No. 18-1049

IN THE

Supreme Court of the United States

PETER HOFFMAN, ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

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

BRIEF OF CRIMINAL LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE* [1]

As law professors who study criminal law and procedure,[2] the undersigned have observed with increasing frequency how vaguely drafted federal criminal statutes invite the arbitrary use of prosecutorial power. This power can be wielded to undermine the carefully structured state-federal balance in the prosecution of crimes. When it does so, it also often leads to government overreach and unfairness for the individual citizens who bear its brunt. Many of us have published widely on these issues,[3] and have noted how this Court has taken steps to confront the federalism and unfairness concerns engendered by facially vague federal criminal statutes. We seek to participate here because we believe that this case illustrates why additional steps are necessary, as it presents

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[1] The parties have consented to the filing of this brief and letters of consent are attached. Pursuant to Rule 37.2, *amici* state that all parties received at least ten days' notice of intent to file this brief. Pursuant to Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and no person or entity, other than *amici* and its counsel, made a monetary contribution to the preparation or submission of the brief.

[2] The attached Appendix contains a list of the *amici* along with biographical information for each. *Amici* appear in their individual capacities; institutional affiliations are provided here for identification purposes only.

[3] *See, e.g.*, Ira P. Robbins, *Guns N' Ganja: How Federalism Criminalizes the Lawful Use of Marijuana*, 51 U.C. Davis L. Rev. 1783 (2018); Michael L. Siegel & Christopher Slobogin, *Prosecuting Martha: Federal Prosecutorial Power and the Need for a Law of Counts*, 109 Penn State L. Rev. 1107 (2005); Ellen S. Podgor, *Criminal Fraud*, 48 Am. U.L. Rev. 729 (1999); Ellen S. Podgor, *Mail Fraud: Opening Letters*, 43 S.C. L. Rev. 223 (1992).

another permutation of the same recurring problem. The issues raised by the Petition, moreover, are worthy of this Court's review, as they offer procedural solutions that can restrict the reach of these vague federal statutes, thereby respecting the state-federal balance and limiting government overreach.

SUMMARY OF ARGUMENT

The dangers of expansive federal criminal laws have long been known, but in the past twenty years, this Court has shown a heightened concern about the proliferation of facially vague federal criminal statutes, whose broad reach can trigger both federalism and fundamental fairness concerns. Cases like *Bond v. United States*, 572 U.S. 844, 862–63 (2014) and *Cleveland v. United States*, 531 U.S. 12, 24 (2000) illustrate the federalism concerns these vague criminal laws create, as each case involved federal a prosecution that intruded on traditional state policing powers. And cases like *Yates v. United States*, 135 S. Ct. 1074 (2015), *McDonnell v. United States*, 136 S. Ct. 2355, 2372–73 (2016), *Skilling v. United States*, 561 U.S. 358 (2010) illustrate how prosecutors stretch facially vague criminal laws beyond any fair or even rational bounds when they are not constrained by discrete limiting principles—in each case the Court was required to craft a narrowing construction that returned the statutory focus to its original moorings, thus preventing prosecutorial overreach.

This Petition presents this same problem in a new posture: Petitioners' federal fraud convictions arise from their attempt to navigate a complex Louisiana regulatory system, which the district

court recognized was rife with ambiguity, and which, construed reasonably, permitted the non-cash commitments for the state-directed purpose to be submitted for tax credits. Nonetheless, the federal prosecutors' theory of fraud was that petitioners knew they were entitled to state tax credits only for expenses paid in cash, or cash equivalents, and that they their submissions to state officials falsely suggested that they had made such payments when they had not. Conviction under this theory depended on a jury's determination that Petitioners' view of what was permissible under the state tax credit scheme was not only incorrect, but fraudulently so — despite the fact that the state tax credit system objectively allowed the use of non-cash commitments, and certainly did not deem them improper. A federal mail and wire fraud prosecution aimed solely at interactions with state regulators as part of a state regulatory process, and whose essential elements turn on the contents and understanding of the state regulatory process is replete with federalism concerns. This expansive view of the federal fraud statute lets federal prosecutors decide what the requirements of state law are and seek punishment for infractions of state law (as they see it) with federal felony convictions — even if the accused's reading of the state tax system is objectively reasonable.

