song as a true threat of violence and may falsely conclude a rapper intended to convey a true threat of violence when he did not. The brief does this partly by contextualizing the rap music of petitioner Jamal Knox with that of the iconic rap song “Fuck tha Police” by N.W.A and partly by analyzing the petitioner’s own lyrics for which he was prosecuted and convicted. The brief explains that N.W.A’s “Fuck tha Police” was a political protest against aggressive, militarized police tactics in Los Angeles in the 1980s. The song, which vented frustration for people of color, pivots on a fictional trial where

rappers play the roles of judge and prosecutors, while the defendant is the police department. No one would objectively take it as threatening.

Amici thus respectfully request that this Court grant the petition for a writ of certiorari to decide the applicable standard for determining whether and when a statement constitutes a true threat of violence not protected by the First Amendment.

ARGUMENT

I. BACKGROUND: THE ORIGINS, RISE, AND INFLUENCE OF HIP HOP AND RAP MUSIC

*“You Never Thought That Hip Hop
Would Take It This Far”*²

It is impossible to understand popular culture without understanding hip hop, a cultural movement dating back to the 1970s that is composed of performance arts such as MCing (“rapping”), DJing (“spinning”), breakdancing (“b-boying”), and graffiti (“writing”). In less than 50 years, hip hop has established itself as one of the most important forms of cultural expression to emerge in modern American history.

Today, rap, the musical element of hip hop, is easily one of the most popular genres in the United States. See NIELSEN MUSIC, 2017 YEAR-END MUSIC REPORT, U.S. at 2 (2017). Its sounds and rhythms fill the airwaves, influencing a bevy of genres, including

² NOTORIOUS B.I.G., *Juicy*, on READY TO DIE (Bad Boy & Arista Records 1994).

rock, country, and even classical music. Lin-Manuel Miranda’s Broadway mega-hit *Hamilton*—a musical about Alexander Hamilton’s life, told in rap form—is a telling example of rap’s capacity to inform and influence popular culture in ways its early creators probably never imagined.

With influence also came critical and scholarly acclaim. Multiple hip hop artists—including Run-DMC, Public Enemy, Tupac Shakur, and N.W.A—have been inducted into the prestigious Rock & Roll Hall of Fame. Their lyrics are included in numerous literary anthologies, taught at Ivy League universities, and acknowledged by our most venerable institutions for their imagination, innovation, and sophistication.

In 2018, for example, Kendrick Lamar, one of rap’s most commercially successful artists, won the Pulitzer Prize in Music for his album *DAMN*. KENDRICK LAMAR, *DAMN*. (Aftermath Entertainment, Interscope Records & Top Dawg Entertainment 2017). The Pulitzer committee dubbed it “a virtuosic song collection unified by its vernacular authenticity and rhythmic dynamism that offers affecting vignettes capturing the complexity of modern African-American life.” THE PULITZER PRIZES, *The 2018 Pulitzer Prize Winner in Music*, <https://www.pulitzer.org/winners/kendrick-lamar>.³

³ Similarly, in 2011, the director of Britain’s Royal Shakespeare Company described leading rappers, Jay-Z, Nas, and Eminem, as the best examples of inheritors of Shakespeare. Jacob Moore, *Director of Britain’s Royal Shakespeare Company Says Jay-Z, Nas, and Eminem Are The* (footnote continued)

Rap's success helped fuel a multibillion-dollar hip hop industry now seen and heard virtually everywhere—in fashion, film, advertising, politics, and our everyday lexicon. PAUL BUTLER, LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE 124-25 (2010).

Hip hop's cultural presence today is a far cry from its humble beginnings in the 1970s. It emerged from the South Bronx, an area of New York City that then was an extreme example of urban decay. EMMETT G. PRICE III, HIP HOP CULTURE 4-7 (2006). With thousands of burned-out or abandoned buildings, the landscape mirrored the hopelessness faced by its residents, who were confronted with the combined effects of poverty, unemployment, gang violence, and isolation from mainstream America. JEFF CHANG, CAN'T STOP, WON'T STOP: A HISTORY OF THE HIP-HOP GENERATION 10-19 (2005).

