No. ____

IN THE

Supreme Court of the United States

JOHN R. MOORE, JR. and
TANNER J. MANSELL,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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May 22, 2025

QUESTION PRESENTED

It is a federal crime, punishable by up to five years in prison, to take and carry away the personal property of another in the special maritime jurisdiction of the United States if the taking is done "with intent to steal or purloin." 18 U.S.C. § 661.

The question presented is:

Whether a person acts with "intent to steal or purloin" for purposes of the felony offense in 18 U.S.C. § 661 whenever he knowingly takes and carries away the personal property of another, regardless of the reason or motivation for the taking.

RELATED PROCEEDINGS

The following proceedings are related under this Court's Rule 14.1(b)(iii):

- *United States v. Moore & Mansell*, 11th Cir. No. 23-10579 (Sept. 23, 2024);
- *United States v. Moore & Mansell*, S.D. Fla. No. 22-cr-80073 (Feb. 13, 2023).

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Petitioners Moore and Mansell respectfully seek a writ of certiorari to review a judgment issued by the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit's opinion is reported at 115 F.4th 1370 and is reproduced as Appendix ("App.") A, 1a–21a. The district court did not issue a written opinion, but the district court's instructions to the jury are reproduced as App. B, 22a–40a.

JURISDICTION

The Eleventh Circuit issued its judgment on September 23, 2024, and that court denied petitioners' timely petition for rehearing en banc on January 23, 2025. Justice Thomas extended the time to file this certiorari petition until May 23, 2025. This Court has certiorari jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 661 of Title 18 of the U.S. Code provides, in pertinent part:

> Whoever, within the special maritime and territorial jurisdiction of the United States, takes and carries away, with intent to steal or purloin, any personal property of another shall be punished as follows:
>
> If the property taken is of a value exceeding $1,000, or is taken from the person of another, by a fine under this title, or imprisonment for not more than five years, or both; in all other cases, by a fine under this title or by imprisonment not more than one year, or both.

INTRODUCTION

If there is one through line of this Court's recent criminal jurisprudence, it is that federal over-criminalization is a serious problem. In a dozen decisions over the past decade, the Court has emphatically rebuffed efforts by federal prosecutors to expand the scope of criminal statutes in a manner that would sweep in conduct that no ordinary person would think is covered. Instead, the Court has applied the time-honored principle that federal courts must exercise restraint when assessing the reach of federal criminal statutes. This principle is based in part on: a respect for Congress, as the exclusive creator of federal crimes; the presumption of *mens rea*; the importance of fair notice; and a refusal to trust prosecutors with unbridled discretion.

Given this Court's recent intolerance of overreach by federal prosecutors, one would expect this practice to be in decline. Unfortunately, it persists. This explains why one member of this Court recently co-authored an entire book about the over-criminalization epidemic. *See* Neil M. Gorsuch & Janie Nitze, Over Ruled: The Human Toll of Too Much Law (2024). And this explains why the Court has needed to grant review in numerous cases over the past few years to repudiate expansive

theories of federal criminal liability. The only conclusion is that federal prosecutors and lower courts continue to defy this Court's directive to curb over-criminalization.

This case unequivocally confirms that conclusion. Disregarding this Court's last decade of precedent, federal prosecutors and lower courts created a perfect storm, turning two upstanding citizens with no criminal record into felons. Indeed, this may be the most egregious over-criminalization case ever to reach this Court. Unless the Court intervenes, petitioners will be felons for life because they discovered, reported, and stopped what they justifiably believed to be a vicious crime against wildlife.

Petitioners were shark-diving instructors in Jupiter, Florida. On their way back to shore with their passengers one day, they spotted a fishing line attached to a buoy in the middle of the ocean. On the line were baited hooks with sharks and other marine life caught on them—just floundering and left to die. Believing that they had stumbled on an illegal shark-killing operation, and with no time to spare, petitioners (with their passengers) spent the next few hours pulling in the line and cutting off the hooks and sharks. Most remarkable of all, as this was happening, petitioners were in constant communication with the authorities about what they were doing. As it turned out, and to petitioners' extreme surprise, the fishing line had received a rare government research permit. There were no markings alerting anyone to that fact.

What should have happened next is obvious: petitioners should have simply paid the owner of the fishing line the $3,000 in property damage caused by their good-faith mistake. But what actually happened is baffling. "For reasons that defy understanding," Pet. App. 16a (Lagoa, J., concurring), federal prosecutors in the

Southern District of Florida charged petitioners with *theft* in the special maritime jurisdiction of the United States, in violation of 18 U.S.C. § 661. This is a felony carrying up to five years in prison. Dumbfounded, petitioners proceeded to trial.

But petitioners' luck only got worse from there. To convict under § 661, the government had to prove that they took property "with intent to steal or purloin." They argued that they lacked such intent because they took the property not for the use or benefit of themselves or others but rather to stop what they justifiably believed was an illegal shark-killing operation. The jury's deliberations made clear that it wanted to acquit. After all, how could it not? But the district court's instructions precluded the jury from doing so. That is because the court accepted the government's expansive theory that petitioners engaged in "stealing" as long as they took property with the intent to deprive the owner of his use or benefit of it. So, under the court's jury instructions, as long as petitioners knew that the property belonged to someone else and took it, they engaged in "stealing." The reason for the taking was irrelevant.

Petitioners were sentenced to one year of probation and restitution, but as newly branded "felons" they appealed their convictions. On appeal, they argued that the district court legally erred by refusing to instruct the jury that, to convict them of "stealing," it had to find that they took property for the use or benefit of themselves or someone else. However, the Eleventh Circuit affirmed their felony convictions on the exclusive ground that their proposed instruction was legally incorrect. The court relied entirely on this Court's decision in *United States v. Turley*, 352 U.S. 407 (1957), even though it did not address that specific issue at all. Worse still, at no point did

the court address this Court's precedent requiring restraint in assessing the reach of federal criminal statutes, even though petitioners relied on that body of precedent.

Judge Lagoa, joined by Judge Grant, authored a remarkable concurring opinion lambasting the government's decision to charge this case and calling out the federal prosecutor by name. Her opinion correctly explained that petitioners were guilty of nothing more than a good-faith mistake, and that they lacked fair notice that their conduct would be covered by the statute. Her opinion also correctly explained that the jury instructions were so broad that even a man who took a robber's gun to prevent the crime (and called the cops to explain what he was doing) would be guilty of "stealing." But Judge Lagoa nonetheless concluded that her court was powerless to remedy the injustice in this case. That was wrong. Had the court simply consulted this Court's over-criminalization precedent, and had it properly applied this Court's precedent about the term "stealing," petitioners' convictions could not have stood.