The potential injustice presented by this case is also manifest. In a nutshell, Petitioners have been convicted of federal fraud for making statements to state regulators about the requirements of a state law tax scheme that was so ambiguous that no one knew with any certainty what the requirements of the state law scheme were, and where Petitioners

were convicted for the "misleading" submission of information seeking non-cash credits that were objectively allowed. In these circumstances, the facially expansive federal mail fraud statutes gave no fair warning that they could be applied to these sorts of interactions with regulators. At bottom the federal mail and wire fraud statutes have been used here in a way that "leav[es] the people in the dark about what the law demands and allow[s] prosecutors and courts to make it up." *Sessions v. Dimaya*, 138 S. Ct. 1204, 1223–24 (2018) (Gorsuch, J. concurring in the judgment).

What's more, the resulting convictions arose from evidence that even the district court acknowledged was in "equipoise." But the courts below denied Petitioners the benefit of a Rule 29 judgment-of-acquittal rule that is designed to prevent criminal convictions in objectively doubtful cases like this one—cases where the inculpatory evidence, viewed in the light most favorable to the government, is objectively balanced between innocence and guilt.

This case shows that the Court's work in this area is not complete, as the federal government continues to capitalize on the vague language of the federal mail and wire fraud statutes. This sort of "statute-stretching" requires continued judicial oversight, as it undermines the rule of law and applies the federal criminal law to circumstances where it does not belong.[4] We urge the Court to grant this Petition, as this case is an ideal vehicle for addressing and resolving circuit splits about

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[4] Ellen S. Podgor, *What Kind of a Mad Prosecutor Brought Us This White Collar Case*, 41 Vt. L. Rev. 523 (2017).

whether certain procedural safeguards can be applied to mitigate or prevent the misuse of these expansive federal laws and cabin them within their proper bounds.

ARGUMENT

I. The Expansive Use of Broad and Vague Federal Criminal Laws Presents Grave Federalism and Fairness Concerns

Over the past 20 years, those familiar with the criminal justice system have observed increasing federal encroachment into traditional state policing powers, along with aggressive attempts to extend vague statutes to facts far beyond what Congress ever could have intended. This trend — often referred to by courts and commentators as "overcriminalization" — has often arisen in the context of "the twentieth century pursuit of 'regulatory crimes.'" Paul J. Larkin, Jr., *Public Choice Theory and Overcriminalization*, 36 Harv. J.L. & Pub. Pol'y 715, 728 (2013). In response, the Court has attempted to blunt the force of these facially sweeping federal criminal laws both to protect traditional state policing powers and to prevent the unfairness inherent in the application of vague criminal laws far beyond their original purpose. The Petition implicates new but similar federalism and unfairness concerns, presenting an ideal vehicle for this Court to review important issues on which the courts of appeals are currently divided.

A. Federalism Limits the Reach of Broad and Vague Federal Criminal Laws

Federalism has traditionally served as a critical jurisprudential basis for limiting application

of facially broad criminal laws, like the mail and wire fraud statutes. For example, almost two decades ago, in *Cleveland v. United States*, 531 U.S. 12 (2000), this Court addressed federal mail fraud allegations similar to the ones here. Petitioner Carl W. Cleveland and others had been prosecuted for making misrepresentations in applying to the Louisiana State Police for permission to operate video poker machines. This Court reversed the convictions. Writing for a unanimous Court, Justice Ginsburg held that such charges are not within the scope of the mail fraud statute because the statute requires that any misrepresentations be for the purpose of obtaining "property" and "Louisiana's video poker licenses . . . do not rank as 'property,' for purposes of § 1341." *Cleveland*, 531 U.S. at 15.

In construing the term "property" narrowly, this Court explained that "the Government nowhere alleges that Cleveland defrauded the State of any money to which the State was entitled by law." *Id.* at 22. Likewise, the Court reasoned that the government's construction "would subject to federal mail fraud prosecution a wide range of conduct traditionally regulated by state and local authorities." *Id.* at 24. This was improper, the Court determined, both because Louisiana had its own state criminal laws preventing misrepresentations in the regulatory process and because the Court had consistently refused to construe federal criminal laws in a way "deemed to have significantly changed the federal-state balance in the prosecution of crimes." *Id.* at 24–25 (internal quotation marks and citations omitted).