By the late 1970s, conditions were so dire that President Jimmy Carter, Pope John Paul II, and Mother Teresa visited the Bronx to see what had become an international symbol of urban failure. In 1980, after then-Presidential candidate Ronald Reagan visited the area, he said he had not “seen anything that looked like this since London after the Blitz.” *Reagan, in South Bronx, Says Carter Broke Vow*, N.Y. TIMES, Aug. 6, 1980, at A16.

Hip hop grew out of these dire conditions. Early pioneers developed hip hop, in part, to end gang violence by providing an outlet that transformed the

Inheritors of Shakespeare, COMPLEX (Dec. 13, 2011), <https://www.complex.com/music/2011/12/michael-boyd-says-jay-z-nas-and-eminem-are-the-inheritors-of-shakespeare>.

competitiveness and territoriality of gang life into something artistic and productive. As gang members began to join hip hop crews, dance competitions, rap battles, and other competitive performances increasingly replaced the fighting that had long consumed the Bronx. Over time, street gangs lost their grip on the Bronx and, more generally, New York City.

As hip hop expanded, its musical element, rap music, exploded in popularity. At first, rap—defined as a “musical form that makes use of rhyme, rhythmic speech, and street vernacular, which is recited or loosely chanted over a musical soundtrack”—was party music, meant to excite crowds and celebrate having a good time. CHERYL L. KEYES, *RAP MUSIC AND STREET CONSCIOUSNESS* 1 (2002). Rarely did the lyrics tackle important social or political issues. As the genre evolved, however, that changed. Rappers used their platform to raise awareness about the problems facing urban America, and they became more comfortable challenging public figures and institutions that appeared uninterested in, or downright hostile to, America’s most vulnerable citizens.

By the late 1980s, rappers took their social and political commentary to mainstream audiences. Groups like Public Enemy, Boogie Down Productions, and Niggaz Wit Attitudes (N.W.A) launched powerful attacks against the establishment, addressing a host of social problems, including racism, inequality, inner-city drug use, and police brutality.

No song reflects this oppositional posture better than N.W.A’s “Fuck tha Police,” one of the most important protest songs ever written and considered

by *Rolling Stone* magazine to be among the 500 greatest songs ever. *500 Greatest Songs of All Time*, ROLLING STONE (Apr. 7, 2011), <https://www.rollingstone.com/music/music-lists/500-greatest-songs-of-all-time-151127>, ranked #425. Recorded in 1988, “Fuck tha Police” was a response to the increasingly aggressive policing strategies in Los Angeles, N.W.A’s home, but it became an anthem of resistance in communities across the country as police began waging the War on Drugs. Already weakened by joblessness and drug addiction, these communities watched in horror as newly-militarized police departments turned weapons of war—helicopters, armored vehicles, and machine guns—on their own citizens. At the same time, people were being locked up in record numbers, leading to an incarceration crisis that eventually turned the United States into the world’s incarceration capital.

In Los Angeles, police hostility and brutality were commonplace. Black and brown men in particular were routinely harassed, arrested, and beaten by police, often as part of the city’s anti-gang and anti-drug efforts, which were some of the most aggressive in the nation. Long before the treatment of the current opioid crisis as a public health emergency, Daryl Gates, the Los Angeles Police Department chief from 1978 to 1992, openly opined in a U.S. Senate hearing that casual drug users “ought to be taken out and shot.” Ronald J. Ostrow, *Casual Drug Users Should Be Shot, Gates Says*, L.A. TIMES (Sept. 6, 1990), http://articles.latimes.com/1990-09-06/news/mn-983_1_casual-drug-users.

Such open hostility led to a simmering sense of frustration and resentment within minority communities. N.W.A gave full, unapologetic voice to that frustration with “Fuck tha Police,” beginning with the opening lines: “Fuck the police, comin’ straight from the underground / a young nigga got it bad ‘cause I’m brown.” N.W.A, *Fuck Tha Police, on STRAIGHT OUTTA COMPTON* (Ruthless Records 1988).