This exceptional criminal case warrants the Court's review. When compared to the dozen over-criminalization cases that this Court has reviewed over the past decade—many of them split-less—this one is more troubling. This is not a case where the government charged the wrong statute. Nor is it a case that should have been prosecuted by the States. It is a case that should not have been prosecuted *at all*. The conduct here was civic-minded, not criminal. In addition to rectifying this injustice, the Court should grant review to reaffirm, yet again, that federal criminal statutes should not be stretched to capture broad swaths of conduct that nobody would think is criminal. Federal prosecutors and the lower courts are *still* not getting the message.

STATEMENT

A. Facts

Petitioners worked for a shark-diving company in Jupiter, Florida. In August 2020, they took the Kuehl family, who were on vacation from Kansas City, out to swim with sharks. On their way back to shore after a successful outing, petitioners spotted a buoy in the middle of the ocean. Attached to the buoy was a fishing longline. Petitioners believed that this line was illegally killing sharks and other marine life.

To save the sharks, petitioners spent the next few hours pulling the line into the boat and cutting off the hooks and the sharks caught on them. Petitioners enlisted the Kuehls—two of whom were police officers (one a police *chief*)—to assist in this effort. As this was happening, petitioners and their colleague back on shore were in constant communication with Florida Fish & Wildlife (FWC) and the National Oceanic and Atmospheric Administration (NOAA) about what they were doing. Excited to be saving sharks, the Kuehls filmed the episode and posted the videos on social media. Petitioners also directed them to document the sharks being saved.

On their way back in to shore, petitioner Moore and the Kuehls encountered the FWC officer with whom they had been communicating. (By that point, petitioner Mansell had joined another charter). This encounter was captured on video. Piles of fishing line were visible on the boat. At no time did the officer seem upset or suggest they had done anything wrong. Rather, the officer directed petitioner Moore to bring the line back to the dock, which he did. After the line sat on the dock for hours, with

no follow-up from law enforcement, the dock master directed his employees to throw it in a dumpster. Petitioner Moore later told the authorities where they could find it.

As it turned out, the fishing line was legal. The owner of a fishing vessel, the *Day Boat III*, had received a rare permit from NOAA to set the line so that the government could research sandbar sharks. However, there were no official markings that would have alerted anyone that the line was legal. As a result, the government's own witness—the NOAA observer on the *Day Boat III*—acknowledged that it would have been reasonable for petitioners to believe that the line was illegal. All told, the owner of the fishing vessel lost a little more than $3,000. There was no allegation or evidence that petitioners took any property for the use or benefit of themselves or anyone else; they did so only to save the sharks caught on the ostensibly illegal line.

B. District Court Proceedings

Petitioners would have been happy to simply pay for the damage caused by their good-faith mistake. But the government inexplicably decided to make a federal criminal case out of this. The government charged petitioners with one count of property theft within the special maritime jurisdiction of the United States, in violation of 18 U.S.C. § 661. This is a felony offense carrying up to five years in prison.

Petitioners proceeded to trial. The only dispute was whether they possessed the requisite "intent to steal or purloin" under § 661. Boiled down, the prosecution's theory was that petitioners "stole" because they knew that the fishing line belonged to someone, and they took it anyway. Petitioners, meanwhile, essentially argued that

they did not "steal" because they took the property for a good reason—namely, to save the marine life that they justifiably believed was being illegally slaughtered.

The district court's jury instructions, however, precluded the jury from accepting petitioners' defense. That is because the court expansively defined "steal" as "to wrongfully take property belonging to someone else with the intent to, either permanently or temporarily, deprive the owner of his right to the property or the use or benefit from it." App. 30a. Under this instruction, the *reason* for the taking was irrelevant. Petitioners had instead urged the court to instruct the jury—as part of both the offense instruction and their theory of defense—that "stealing" also required taking the property "with the intention to keep [it] wrongfully" or "for his own use or benefit or the benefit or use of others." App. 58a–59a, 66a. But the district court refused to give those requested jury instructions. *See* Dist. Ct. ECF No. 146 at 4–9.

The jury thus had no choice but to convict. As long as it found that petitioners knew the fishing line belonged to someone and took it, they had the requisite "intent to steal." But the jury clearly did not want to convict. It deliberated for longer than the trial itself, twice reported being deadlocked, and received an *Allen* charge. In its seventh and final note, it asked if there were "any other defense theories" available. App. 6a–7a, 41a. But the only defense on which the jury had been instructed was the following: petitioners lacked an "intent to steal or purloin" if they took the property "without the bad purpose to disobey or disregard the law." App. 33a. The problem is that "the law" prohibited "stealing," as the court had expansively defined it. So the

jury could not acquit petitioners even if it found that they had taken the property for an entirely altruistic reason—not for the use or benefit of themselves or anyone else.

C. Appeal

1. On appeal, petitioners argued that the district court erred by refusing to give their requested instructions on "stealing." As relevant here, they made the following arguments. First, they argued that their proposed definition of "stealing" was taken verbatim from *Morissette v. United States*, 342 U.S. 246, 271 (1952). Second, they argued that, under *United States v. Turley*, 352 U.S. 407 (1957), the taking had to be "felonious"—*i.e.*, one done with criminal intent—and the court's instructions failed to require such intent. Third, they argued that, under this Court's precedent, the court had to narrowly construe § 661 to avoid sweeping in conduct that ordinary people would not think is criminal. Finally, they argued that their narrower construction was supported by the word "purloin," which required misappropriation.

2. Following oral argument, the Eleventh Circuit affirmed petitioners' felony convictions in a published opinion on the sole ground that their proposed jury instructions were legally incorrect. App. 11a, 14a. The court of appeals acknowledged that the term "steal" was "not necessarily clear on its face, so the plain text does not require a specific outcome." App. 11a. The court, however, believed that this Court's decision in *Turley* and its progeny expansively defined "stealing" in other contexts to require no more than a taking with intent to deprive the owner of the rights and benefits of their property. And this did not require that the taking be done for the benefit or use of the taker. App. 11a–12a. Meanwhile, the court believed that the

definition of "stealing" from *Morissette* on which petitioners had relied was inapt. App. 12a–13a. The court did not address petitioners' arguments about "purloin" or, more importantly here, that federal criminal statutes must be narrowly construed.