Fourteen years later, in *Bond v. United States*, 572 U.S. 844 (2014), the Court addressed

whether the Chemical Weapons Convention Implementation Act of 1998 reached a "purely local crime: an amateur attempt by a jilted wife to injure her husband's lover, which ended up causing only a minor thumb burn readily treated by rinsing with water." *Id.* at 848. Again, the Court unanimously rejected applying federal criminal law to the conduct, with a majority relying on the rule of construction that "[b]ecause our constitutional structure leaves local criminal activity primarily to the States, we have generally declined to read federal law as intruding on that responsibility, unless Congress has clearly indicated that the law should have such reach." *Id.* Because the Chemical Weapons Convention Implementation Act contained no such clear indication, the Court held that it did "not cover the unremarkable local offense at issue here." *Id.* Three members of the Court (Justices Scalia, Thomas, and Alito) would have gone further, holding that Congress had no power to extend the federal criminal laws to such obviously local conduct. *See id.* at 867 (Scalia, J. concurring in the judgment).

This Court's concern for preserving the state-federal balance in the prosecution of crimes has deep roots. For example, both *Cleveland* and another case decided the same term, *Jones v. United States*, 529 U.S. 848, 858 (2000), traced that principle to the now nearly 50-year-old decision in *United States v. Bass*, 404 U.S. 336, 349 (1971), which rejected the government's expansive reading of an earlier version of a federal felon-in-possession of a firearm statute because otherwise, "the statute would mark a major inroad into a domain traditionally left to the States." *Id.* at 339. In doing so, Justice Marshall's

opinion for the Court relied on broader federalism cases such as *Younger v. Harris*, 401 U.S. 37, 43 (1971), which traced these federalism principles back to the "the beginning of this country's history."

The instant Petition presents a new version of these same historic federalism concerns. Just as in *Cleveland*, federal prosecutors in Louisiana have sought to build a federal fraud case out of a purported misleading submission of information that took place during the Louisiana state regulatory process. And, just as in *Bond*, the lower court's expansive reading of a facially broad federal statute, if left unchecked, would significantly intrude on the state policing power by turning any sort of misstatement during that process into a potential federal case. In *Cleveland* and *Bond*, this Court granted review to apply narrowing doctrines that would guard against such expansive intrusions into the state law policing power, and as we discuss in later sections, it should grant review here to consider how different limiting doctrines, namely the equipoise rule and the "objectively reasonable construction of ambiguity" rule articulated by Petitioner, might also be used in related circumstances as a check against federal prosecutorial power.

B. Due Process and Fair Notice Principles Also Limit the Reach of Broad and Vague Federal Criminal Laws

Due process and fair notice principles have also served as an important basis for limiting facially sweeping federal criminal laws to their original moorings. Almost a decade ago, in *Skilling v. United States*, 561 U.S. 358 (2010), the Court addressed the question of whether the former Chief

Executive Officer of the Enron Corporation, Jeffrey Skilling, had been properly convicted of conspiracy to commit "honest services" wire fraud, where the charges alleged he had conspired to defraud Enron's shareholders by misrepresenting the company's fiscal health, thereby artificially inflating its stock price. The Court held that construing the facially expansive honest services fraud statute, 18 U.S.C. § 1346, to include such charges "would raise due process concerns underlying the vagueness doctrine." *Id.* at 408. To preserve the statute without transgressing constitutional limitations, the Court accordingly held that the statute applied only to the "bribery and kickback" core of the law that had existed at the time of its passage in 1987. *Id.* at 408–09.

The Court took a similar tack in *Yates v. United States*, 135 S. Ct. 1074 (2015), in reviewing a federal obstruction of justice conviction obtained under 18 U.S.C. § 1519, which had been adopted as part of the Sarbanes-Oxley Act of 2002. Although that statute had been clearly aimed at the destruction of corporate records by those suspecting an impending federal investigation, as allegedly occurred during the collapse of the Enron Corporation, the government had used this statute to secure conviction of a commercial fisherman suspected of catching undersized grouper, who had told a crew member to toss the suspect catch into the sea. In support of the conviction, the government argued that the fish were "tangible objects" whose intentional destruction was forbidden by § 1519. A plurality of the Court rejected the argument, holding that the government's reading of the statute:

> would cut § 1519 loose from its financial-fraud mooring to hold that it encompasses any and all objects, whatever their size or significance, destroyed with obstructive intent. Mindful that in Sarbanes-Oxley, Congress trained its attention on corporate and accounting deception and cover-ups, we conclude that a matching construction of § 1519 is in order: A tangible object captured by § 1519, we hold, must be one used to record or preserve information.