The song gains power through inversion. It opens as if in a courtroom, only this, we are told, is “N.W.A court,” which is about to hear the case of “N.W.A versus the police department.” Here, the rappers run the show: Dr. Dre is the judge, while MC Ren, Ice Cube, and Eazy E are prosecuting attorneys. As the song progresses, the rappers’ verses are framed by vignettes that depict police brutality, essentially offering listeners the “evidence” that will eventually inform the verdict at the end of the song. And that verdict is handed down by a group of black men who, in this alternate universe, now have voice and authority, while the white authority figure (a police officer) must wait silently for the outcome. No suspense here; he’s found guilty. As he’s taken out of court, he screams, “I want justice! I want justice!” and then adds “Fuck you, you black motherfuckers!” as if to affirm that the verdict was indeed well deserved.

The song struck a nerve for many people, especially in marginalized communities. They wanted justice, too, but only in fictional songs like “Fuck tha Police” could they seem to find it. It also spoke to the anger that communities felt toward police as a result. When Ice Cube raps, “A young nigga on the warpath / And when I’m finished, it’s

gonna be a bloodbath / of cops, dyin' in L.A.”—or when MC Ren says later in the song, “I’m a sniper with a hell of a scope / Takin’ out a cop or two, they can’t cope with me”—they aren’t calling for actual violence. They are offering an imaginary reversal, one in which, just for a moment, their listeners can envision themselves on the other side of a power dynamic that usually ends with black and brown men in handcuffs, in prison, or worse.

Police certainly didn’t appreciate the song. When it was released, Milt Ahlerich, assistant director of the FBI, was infuriated by N.W.A’s lyrics. In an unprecedented move, he penned a letter expressing his displeasure to N.W.A’s label, Ruthless Records. See GEORGE LIPSITZ, *FOOTSTEPS IN THE DARK: THE HIDDEN HISTORIES OF POPULAR MUSIC* 164 (2007). This response triggered a reaction from police departments across the country intent on disrupting N.W.A’s concerts. In Detroit, for example—as depicted in the N.W.A biopic, *Straight Outta Compton*—police stormed the stage when the group began performing “Fuck tha Police.” In many other cities, concerts were simply cancelled due to police pressure.

But controversy did not silence the group. It actually increased their popularity, their record sales, and, by extension, their influence. *Straight Outta Compton*, the album containing “Fuck tha Police,” eventually went triple platinum and shined a light for millions of Americans on the issues N.W.A was rapping about—issues that were far from resolved.

In fact, just three years after the song’s release, Rodney King, an African American, was savagely beaten by Los Angeles police officers. It was caught

on camera for the world to see, yet the officers involved (all white) were acquitted of the charges filed against them.

In response to their acquittal, Ice Cube, now a solo artist, released his album *The Predator* in 1992, which included the track “We Had to Tear this Muthafucka Up.” In it, he identifies two of the police officers by name and describes in graphic detail the revenge he fantasizes about taking against them: “Born, wicked, Laurence Powell, foul / Cut his fuckin’ throat and I smile” and, later in the song, “Pretty soon we’ll catch Sergeant Koon / Shoot him in the face, run up in him with a broom.” ICE CUBE, *We Had to Tear this Mothafucka Up*, on *THE PREDATOR* (Priority Records & EMI 1992).

The Predator went double platinum, earning critical acclaim and eventually becoming Ice Cube’s best-selling solo album. Nobody heard the lyrics and believed that O’Shea Jackson (Ice Cube’s given name) intended to carry out the fantasies of his musical persona. They heard an artist protesting injustice.

Fellow Los Angeles rapper Ice-T did the same thing in 1992 when he released “Cop Killer” (which he performed with his heavy metal band Body Count). Like Ice Cube, he used the song to express the rage building within his community over police brutality, at one point singling out Daryl Gates by name.