3. Judge Lagoa—joined by Judge Grant—authored a remarkable concurring opinion forcefully criticizing the government's decision to bring this case.

Her introduction began with a striking observation: petitioners were the "only felons I have ever encountered in my eighteen years on the bench and three years as a federal prosecutor who called law enforcement to report what they were seeing and what actions they were taking in real time. They are felons who derived no benefit, and in fact never *sought* to derive a benefit, from the conduct that now stands between them and exercising the fundamental rights from which they are disenfranchised. What's more, they are felons for having violated a statute that no reasonable person would understand to prohibit the conduct they engaged in." App. 15a.

"For reasons that defy understanding," Judge Lagoa continued, the federal prosecutor (who she then identified by name) took "a page out of Inspector Javert's playbook" by charging this case. App. 16a–17a. In her view, the facts "plainly suggest[ed] a good-faith mistake on Moore and Mansell's part" that was not "worth the public expense of a criminal prosecution, and the lifelong yokes of felony convictions, rather than imposition of a civil fine." App. 17a. In other words, she explained, this was an "imprudent exercise of [prosecutorial] discretion." App. 18a.

Judge Lagoa concluded by offering a series of hypotheticals illustrating how the government had "stretch[ed] [§ 661] to its farthest possible application in this

case." *Id*. She explained that, under the jury instructions given in this case, a man would commit "stealing" if he saw an elderly woman being robbed, took the robber's gun, and kept it until the police arrived. App. 19a. The same result would follow even if he called the police during the incident and told them he was holding the gun so that the robber could not harm the victim. App. 20a. And, in a hypothetical that came "the closest to our facts," the same result would follow even if, unknown to the man, the robbery had just been a scene put on by actors. *Id*. Under the instructions, "all that matters is that [the] man took the 'robber's' property with the intent to deprive him of it," even if he reasonably but mistakenly thought he was foiling a crime. *Id*.

4. Supported by multiple amici, petitioners sought rehearing en banc. *See* C.A. ECF Nos. 65, 74–75. They explained that they agreed with Judge Lagoa that this case should never have been prosecuted, and they further agreed with her understanding of the sweeping scope of the jury instructions. C.A. ECF No. 65 at 10. However, they strongly disagreed with the Eleventh Circuit's conclusion that those instructions were legally correct, rendering that court powerless to rectify this miscarriage of justice. They emphasized that the court of appeals had failed to consider, much less apply, this Court's over-criminalization precedent requiring that it narrowly construe the reach of federal penal statutes and their *mens rea* elements. *See id*. at 11–14. They further argued that this construction was supported by this Court's precedents in *Morissette* and *Turley* interpreting the term "stealing," and that the Eleventh Circuit had misapplied those precedents. *See id*. at 14–18. The Eleventh Circuit denied rehearing, with no active Judge calling for a vote. C.A. ECF No. 76.

REASONS FOR GRANTING THE PETITION

The decision below upholding petitioners' felony convictions cannot stand. It brazenly defies this Court's precedent requiring interpretive restraint as to the reach of federal criminal statutes. It misapplies this Court's precedent about "stealing." And it perpetuates a shocking miscarriage of injustice. In short, this case exemplifies the federal over-criminalization crisis that this Court has been combatting for the past decade. The Court should continue to do so and grant review in this egregious case.

I. The decision below contravenes two lines of this Court's precedent.

The decision below contravenes two separate lines of precedent of this Court. The Eleventh Circuit below inexplicably ignored this Court's precedent requiring restraint as to the reach of federal criminal statutes. And, on top of that, the Eleventh Circuit misapplied this Court's precedent about what it means to engage in "stealing."

A. The decision below ignores this Court's precedent requiring restraint in interpreting the reach of federal criminal statutes.

To safeguard against federal over-criminalization and prosecutorial overreach, the Court has developed a robust line of precedent requiring the strict construction of federal penal laws. In recent years, the Court has emphatically and consistently applied these precedents to invalidate sweeping interpretations of federal criminal statutes employed by overly aggressive prosecutors. Although that precedent was tailor made for this case, the Eleventh Circuit's decision below completely ignores it.

1. The Court limits the reach of federal criminal statutes.

As the Court reiterated just last Term, the Court has "traditionally exercised restraint in assessing the reach of a federal criminal statute." *Fischer v. United*

States, 603 U.S. 480, 497 (2024) (quotation omitted). The Court has repeatedly articulated this principle of interpretive restraint in several precedents over the past three decades. *See, e.g.*, *Dubin v. United States*, 599 U.S. 110, 129 (2023); *Marinello v. United States*, 584 U.S. 1, 11 (2018); *Arthur Andersen LP v. United States*, 544 U.S. 696, 703–04 (2005); *United States v. Aguilar*, 515 U.S. 593, 600 (1995).

But this principle is not new. To the contrary, "[t]he rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself." *United States v. Wiltberger*, 5 Wheat. 76, 95 (1820) (Marshall, C.J.); *see also Wooden v. United States*, 595 U.S. 360, 388–93 & nn.1–2 (2022) (Gorsuch, J., concurring in the judgment) (citing authorities). Although reinvigorated in recent years, the Court has applied this principle over the last century. *See, e.g.*, *Dowling v. United States*, 473 U.S. 207, 213–14 (1985); *United States v. Williams*, 458 U.S. 279, 290 (1982); *United States v. Bass*, 404 U.S. 336, 347–48 (1971); *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221–22 (1951); *McBoyle v. United States*, 283 U.S. 25, 27 (1931).

"This principle is founded on two policies that have long been part of our tradition." *Bass*, 404 U.S. at 348. This case directly implicates both of these policies.

a. The first policy derives from the separation of powers and "deference to the prerogatives of Congress." *Aguilar*, 515 U.S. at 600. "Federal crimes . . . are solely creatures of statute." *Dowling*, 473 U.S. at 213 (quotation omitted). Congress alone is responsible for defining federal crimes in part "because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community." *Bass*, 404 U.S. at 348; *see United States v. Davis*,

588 U.S. 445, 451 (2019). Accordingly, the Court has "stress[ed] repeatedly that when choice has to be made between two readings of what conduct Congress had made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." *Dowling*, 473 U.S. at 213–14 (quotations omitted). Absent clarity from Congress, federal crimes could be re-defined by "clever prosecutors riffing on equivocal language," *Dubin*, 599 U.S. at 129–30 (quotation omitted), and federal courts could "derive criminal outlawry from some ambiguous implication," *Universal C.I.T. Credit*, 344 U.S. at 222.

b. The second policy underlying the principle of restraint is "founded on the tenderness of the law for the rights of individuals." *Wiltberger*, 5 Wheat. at 95. As Justice Holmes famously explained, this solicitude requires that "a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear." *McBoyle*, 283 U.S. at 27. This concept of fair notice underlying "the canon of strict construction of criminal statutes" also underlies the constitutional prohibitions against vague and ex post facto laws. *United States v. Lanier*, 520 U.S. 259, 266–67 (1997). "In each of these guises, the touchstone is whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant's conduct was criminal." *Id*. at 267.