Yates, 135 S. Ct. at 1079.

Only a year later, similar due process and fair notice concerns animated this Court's decision in *McDonnell v. United States*, 136 S. Ct. 2355 (2016). There, the Court was faced with an expansive government interpretation of the term "official act" within the meaning of the federal bribery statute, 18 U.S.C. § 201, which did not limit the term to specific and focused acts relate to pending matters before government officials. In unanimously rejecting the government's interpretation, the Court relied on *Skilling*, noting that the government's construction of the term "official act" was similarly undefined, and could similarly encourage "'arbitrary and discriminatory enforcement.'" *Id.* at 2373 (quoting *Skilling*, 561 U.S. at 402-03). The Court also noted that the government's broad construction of the federal bribery statute raised federalism concerns, as it would override state statutes and allow federal officials to set standards of "good government for state and local officials." *Id.* (internal quotation marks and citation omitted). As a result, the Court

overturned the bribery convictions of the former Virginia Governor, finding that the jury instructions had taken too broad a read of the statutory term.

Just as in the federalism context discussed in the previous section, the concerns that animated *Skilling*, *Yates*, and *McDonnell* are not new ones. In his concurrence in *Sessions v. Dimaya*, 138 S. Ct. 1204, 1224 (2018), Justice Gorsuch described the dangers posed by expansive federal criminal laws, and reviewed this Court's historic role as a bulwark against vague criminal statutes. As the concurrence ultimately concludes, sounding some of the same themes as Justice Ginsburg's opinion for the Court in *Cleveland*, 531 U.S. at 26, the Court's vagueness jurisprudence "serves as a faithful expression of ancient due process and separation of powers principles the framers recognized as vital to ordered liberty under our Constitution." *Dimaya*, 138 S. Ct. at 1224; *see also* *Johnson v. United States*, 135 S. Ct. 2551 (2015).

This Court has likewise demonstrated longstanding concern about vagueness in the context of the mail and wire fraud statutes in particular. *Skilling* is the best and most recent example, but cases like *Cleveland* and *McNally v. United States*, 483 U.S. 350 (1987), *superseded by statute as recognized in Skilling v. United States*, 561 U.S. 358, 410 (2010); and even *Fasulo v. United States*, 272 U.S. 620 (1926), illustrate how these concerns date back almost a century. These cases sought to impose limiting principles on federal fraud statutes that, if construed broadly, could usurp state fraud and misrepresentation laws.

The instant Petition presents a new permutation, but implicates these same

fundamental concerns. When Petitioners attempted to navigate the Louisiana tax credit system, a scheme that the district court recognized was rife with ambiguity, the system indisputably had no clear rules about whether cash expenditures were required to receive tax credits. But the rules that did exist objectively suggested that non-cash submissions were proper. Under such circumstances, it may have been foreseeable that Louisiana officials (who were familiar with the vagaries of the regulatory scheme) may have a strong interest in the accuracy of statements made during the tax application process, since the making of false statements is a Louisiana misdemeanor. But it was completely unforeseeable that any submissions Petitioners made to state officials involving non-cash commitments, if they ultimately turned out to be inconsistent with a federal prosecutor's reading of the state scheme, could be prosecuted under the federal mail and wire fraud statutes. Those statutes provided no fair notice that objectively reasonable statements about the ambiguous state regulatory scheme could engender federal felony convictions. Just as in *Skilling*, *Yates*, and *McDonnell*, federal prosecutors' expansive use of the mail and wire fraud statutes left Petitioners in the dark about what the law demands and let prosecutors and courts make up the rules as they went along.