In response to the significant controversy generated by the song, Ice-T defended himself, saying, “I’m singing in the first person as a character who is fed up with police brutality. I ain’t never killed no cop. . . . If you believe that I’m a cop killer,

you believe David Bowie is an astronaut” (a reference to Bowie’s song “Space Oddity”). ICE-T & DOUGLAS CENTURY, *ICE: A MEMOIR OF GANGSTER LIFE AND REDEMPTION—FROM SOUTH CENTRAL TO HOLLYWOOD* 142 (2011).

O’Shea Jackson and Tracy Marrow (Ice-T’s given name) were obviously not cop killers; in fact, both later played police officers during their distinguished acting careers. They were artists who used their music as a form of social and political protest, laying the groundwork for future artists like Jamal Knox to do the same.

II. THE PETITION PRESENTS AN IMPORTANT QUESTION AS TO THE APPROPRIATE STANDARD TO JUDGE WHETHER ARTISTIC EXPRESSIONS ARE TRUE THREATS

A. Rap Lyrics Are Particularly Susceptible To Being Perceived As Subjectively Threatening

“I Talk With Slang And I’mma Never Stop Speaking It”⁴

Drawing on black musical and storytelling traditions dating back centuries, rappers have fashioned a sophisticated poetic form—what Harvard University professor Henry Louis Gates, Jr. describes as “a new vanguard of American poetry”—that manipulates language to the point that it “complicates or even rejects literal interpretation.”

⁴ BIG L, *Ebonics*, on *THE BIG PICTURE* (Rawkus Records 2000).

Henry Louis Gates Jr., *Foreword* to THE ANTHOLOGY OF RAP xxvi, xxv (Adam Bradley & Andrew DuBois eds., 2010).

It also draws strength by “shattering taboos, sending up stereotype, and relishing risqué language and subject matter,” something that is true of many of rap’s artistic and linguistic antecedents. *Id.* at xxv. In the early decades of the Jim Crow era, for example, folk tales cropped up in the Deep South, circulating orally throughout the African-American community. These tales, or toasts, were early prototypes for rap: they were often told in rhyme form and from the first-person perspective, they could be violent and profane, and they celebrated the clever underdog who outwitted his opponent or the hero who inspired fear in those who dared oppose him. See EITHNE QUINN, NUTHIN’ BUT A “G” THANG: THE CULTURE AND COMMERCE OF GANGSTA RAP 94-97 (2004).

The coarse language, explicit themes, and violent rhetoric sometimes found in the toasts is also apparent in “the dozens”—verbal competitions dating back more than a century in which two opponents trade insults, often in rhyme, until a winner emerges. Although the insults may appear to cross the lines of healthy competition—references to violence and barbs aimed at “yo’ mama” are common—the contestants and onlookers understand they are not to be taken literally. These are intellectual battles, not physical ones.

The sense of competition and emphasis on verbal dexterity inherent to the dozens are very much at the heart of rap music as well. For example, in rap battles—competitions, reminiscent of the dozens, in

which rappers attack each other in rhymed verse—the rhetoric can become extreme. In one classic battle between artists Loaded Lux and Hollow Da Don, for example, Hollow stands just inches from Loaded Lux and screams, “Your death is up, neck get cut” while making a slicing motion with his hands. He then threatens that he will order an invasion of Lux’s house: “My niggas got their facemasks at your residence / I got the goons waiting on the outside like a defensive end.” *U Dubb Presents Loaded Lux Vs Hollow Da Don*, YOUTUBE.COM (Sept. 27, 2015), <https://www.youtube.com/watch?v=7q4BshCzxss>, at 22:40-23:10. Hollow Da Don sounds and looks deadly serious, but Loaded Lux is smiling and the crowd is cheering. Everyone knows this is a *performance*.

The same goes for so-called “diss tracks,” recorded songs in which rappers insult, or “diss,” one another. Nearly every well-known rapper has written one of these. Eminem, who rose out of the battle rap tradition to become one of the best-selling rappers of all time, has written many. He also has used his songs to verbally attack people outside of the music industry, sometimes viciously and by name, ranging from his ex-wife to President Donald Trump.