To ensure fair notice, the Court has applied three principles relevant here.

i. First is the presumption of *mens rea*. Because "our criminal law seeks to punish the 'vicious will,'" "wrongdoing must be conscious to be criminal." *Ruan v.*

United States, 597 U.S. 450, 457 (2022) (quoting *Morissette*, 342 U.S. at 251; other quotations omitted). "As Justice Jackson explained, this principle is 'as universal and persistent in mature systems of criminal law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.'" *Elonis v. United States*, 575 U.S. 723, 734 (2015) (quoting *Morissette*, 342 U.S. at 250). "Consequently, when we interpret statutes, we normally 'start from a longstanding presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state.'" *Ruan*, 597 U.S. at 457–58 (quoting *Rehaif v. United States*, 588 U.S. 225, 228–29 (2019)). In short, this "deeply rooted presumption of *mens rea*" helps ensure "fair notice" of the federal criminal law and thereby "protect[s] criminal defendants against arbitrary or vague federal criminal statutes." *Wooden*, 595 U.S. at 378–79 (Kavanaugh, J., concurring).

ii. Second, "[t]ime and again, this Court has prudently avoided reading incongruous breadth into opaque language in criminal statutes" that would "sweep in" conduct that no ordinary person would believe to be covered. *Dubin*, 599 U.S. at 130. Where the government's expansive interpretation "would criminalize a broad swath of prosaic conduct," *Fischer*, 603 U.S. at 496, such "far-reaching consequences" and the resulting "fallout underscores the implausibility of the Government's interpretation," *Van Buren v. United States*, 593 U.S. 374, 393–94 (2021). Over the past decade alone, the Court has applied this principle in the following precedents:

- In *Fischer* (2024), the Court rejected the government's expansive reading of an obstruction statute that would have "criminalize[d] a broad swath of prosaic conduct, exposing activists and lobbyists alike to decades in prison." 603 U.S. at 496 ("under the Government's interpretation, a peaceful

protestor could conceivably be charged under § 1512(c)(2) and face a 20-year sentence. And the Government would likewise have no apparent obstacle to prosecuting under (c)(2) any lobbying activity that 'influences' an official proceeding and is undertaken 'corruptly.'") (internal citation omitted).

- In *Snyder v. United States*, 603 U.S. 1 (2024), the Court rejected the government's expansive reading of a federal bribery statute that would have "subject[ed] 19 million state and local officials to up to 10 years in federal prison for accepting even commonplace gratuities" as "a token of appreciation." *Id*. at 5; *see id*. at 15–16 ("The Government's interpretation of the statute would create traps for unwary state and local officials" and potentially criminalize giving "a $100 Dunkin' Donuts gift card for a trash collector," giving "a $200 Nike gift card for a county commissioner who voted to fund new school athletic facilities," and students taking "their college professor out to Chipotle for an end-of-term celebration").

- In *Dubin* (2023), the Court rejected the government's expansive reading of the federal aggravated identity theft statute that would have covered any use of someone's identity in the course of submitting a fraudulent bill. 599 U.S. at 130 ("The Government's reading would sweep in the hour-inflating lawyer, the steak-switching waiter, the building contractor who tacks an extra $10 onto the price of the paint he purchased.").

- In *Percoco v. United States*, 598 U.S. 319 (2023), the Court rejected the government's expansive reading of honest-services fraud that would have covered all "individuals who lacked any formal government position but nevertheless exercised very strong influence over government decisions," including "wise counselors" and "well-connected and effective lobbyists." *Id*. at 330–31.

- In *Ciminelli v. United States*, 598 U.S. 306 (2023), the Court rejected the government's expansive reading of the wire fraud statute that would have made "a federal crime of an almost limitless variety of deceptive actions traditionally left to state contract and tort law," including deception relating to "the ethics (or lack thereof) of state employees and contractors." *Id*. at 315–16.

- In *Van Buren* (2021), the Court rejected the government's expansive reading of the Consumer Fraud and Abuse Act (CFAA) that would have covered a "breathtaking amount of commonplace computer activity" that is routinely committed by "millions of otherwise law-abiding citizens." 593 U.S. at 393–94 ("So on the Government's reading of the statute, an

employee who sends a personal e-mail or reads the news using her work computer has violated the CFAA.").

- In *Kelly v. United States*, 590 U.S. 391 (2020), the Court rejected the government's expansive reading of federal fraud statutes that would have covered "every lie a state or local official tells in making [any regulatory] decision," leading to a "sweeping expansion of federal criminal jurisdiction" into "broad swaths of state and local policymaking." *Id*. at 403–04 (quotation omitted); *see id*. at 402 n.2 (noting that, under the government's interpretation, "even a practical joke could be a federal felony.")

- In *Marinello* (2018), the Court rejected the government's expansive reading of an obstruction provision in the tax code that would have "cover[ed] virtually all governmental efforts to collect taxes." 584 U.S. at 4; *see id.* at 10 ("Interpreted broadly, the provision could apply to a person who pays a babysitter $41 per week without withholding taxes, leaves a large cash tip in a restaurant, fails to keep donation receipts from every charity to which he or she contributes, or fails to prove every record to an accountant.").

- In *McDonnell v. United States*, 579 U.S. 550 (2016), the Court rejected the government's expansive reading of a federal bribery statute that would have "encompasse[d] nearly any activity by a public official," including "arranging a meeting, contracting another public official, or hosting an event—without more—concerning any subject." *Id*. at 566–67; *see id*. at 574–75 (rejecting "the Government's expansive interpretation of 'official act,'" under which "nearly anything a public official accepts—from a campaign contribution to lunch—counts as a *quid*; and nearly anything a public official does—from arranging a meeting to inviting a guest to an event—counts as a *quo*"); *id*. at 576 ("Under the standardless sweep of the Government's reading, public officials could be subject to prosecution, without fair notice, for the most prosaic interactions") (quotation omitted).