II. The Petition Presents an Ideal Vehicle for the Court to Address These Same Federalism and Fair Notice Concerns in a New and Important Context

While the scenario presented by the Petition implicates both federalism and due process

concerns, it arises in a new posture. The Petition further presents the Court with the opportunity to address the propriety of using new methods — the equipoise rule and the rule requiring acquittal when the prosecution theory rests entirely on objectively reasonable statements about the requirements of an ambiguous state law scheme—to combat these historic concerns. This Petition provides the Court with the opportunity to consider whether additional limiting doctrines such as these should be applied to criminal convictions resulting from use of the facially expansive mail and wire fraud statutes.

A. This Case Permits the Court to Resolve a Circuit Split on the Equipoise Rule, Which Provides Another Limit on Expansive Federal Prosecutions

The so-called equipoise rule is essentially a rule of lenity, in which ties go to the accused. More precisely, the rule states that a district court, in resolving a motion for judgment of acquittal under Fed. R. Crim. P. 29, must reverse a conviction if the evidence construed in favor of the verdict gives equal or near equal circumstantial support to a theory of guilt and a theory of innocence. In dubious cases like this one, this rule checks federal overreach and encroachment by assuring that, when the question of guilt or innocence is close, reasonable doubt necessarily exists as a matter of law. By contrast, the Fifth Circuit rule, followed below, fails to limit expansive prosecutions by allowing convictions to stand where the evidence is entirely circumstantial and equally consistent with innocence.

As Petitioner demonstrates, most of the courts of appeals reject the Fifth Circuit's rule. Thus, if Petitioners had been tried and convicted in

the First, Sixth, Seventh, Eighth, Tenth, Eleventh, or D.C. Circuits, they would have been acquitted because the district court, after sitting through an 11-day jury trial, expressed the view that the evidence here was in equipoise. Despite this determination, the district court here had to accept the convictions because the Fifth Circuit, in *United States v. Vargas-Ocampo*, 747 F.3d 299 (5th Cir. 2014), abandoned the equipoise rule.

Granting the Petition would allow the Court to resolve the split, under a set of circumstances that appears to be outcome determinative. The petition presents an ideal vehicle for the Court to decide whether to adopt a rule creating another check on federal overreach, similar to the rule of lenity, the clear statement rule, and the doctrine of constitutional avoidance. At bottom, these essential procedural protections, like the equipoise rule, stand as safeguards against broad use federal criminal statutes, which can be applied to doubtful cases and theories like this one. The Court should grant the Petition to determine whether this safeguard can be used under the compelling circumstances presented here.

B. This Case Also Permits the Court to Resolve a Circuit Split on Whether Fraud Convictions Require a Misstatement Based on an Objectively Reasonable Understanding of the State Law Scheme

The "objectively reasonable understanding of the requirements of an ambiguous regulatory scheme" issue raised by Petitioner is also of a piece with the underlying concerns about federalism and fair notice that have animated many of this Court's recent federal decisions.

Petitioner's proposed limiting principle is straightforward as it seeks to cabin the use of the mail and wire fraud statutes to statements about regulatory schemes that are inconsistent with any reasonable understanding of the regulatory scheme. In rejecting such a rule, the Fifth Circuit exacerbated the federalism and fair notice concerns inherent in prosecutions like this one. By contrast, the First, Seventh, Eighth, Tenth, and Eleventh Circuits hold that a federal mail or wire fraud conviction can occur only where the statements are false when measured against an objectively reasonable understanding of the regulatory requirements; not simply when measured against the federal government's hindsight (and arguably incorrect) understanding of those requirements. In other words, most circuits (unlike the Fifth) follow the rule that a fraud conviction cannot stand where the defendant acted consistently with an objectively reasonable interpretation of an ambiguous regulatory scheme, since statements relating to that scheme can be "fraudulent" only where the government shows there is no reasonable basis that the defendant could have acted in good faith. *See United States v. Migliaccio*, 34 F.3d 1517 (10th Cir. 1994).

The use of the mail and wire fraud statutes to target supposedly false submissions relating to a state regulatory tax scheme, by definition, makes a major inroad into a domain traditionally left to the States. This is even more so when these broad federal criminal laws are used to build a fraud cases on objectively reasonable statements about a state regulatory scheme. Permitting federal cases to rest on such a slender reed turns federalism on its head,

allowing the federal government to bulldoze traditional state policing powers and replace them with unconstrained and largely unaccountable federal ones.