During oral argument in *Elonis v. United States*, 135 S. Ct. 2001 (2015), this very point arose. The Court during questioning cited lines from the song “97 Bonnie and Clyde,” in which Eminem raps about killing his wife in graphic detail. Marshall Mathers (Eminem’s given name) has never been accused of trying to kill his wife, and violent lyrics are a

common part of the genre. But, as the inquiry suggested, taking such lyrics out of context could “subject to prosecution the lyrics that a lot of rap artists use.” Tr. of Oral Arg. at 41:4-5, *Elonis v. United States*, 135 S. Ct. 2001 (2015) (No. 13-983) (Roberts, C.J.).

Viewing the lyrics in their proper context is vital. Like all poets, rappers use figurative language, relying on a full range of literary devices such as simile and metaphor. Rappers also, in the tradition of African American vernacular, invent new words, invert the meaning of others, and lace their lyrics with dense slang and coded references that defy easy interpretation, especially among listeners unfamiliar with the genre. Furthermore, rappers famously rely on exaggeration and hyperbole as they craft the larger-than-life characters that have entertained fans (and offended critics) for decades. See Andrea L. Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 COLUM. J. L. & ARTS 1, 25 (2007).

It is with these complex traditions in mind that one should interpret petitioner Jamal Knox and Rashee Beasley’s version of “Fuck the Police.” Told from the narrative perspective of Mayhem Mal and Soulja Beaz—characters not to be conflated with Beasley and Knox themselves—the song is intentionally provocative, but it is following conventions that have defined mainstream rap for decades.

To start, even casual listeners would recognize that Knox and Beasley are paying tribute to the N.W.A original. They are hardly the first to do so. A number of well-known artists have released their

own versions of the song, including Boosie Badazz, J Dilla, Rage Against the Machine, Bone Thugs-N-Harmony, Dead Prez, Slim Thug, BG, and Soulja Slim (whose name likely helped inspire the moniker “Soulja Beaz”). More important, the phrase “fuck the police” is now common in rap music, both as a way to acknowledge N.W.A’s song and to extend the group’s criticism of police. Countless rappers have used the phrase in their own music, including Kanye West, Tupac Shakur, Kendrick Lamar, Eminem, Lil Wayne, and even certain of the *amici* here.

In its opinion that Knox and Beasley’s song constitutes a true threat, the Pennsylvania Supreme Court acknowledges that rap and other art forms often contain depictions of violence that “cannot reasonably be understood as a sincere expression of the singer’s intent to engage in real-world violence.” Pet. App. 27a. But, according to the Court, Knox and Beasley’s song “is of a different nature and quality.” *Id.* The Court notes that the specific references to police officers and other violent lyrics set the song apart, as does its production: “The words themselves are not the only component of Appellant’s expressive conduct which tends to make the song threatening. The sound track includes bull horns, police sirens, and machine-gun fire ringing out over the words, ‘bustin’ heavy metal.’” *Id.* at 24a-25a.

This odd bit of musical analysis—along with the justices’ opinion that the song lyrics “do not include political, social, or academic commentary,” *id.* at 22a—reveals a court deeply unaware of popular music generally and rap music specifically. Rap music and other forms of political protest do indeed single out people by name, sometimes using violent

rhetoric and imagery in the process. Countless songs, rap and otherwise, include non-instrumental sounds, such as police sirens and gunfire. In fact, N.W.A's version features both. People across the music industry would be shocked to learn that using such sounds could subject them to prosecution.

Additionally, the song is replete with lyrics that defy a literal interpretation. For instance, the lyrics refer to heavy artillery, enough to "shake the motherfuckin' streets," and mention all of the "soldiers" in the Ghetto Superstar Committee. *Id.* at 3a-4a. Neither Knox nor Beasley has served in the military or ever possessed street-shaking heavy artillery. (And neither has served on a committee of superstars, ghetto or otherwise.) The lyrics repeatedly refer to the rappers' "riches," *id.* at 3a, yet Knox lived in public housing and Beasley was represented by a court-appointed attorney. The song threatens to turn the Highland Park area of Pittsburgh into *Jurassic Park*, but neither rapper was found to have recreated dinosaurs. *Id.* at 4a.