- In *Yates v. United States*, 574 U.S. 528 (2015), the Court rejected the government's expansive interpretation of a provision in the Sarbanes-Oxley Act focused on preserving "records" and "documents" that would have "cover[ed] all physical items that might be relevant to any matter under federal investigation"—*i.e.*, "physical objects of every kind"—including an undersized grouper (fish). *Id*. at 531–32, 536, 540 (plurality opinion).

- In *Bond v. United States*, 572 U.S. 844 (2014), the Court rejected the government's expansive reading of a "chemical weapons" statute that would have covered "Bond's feud-driven act of spreading irritating chemicals on [the victim's] door knob and mailbox," "an act of revenge born of romantic

> jealously, meant to cause discomfort, that produced nothing more than a minor thumb burn." *Id*. at 861; *see id*. at 862 (observing that the government's interpretation "would sweep in everything from the detergent under the kitchen sink to the stain remover in the laundry room," substances that "no one ordinarily [would] describe" as "chemical weapons"); *id*. (declining to "transform" a statute about chemical weapons "into one that also makes it a federal offense to poison goldfish").

iii. Last, "as this Court has said time and again, the Court cannot construe a criminal statute on the assumption that the Government will use it responsibly." *Snyder*, 603 U.S. at 17 (quotation omitted; citing cases). Relying "upon prosecutorial discretion to narrow the otherwise wide-ranging scope of a criminal statute's highly abstract general statutory language places great power in the hands of the prosecutor." *Dubin*, 599 U.S. at 131 (quotation omitted). That power would "allow policemen, prosecutors, and juries to pursue their personal predilections," and the "nonuniform execution of that power across time and geographic location" would lead to "fears [of] arbitrary prosecution" and thereby "undermin[e] necessary confidence in the criminal justice system." *Marinello*, 584 U.S. at 11 (quotation omitted).

2. <u>This Court's precedent applies squarely to this case.</u>

If any case requires the exercise of interpretive restraint, it is this one.

a. In § 661, Congress defined a felony larceny offense using opaque language. It proscribes taking and carrying away personal property of another in the special maritime jurisdiction of the United States "with intent to steal or purloin." But Congress did not further define or clarify this critical *mens rea* element. And the Eleventh Circuit below acknowledged that the term "steal" "is not necessarily clear on its face, so the plain text does not require a specific outcome." App. 11a. Thus, this

is precisely the sort of criminal statute that should be narrowly construed. Otherwise, the offense that Congress defined could be inappropriately re-defined and broadened by "clever prosecutors riffing on equivocal language." *Dubin*, 599 U.S. at 129–30 (quoting *United States v. Spears*, 729 F.3d 753, 758 (7th Cir. 2013) (Easterbrook, J.)).

b. That is exactly what happened here, depriving petitioners of fair notice that their conduct could be subject to prosecution. Rather than narrowly construe the statute's "intent to steal or purloin" element, "the government stretched [it] to its farthest possible application in this case." App. 18a (Lagoa, J., concurring). According to the government and the jury instructions, petitioners acted with the requisite "intent to steal or purloin" because they took property with the intent to deprive the owner of his use or benefit of it. App. 30a. That conduct alone sufficed. It was irrelevant that petitioners did not take the property for their own (or anyone else's) use or benefit but rather for an entirely altruistic and exigent purpose—namely, to save dying marine life that they justifiably believed was being illegally killed.

i. That conduct plainly lacks the *mens rea* necessary for criminal liability. When petitioners took the property, they did so for the purpose of *foiling* a crime, not committing one. That is why they repeatedly called law enforcement to advise about what they were seeing and doing. And that is why they enlisted their passengers—two of whom were police officers!—to assist them and even document their efforts. Needless to say, people committing crimes do not typically alert and advise the authorities when they are doing so. Nor do they go out of their way to create witnesses and evidence against themselves. Indeed, Judge Lagoa observed that she had never

before encountered "felons" who had engaged in such conduct in her "eighteen years on the bench and three years as a federal prosecutor." App. 15a (Lagoa, J., concurring). To be sure, petitioners made a reasonable and "good-faith mistake." App. 17a (Lagoa, J., concurring). But that mistake was no more than a civil tort, one easily remedied by the payment of money damages. Petitioners' conduct was wholly devoid of the moral culpability and blameworthiness necessary to justify "the public expense of a criminal prosecution, and the lifelong yokes of felony convictions." *Id*.

ii. For that reason, petitioners lacked fair notice that their conduct would have been covered by § 661. As Judges Lagoa and Grant recognized below, petitioners "are felons for having violated a statute that no reasonable person would understand to prohibit the conduct they engaged in." App. 15a (Lagoa, J., concurring). Indeed, the jury deliberations reflect that no reasonable person would understand petitioners to have engaged in "stealing." The jury deliberated "longer than the actual presentation of the evidence," it twice reported being deadlocked, it transmitted seven notes to the court, and its final note revealingly asked "if there were any other defense theories" available. App. 6a–7a. The jury plainly wanted to acquit—because it understood that petitioner did not engage in "stealing"—but the instructions legally precluded the jury from doing so. As long as it found that petitioners intended to deprive someone else of their property, the instructions required the jury to find that they acted with the requisite "intent to steal of purloin." *See* App. 20a (Lagoa, J., concurring).

iii. This unwarranted prosecution thus confirms the wisdom of this Court's repeated refusal to interpret a federal criminal statute "on the assumption that the

Government will use it responsibly." *Snyder*, 603 U.S. at 17 (quotation omitted). Indeed, Judge Lagoa took the rare step of criticizing the federal prosecutor by name to emphasize the "imprudent exercise of [prosecutorial] discretion" that "occurred in this case." App. 16a, 18a; *see* App. 16a–17a ("For reasons that defy understanding, Assistant United States Attorney Tom Watts Fitzgerald learned of these facts and—taking a page out of Inspector Javert's playbook—brought the matter to a grand jury to secure an indictment for a charge that carried up to five years in prison.").

In that regard, this prosecution is more troubling than many of this Court's over-criminalization cases from the past decade. In those cases, the Court rejected the government's expansive interpretation in part because it would have swept in conduct that no ordinary person would think was covered—even though the defendant himself had not engaged in such conduct. But, here, no hypothetical parade of horribles is necessary to illustrate the sweeping scope of the government's interpretation because the facts of this very case do so. The government chose to prosecute conduct that no ordinary person would think was covered or even criminal. The last time that happened in a case in this Court was *Yates*, where the defendant's own conduct illustrated the sweeping scope of the government's interpretation.

3. The Eleventh Circuit ignored this Court's precedent.

Inexplicably, the Eleventh Circuit's decision below made no mention of this Court's over-criminalization precedents above. That glaring omission is remarkable for a number of reasons. First, petitioners expressly relied on it in their briefs (Pet. C.A. Initial Br. 3–4, 20, 35–36; Pet. C.A. Reply Br. 2, 10–12), and then highlighted

the court's omission in their rehearing petition (C.A. ECF No. 65 at 11–14). Second, as Judge Lagoa's concurrence reflects, two judges *agreed* that petitioners made a good-faith (*i.e.*, non-criminal) mistake, lacked fair notice their conduct was covered, and should not have been charged. Yet the court of appeals felt powerless to rectify this miscarriage of justice, even though this Court's over-criminalization precedent compelled that result. Finally, that oversight is most puzzling given how emphatic this Court has been about policing federal over-criminalization over the past decade.

B. The decision below misapplies the Court's "stealing" precedent.

It would be one thing if, like the dissent in *Yates*, the Eleventh Circuit believed that its expansive interpretation was required by the statute's plain language. But, to the contrary, the Eleventh Circuit acknowledged that the term "steal" was "not necessarily clear on its face, so the plain text does not require a specific outcome." App. 11a. Indeed, petitioners had cited legal dictionaries supporting their narrower definition of "steal" as taking property "with intent to keep it wrongfully." Pet. C.A. Initial Br. 36 (quoting Black's Law Dictionary 1453 (8th ed. 2004)). Nor did the Eleventh Circuit invoke some other canon of construction. In fact, the court ignored petitioners' argument that "steal" was cabined by the word "purloin," which requires misappropriation. Instead, it believed that affirming petitioners' felony convictions was required by just one source of authority: this Court's decision in *Turley*. But this Court's precedent about the meaning of "stealing"—not only *Turley* but *Morissette*—supports rather than forecloses petitioners' narrower interpretation of the statute.

1. *Morissette* requires intent to benefit from the property.

In petitioners' proposed jury instructions, one of their definitions of the term "steal" was taken verbatim from this Court's decision in *Morissette*. App. 58a–59a & n.2. In the course of interpreting 18 U.S.C. § 641, which prohibits theft of government property, *Morissette* offered this definition: "To steal means to take away from one in lawful possession without right *with the intention to keep wrongfully*." 342 U.S. at 271 (emphasis in original; quotation and first emphasis omitted). By explaining what stealing "means," *Morissette* provided an exclusive definition. *See Burgess v. United States*, 553 U.S. 124, 130 (2008) ("a definition which declares what a term 'means' excludes any meaning that is not stated") (quotation, brackets, and ellipsis omitted). And that definition excludes petitioners' selfless taking here.

The Eleventh Circuit, however, casually dismissed *Morissette* as "not explicitly relevant" because it interpreted § 641 rather than § 661. App. 12a. Going further, the court added that *Morissette*'s definition came in "an unrelated context." App. 13a. But the court overlooked that the two statutes *are* related. They were both codified in the same 1948 Act of Congress and are both located in Chapter 31 of Title 18 of the U.S. Code ("Embezzlement and Theft"). And because they both use the term "steal," that term should bear the same meaning for § 661 that it bears for § 641 (as defined in *Morissette*). *See Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 570 (1995) (reiterating "the normal rule of statutory construction that identical words used in different part of the same act are intended to have the same meaning") (quotation omitted).

The Eleventh Circuit instead emphasized that, unlike § 661, § 641 prohibits "conversion" as well as "stealing." App. 12a–13a. But the court failed to explain why that supported giving "stealing" a narrower meaning under § 641 than under § 661. If anything, the fact that § 641 prohibits "conversion" in addition to "stealing" suggests that § 641 has a broader (not narrower) scope of coverage than does § 661.

Unable to support the converse proposition, the court was forced to opine that *Morissette* did not provide a "conclusive definition" of "stealing" *at all*—not even for § 641. App. 13a. The court observed that *Morissette*'s definition was taken from a New York state case. But the Eleventh Circuit failed to explain why this Court in *Morissette* could not adopt a federal definition for "stealing" in § 641 from a state case.

The Eleventh Circuit also observed that, in the sentence preceding that definition, *Morissette* stated that "[p]robably every stealing is a conversion, but certainly not every knowing conversion is a stealing." 342 U.S. at 271. The Eleventh Circuit seized on the word "probably." But, at most, that word indicated some uncertainty about the precise overlap between stealing and conversion. It did not indicate uncertainty about the definition of "stealing" that came in the next sentence.

The Eleventh Circuit also opined that *Morissette*'s discussion of "stealing" was "background context" and "offhand dicta." App. 12a–13a. That was also incorrect. *Morissette*'s holding was that "conversion" under § 641 had an intent element. In so holding, the Court rejected the government's argument that this understanding would render "stealing" superfluous. It was in *that* context that the Court exclusively

defined "stealing." *See Morissette*, 342 U.S. at 271–73. This reasoning—rejecting the government's surplusage argument—therefore formed part of the Court's holding.

In short, *Morissette*'s definition supports rather than precludes petitioners' narrower conception of "stealing." And, "[a]s this Court has explained" time and again, "[i]f a precedent of this Court has direct application in a case . . . , a lower court should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (quotation omitted). The Eleventh Circuit casually disregarded that directive by dismissing *Morissette*'s definition of "stealing" for a neighboring theft statute.

2. *Turley* requires a "felonious" taking.

The Eleventh Circuit relied instead on this Court's decision in *Turley*, finding it "more applicable" than *Morisesette*. App. 13a. But that is difficult to understand given that *Turley* interpreted the National Motor Vehicle Theft Act. Unlike § 641, that statute is not related to § 661 at all. It focuses specifically on the transportation of stolen vehicles, and it is codified in Chapter 113 of Title 18 ("stolen property").