And what about the lyric "you taking money away from Beaz and all my shit away from me / well your shift over at three / and I'm gonna fuck up where you sleep"? *Id.* This was singled out by the Pennsylvania Supreme Court as evidence that the rappers had actually learned when the officers' shifts began and ended. But nothing in the record indicates that either officer's shift ended at 3:00.

A quick scan of the lyrics reveals a much more likely reason for the reference to "three." It rhymes. As is common in rap, Knox and Beasley privileged form over content to complete their rhyme scheme. In this case, "three" is used to rhyme with

“me” in the preceding line and “sleep” in the following, a pattern that begins two lines earlier with a rhymed couplet that has lines ending with “streets” and “beef.” As fans know, this is typical of rap’s poetics, where meter and rhyme are primary, meaning that words are chosen often for their contribution to a song’s rhythm rather than its precise message. Rap is, after all, meant to be heard, not dissected on the page.

In short, this is a work of poetry. It is told from the perspective of two invented characters in the style of rap music, which is (in)famous for its exaggerated, sometimes violent rhetoric, and which uses language in a variety of complex ways. It is not intended to be taken literally, something that a reasonable listener with even a casual knowledge of rap would understand.

**B. This Court Should Clarify That
The True Threats Standard
Requires More Than Mere Intent**

*“I’ve Been Labeled Outlaw,
Renegade, Villain”*⁵

Research tells us that listeners unfamiliar with hip hop culture may have difficulty being reasonable when it comes to rap music because it often primes enduring stereotypes about the criminality of young black men, its primary creators. In the criminal justice system, the results of this racial bias are evident in the disparate treatment that people of

⁵ KILLER MIKE, *Don’t Die, on R.A.P. MUSIC* (Williams Street Records 2012).

color face at virtually every phase of the criminal justice process.

When it comes to rap, research reveals similar disparities. For example, rap is routinely introduced as evidence in criminal trials, where prosecutors will argue that lyrics should be interpreted literally. They are treated as confessions. They are offered as evidence of motive, intent, or identity with respect to a crime. They are deemed “true threats,” as in this case, and prosecuted as such. But “[m]usic, as a form of expression and communication, is protected under the First Amendment.” *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989). No other art form, fictional or otherwise, is targeted as pervasively in court as rap is, even though other genres have long traditions of violence. Erik Nielson & Michael Render (aka Killer Mike), *Rap’s Poetic (In)justice: Flashback*, USA TODAY (Nov. 28, 2014), <https://www.usatoday.com/story/opinion/2014/11/28/poetic-injustice-rap-supreme-court-lyrics-violence-trial-column/19537391/>.

Consider country music. Like rap, it often depicts sex, drug or alcohol (ab)use, poverty, and certainly violence. Indeed, the murder ballad, which can be traced back centuries, has always had a prominent place in country music, thanks to artists like Johnny Cash, Waylon Jennings, Willie Nelson, and many others. Yet people tend to have very different responses to country music.

In one study, social psychologist Carrie Fried asked participants to read a set of violent lyrics from a 1960 folk song, *Bad Man’s Blunder*. Carrie B. Fried, *Who’s Afraid of Rap: Differential Reactions to Music Lyrics*, 29 J. APPLIED SOC. PSYCH. 705

(1999). They were then told that the lyrics were either from a rap or country music song. After reading the lyrics, participants evaluated them and responded to questions about the offensiveness of the song, the threatening nature of the song, the need for regulation of the song, and if the song would incite violence.

The responses were significantly more negative when the lyrics were represented as rap, demonstrating that the same lyrical passage that was viewed as acceptable in a country song was considered dangerous and offensive when identified as a rap song. *Id.* at 711. Fried emphasizes an important racial dimension; whereas country music is traditionally associated with white performers, rap “primes the negative culturally held stereotype of urban Blacks.” *Id.* at 716.