In any event, *Turley* also supports petitioners' narrower conception of "stolen." *Turley* held that "'[s]tolen' as used in 18 U.S.C. § 2312 includes all felonious takings of motor vehicles with intent to deprive the owner of the rights and benefits of ownership, regardless of whether or not the theft constitutes common-law larceny." 352 U.S. at 417; *see id*. at 408, 410 (repeating same). Critically, this (non-exclusive) definition does not encompass *every* taking with intent to deprive the owner of their property, regardless of the reason or purpose. That is so because *Turley*'s definition

still requires that the taking be "felonious." Indeed, *Turley* itself specifically explained that "felonious" referred to "having criminal intent" (as opposed to the "distinction between felonies and misdemeanors"). *Id*. at 408 n.4. This "felonious" requirement ensures that civil torts, such as trespass to chattel, are not punished as theft crimes.

The Eleventh Circuit noted this key requirement but failed to address its import or purpose. *See* App. 9a n.4, 12a. To ensure that petitioners were convicted of a "felonious" taking rather than a civil tort, the jury should have been required to find that they took the property for the use or benefit of themselves or others. But the jury was not so instructed. And nothing else in the instructions here required the jury to find the sort of "felonious" taking needed to support criminal liability under *Turley*.

The Eleventh Circuit never addressed this fatal flaw. Instead, it emphasized that *Turley* held that the term "stolen" was not a common-law term of art; and, as a result, it did not incorporate the *lucri causa* element (*i.e.*, taking for gain's sake) of common-law larceny. App. 12a.[1] But the conclusion does not follow from the premise. While *Turley* held that "stolen" was not a common-law term, it did so in the limited context of addressing whether the statute there encompassed embezzlement (and

[1] By way of background, § 661 traces all the way back to Section 16 of the Crimes Act of 1790. *See United States v. Henry*, 447 F.2d 283, 284–85 (3d Cir. 1971). Early decisions interpreted that statute by reference to common-law larceny. *See, e.g.*, *Jolly v. United States*, 170 U.S. 402, 406–07 (1898) (discussing *United States v. Davis*, 25 F. Cas. 781, 783 (C.C. D. Mass. 1829) (Story, J.)). And common-law larceny required an "intent to convert [the property] to the use of the taker," *United States v. Moulton*, 27 F. Cas. 11, 14 (C.C. D. Mass. 1830) (Story, J.), or a taking "lucri causa," W. Blackstone, 4 Commentaries on the Law of England 232 (1769). However, this Court in *Turley* subsequently held that "stolen" had "no accepted common-law meaning." 352 U.S. at 411–12; *see Bell v. United States*, 462 U.S. 356, 360 (1983) (reaffirming this aspect of *Turley*); *Carter v. United States*, 530 U.S. 255, 266 (2000) (similar).

other takings that went beyond common-law larceny, like false pretenses). At no point did *Turley* address whether one engages in "stealing" by taking another's property without any intent to use or benefit from it. Nor did *Turley* more generally address whether the *reason* for the taking matters. That *lucri causa* was one element of common-law larceny does not mean that a similar requirement may be dispensed with for "stealing" where, as here, it is necessary to commit a "felonious" taking as opposed to a civil tort. If anything, then, *Turley*'s deliberate inclusion of a "felonious" taking requirement supports rather than forecloses petitioners' position in this case.

II. This is an exceptional case warranting this Court's review.

Over the past decade, this Court has granted review in about a dozen substantive federal criminal cases and, in every one of them, it has rejected the government's expansive interpretation of the federal criminal statute. Despite this Court's increasing intolerance of federal over-criminalization, prosecutors continue to bring cases under sweeping theories, and lower courts continue to uphold them. This case illustrates such defiance more than any other to come to this Court. To curb this troubling yet persistent practice, and to avert a shocking miscarriage of justice in this particular case, the Court should grant review here and reverse yet again.

A. The Court should continue to combat over-criminalization.

There is a federal over-criminalization crisis in America. It is not new, but it is enduring. The problem remains so palpable and alarming that, as noted, one member of this Court recently co-authored an entire book about it. *See* Gorsuch & Nitze, *supra*.

The problem stems from the fact that "prosecutors can find some arguable federal crime to apply to just about any one of us, even for the most seemingly innocuous conduct." Harvey A. Silvergate, Three Felonies a Day: How the Feds Target the Innocent xxx (2009). That is because federal "criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something." *Nieves v. Bartlett*, 587 U.S. 391, 412 (2019) (Gorsuch, J., concurring in part and dissenting in part). Indeed, these laws are now too many to count, but the number "may be as high as several hundred thousand." *Van Buren*, 593 U.S. at 408 (Thomas, J., dissenting). The upshot is that upwards of "70 percent of adult Americans today have committed an imprisonable offense—many, maybe most, without even knowing it." Gorsuch & Nitze, *supra*, at 106.

This explosion in federal criminal law is only part of the problem. The other part is the vast discretion afforded to federal prosecutors in deciding which cases to charge. These charging decisions are not subject to judicial review. *See* App. 17a–18a (Lagoa, J., concurring). So Americans are now largely at the whim of prosecutors. On any given day they could find themselves staring down the barrel of federal charges.

At the same time, and for that reason, federal courts still have a vital role to play in checking prosecutorial overreach. Juries are now largely relegated to the role of a factfinder. *See* C.A. ECF No. 70-2 at 2, 7–8 (Cato amicus brief) (arguing that the historic institution of jury independence no longer exists). So it falls to federal courts to narrowly construe the reach of federal criminal statutes when federal prosecutors pursue expansive theories of liability ensnaring every-day or non-criminal conduct.

This Court has admirably risen to the occasion. Over the past decade, the Court has repeatedly granted review of defense petitions when lower federal courts have abdicated their responsibility. In this unbroken line of substantive federal criminal cases, this Court has ruled for the petitioner every time. *Supra* at 15–17. (And that does not include a trilogy of precedents invalidating federal criminal statutes on void-for-vagueness grounds. *See United States v. Davis*, 588 U.S. 445 (2019); *Sessions v. Dimaya*, 584 U.S. 148 (2018); *Johnson v. United States*, 576 U.S. 591 (2015)).

Notably too, in many of these cases (and others in the same vein), the Court granted review without noting the existence of any circuit conflict. Indeed, the opinions in the following nine cases did not mention any conflict: *Fischer*, 603 U.S. at 485; *Percoco*, 598 U.S. at 325; *Ciminelli*, 598 U.S. at 311–12; *Ruan*, 597 U.S. at 457; *Kelly*, 590 U.S. at 398; *Rehaif*, 588 U.S. at 228; *McDonnell*, 579 U.S. at 566; *Yates*, 574 U.S. at 535; *Bond*, 572 U.S. at 854. That omission suggests that this Court views limiting the scope of federal criminal statutes and curbing prosecutorial overreach as independently cert-worthy. Bottom line: when federal prosecutors have pursued overbroad theories of liability, this Court has not hesitated to intervene—split or no.

Yates again serves as the best example here—and not because that case and this one happen to involve marine life. Whether fish qualified as a "tangible object" under the obstruction provision of the Sarbanes-Oxley Act was a legal question that affected just one person: John Yates. Federal prosecutors were not going around the country indicting fishermen under that provision. Accordingly, Mr. Yates's certiorari petition did not allege any circuit conflict on that question. In fact, it acknowledged

that no other circuit had even addressed the question. *See Yates*, Pet. for Cert., 2013 WL 8350082, at *25 (U.S. No. 13-7451) (Nov. 13, 2013). Yet this Court granted review nonetheless. There is only one reason why the Court would have done so: because it was troubled by the government's decision to use an obstruction statute—designed to criminalize the destruction of financial records—to prosecute the destruction of fish.

B. This is the perfect vehicle for addressing over-criminalization.

If review was warranted in *Yates* (as the Court determined), then review must be warranted here too. Indeed, this case makes the *Yates* prosecution look reasonable.

1. As a legal matter, the government at least had a strong plain-text basis for its position in *Yates*. As the dissent emphasized and the majority acknowledged, the plain meaning of "tangible object" did include fish. But, here, there is no such textual hook (no pun intended). Unlike *Yates*, the court below acknowledged that the plain meaning of "stealing" did not compel the government's interpretation. App. 11a.

In addition, the government and lower courts in *Yates* did not have the benefit of a decade of precedent from this Court repeatedly narrowing the reach of federal criminal statutes. In this case, by contrast, the government and lower courts operated against that jurisprudential backdrop. Yet that still did not deter the government from bringing this case. Nor did it deter the lower courts from endorsing the government's expansive interpretation of the statute. Because the government and the lower courts are still not adhering to this Court's precedent when it comes to federal over-criminalization, it is necessary for the Court to grant review yet again.

2. As a matter of individual liberty, Mr. Yates was separately convicted under another federal statute, and he did not dispute that conviction in this Court. *See Yates*, 574 U.S. at 531–32, 534. Thus, even though he ultimately prevailed in this Court, he nonetheless remained a convicted felon. Here, by contrast, petitioners' status as felons depends entirely on their sole count of conviction under § 661. Yet, as explained at length, their conduct plainly did not rise to the level of a criminal act.

This case accordingly has significant real-world implications for petitioners. A felony conviction will follow them for the rest of their lives, and that label carries a host of collateral consequences (and stigma too). For example, petitioners' felon status has already prevented them from voting in the last election. And they currently cannot see their loved ones: petitioner Moore is unable to visit his granddaughter in Canada; and petitioner Mansell is unable to visit his girlfriend in Australia and to fully pursue his livelihood, since much of his diving excursions take place abroad.[2]

3. Finally, this case from the very outset has garnered significant media coverage in both the local and national press. *See* C.A. ECF No. 70-2 at 6 & nn.14–15 (Cato amicus brief) (citing articles). The Eleventh Circuit's decision below upholding petitioners' felony convictions generated more headlines. *See, e.g.*, Jacob Sullum, 2 Florida Men Who Thought They Were Freeing Illegally Caught Sharks are Now Felons, Yahoo News (Dec. 26, 2024); Dave Bonham, Federal Convictions Upheld for

[2] Notably, even after petitioners were charged, and despite knowing about the indictment, the Kuehl family—including the police officers—reached back out to petitioner Mansell and went on another excursion with him in Mexico. One member of the Kuehl family testified at trial that this was the "best experience of my life to date." Dist. Ct. ECF No. 145 at 149; *see* C.A. Pet. Initial Br. 12 (citing trial record).

Jupiter Shark Sighting Captain, Crewmember, West Palm Beach TV (Sept. 24, 2024). And this case was recently featured both in a magazine with a wide circulation—one with 80,000 hard copies of each issue distributed and over 100,000 online views in the past year, *see* Clark Neily, Blindfolded Juries, Coerced Convictions: Why Prosecutors Often Win Before Trials Even Begin, FreeSociety (Spring 2025)[3]—and in a hearing this month before the House Judiciary Committee, *see* Subcommittee on Crime and Federal Government Surveillance, Criminalizing America: The Growth of Federal Offenses and Regulatory Overreach, 119th Cong. (May 7, 2025).[4]

This media coverage means that many Americans have been made aware of this case. Knowing that this sort of federal felony prosecution is not only possible but validated by federal courts exacerbates "public fears [of] arbitrary prosecution" and "undermin[es] necessary confidence in the criminal justice system." *Marinello*, 584 U.S. at 11 (quotation omitted). The only way to quell those fears and restore public confidence is for this Court to grant review and reverse. Conversely, allowing petitioners' convictions to stand would reinforce that Americans are vulnerable to federal prosecution, even when they act in good faith and try to do the right thing.

C. This case would allow the Court to clarify both lines of precedent.

Finally, granting review would have the added benefit of allowing the Court to clarify its own precedent—on interpreting federal criminal statutes and on "stealing."

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[3] https://www.cato.org/free-society/spring-2025/blindfolded-juries-coerced-convictions-why-prosecutors-often-win-trials.

[4] https://judiciary.house.gov/committee-activity/hearings/criminalizing-america-growth-federal-offenses-and-regulatory-0.

1. This case would afford the Court an opportunity to clarify doctrinally the rule requiring interpretive restraint on the reach of federal criminal statutes. By refusing to even mention this rule, the Eleventh Circuit treated it as optional. And it did not rely on the plain language or any other canon of construction to uphold the government's expansive interpretation. As a result, this case would be a good vehicle for the Court to clarify (if it wished) how courts should apply this rule more generally.

2. This case would also afford the Court an opportunity to clarify its precedents about "stealing." Petitioners maintain that the definitions adopted in *Morissette* and *Turley* are consistent and mutually reinforcing here. But the Eleventh Circuit apparently thought that they were inconsistent, electing to apply *Turley* and discard *Morissette*. *See* App. 12a–13a. Only this Court can clarify its own precedents.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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