It is worth noting that Fried’s experiment, which was published in 1999, was replicated in 2016. Despite the passage of nearly two decades, researchers found the same biases. Specifically, they reported that “participants deemed the exact same lyrics to be more offensive, in greater need of regulation, and *more literal* when characterized as rap compared with country.” Adam Dunbar et al., *The Threatening Nature of “Rap” Music*, 22 PSYCH., PUB. POL’Y & L. 280, 288 (2016) (emphasis added).

Research also has confirmed that people’s views of rap music extend to the people who listen to or create it. A 2018 study, for example, considered how people would respond to the author of a piece when they were presented with lyrics they believed were rap, country, or heavy metal (the lyrics were the same for everyone). The results: “[I]t appears that

those who write violent ‘rap’ lyrics are more easily associated with crime and violence than those who write identical violent lyrics labeled as different genres.” Adam Dunbar & Charis E. Kubrin, *Imagining Violent Criminals: An Experimental Investigation of Music Stereotypes and Character Judgments*, 14 J. EXPERIMENTAL CRIMINOLOGY 507, 521 (2018). This adds to previous research showing that rap fans are viewed as more threatening to society compared to fans of other genres associated with violence, such as heavy metal.

This research suggests significant racial disparities in the way lyrics are perceived by listeners. Those perceptions can have grave consequences in a criminal justice context.

In 1999, psychologist Stuart Fischhoff published the findings of an experiment intended to determine the impact that violent rap lyrics might have on potential jurors. Stuart P. Fischhoff, *Gangsta’ Rap and a Murder in Bakersfield*, 29 J. APPLIED SOC. PSYCH. 795 (1999). His test subjects were presented with basic biographical information about a hypothetical 18-year-old African American man, but only some were shown a set of violent, sexually explicit rap lyrics that he had written. Subjects were then asked about their perceptions regarding the young man’s personality (*e.g.*, caring/uncaring, truthful/untruthful, capable of murder/not capable of murder).

Fischhoff found that the lyrics exerted “a significant prejudicial impact” on his test subjects. *Id.* at 803. For example, subjects who read the lyrics were significantly more likely to think the man was capable of committing murder. More striking was

that when Fischhoff told some subjects that the man was being prosecuted for murder, he found that “exposure to the lyrics evoked a negative reaction in participants that was more intense than the reaction to being told that the young man was on trial for murder.” *Id.* In his discussion of the results, Fischhoff writes, “it seems that people may indeed be inclined to identify an artist with his or her artistic product” but, importantly, he goes on to suggest that race or ethnicity “may also be found to serve as a moderating influence on such social judgments.” *Id.* at 804.

All of this research reveals that racial stereotypes can play a significant role in our perceptions of rap music and the people who create it. Without the proper safeguards, these stereotypes may blind us to the artistic intentions of young men like Jamal Knox.

Before he was sentenced, Knox spoke to those intentions when he gave a statement to the trial court describing his evolution as a rap artist. It began in elementary school, he said, when his mother signed him up for anger management classes. Pet. App. 110a. At first, his anger management instructor introduced him to a stress ball, but as he began to fall in love with the poetry of artists like Maya Angelou, Langston Hughes, and Tupac Shakur, he found that writing poetry of his own was a far more effective and enduring form of therapy. *Id.* at 111a. His best friend, a music producer, eventually convinced him to apply his love of poetry to rap music. In doing so, he found both a voice and a vocation. See Lily Hirsch, *His Music Was Protest, Not Threat—So Why Is Jamal Knox Still In Jail?*, MEDIUM, Oct. 13, 2016, <https://medium.com/the->

establishment/his-music-was-protest-not-threat-so-why-is-jamal-knox-still-in-jail-fb2fb27a9a4a.

Jamal Knox's story is not unique. Across the country, countless young people—often those of color—have found a voice in rap music, too. For some, it also has offered a legitimate career path, one leading away from the violence and despair so frequently chronicled in rap lyrics. If we criminalize those lyrics, we risk silencing many Americans already struggling to be heard.

CONCLUSION

For the reasons set forth above, *amici* respectfully request that this Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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