The Fifth Circuit's rule also exacerbates the effect of facially sweeping laws like the mail and wire fraud statutes. To the extent the mail and wire fraud statutes provide fair notice that they can be applied to *any* statements about an ambiguous regulatory scheme such as this one, they simply cannot be stretched to include fraud cases built on objectively reasonable statements about the regulatory scheme.

If allowed, this sweeping use of the mail and wire fraud statutes also threatens to upset the federal criminal law balance between the wire fraud and the tax laws. Tax fraud requires, among other things, proof of willfulness. *See, e.g.*, *United States v. Bishop*, 412 U.S. 346 (1973). Indeed, Congress has created a complex scheme of criminal tax offenses, all of which expressly require a showing of willfulness. *See*, *e.g.*, 26 U.S.C. §§ 7201 (tax evasion), 7205 (fraudulent withholding), 7206 (fraud and false statements). Mail and wire fraud, however, arguably do not require a willfulness showing. Thus, if the Fifth Circuit's sweeping construction of the mail and wire fraud statutes stands, that construction could be used to swallow not only state policing power, as occurred here, but also tax statute intent requirements and other narrowing constructs that have been applied to fraud laws in the federal code.

The time is ripe to again limit the mail and fraud laws to meaningful shoals. In the context presented here, where a mail or wire fraud

conviction is premised on purportedly false submissions inconsistent with those permitted by a regulatory scheme, a prosecution must be limited to circumstances where any statements or inferences to be gleaned from those submissions are objectively false. These circumstances cannot include statements about an ambiguous scheme, where the accused's statements are consistent with a reasonable construction of the scheme. Absent such clear, publicized notice about what the regulatory scheme requires, federal prosecutors are permitted to both place their own hindsight gloss on an ambiguous scheme's requirements and to charge statements that are inconsistent with that gloss, as appears to have happened here. The Court should grant the Petition to determine whether such an expansive use of the mail and wire fraud statutes is permissible, under circumstances where most courts of appeals would say "no."

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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March 13, 2019

APPENDIX

APPENDIX

List of *Amici Curiae*[1]

Professor John H. Blume is the Samuel F. Leibowtiz Professor of Trial Techniques at Cornell Law School where he teaches Criminal Procedure, Evidence and Federal Appellate Practice. A 1978 graduate of the University of North Carolina at Chapel Hill, a 1982 graduate of Yale Divinity School, and a 1984 graduate of Yale Law School, Professor Blume spent a number of years in private practice and then as the Executive Director of the South Carolina Death Penalty Resource Center before joining the Cornell Law School Faculty in 1997. Professor Blume is the author or co-author of three books and numerous book chapters and articles in the fields of criminal procedure, evidence and habeas corpus. He has also argued eight cases in the Supreme Court of the United States and been co-counsel or *amicus curiae* counsel in numerous other Supreme Court cases.

Professor Stephen Braga is the Director of the University of Virginia School of Law's Appellate Litigation Clinic. Professor Braga teaches appellate advocacy and white collar criminal defense. Prior to joining the Law School in 2013, He has represented clients in criminal and civil matters before trial and appellate courts across the country for more than three decades.

Professor Steven B. Duke teaches and writes on criminal law, criminal procedure, evidence, and drug policy at the Yale School of Law. From 1981 until

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[1] *Amici* appear in their individual capacities; institutional affiliations are provided here for identification purposes only.

2003, he was the Law of Science and Technology Professor.

Professor Janet C. Hoeffel serves as Catherine D. Pierson Professor of Law at Tulane University. Professor Hoeffel specializes in criminal law and procedure, death penalty law and evidence. Her prior work experience includes six years as a public defender for the District of Columbia, where she practiced both trial and appellate advocacy, and as a litigator with a firm in Denver, Colorado.

Professor Ellen S. Podgor is the Gary R. Trombley Family White-Collar Crime Research Professor and Professor of Law at Stetson University College of Law. She is the author of numerous articles and books including being the co-author of the *Hornbook on White Collar Crime* (2d ed. 2018) (with Israel, Henning, King) and *White Collar Crime in a Nutshell* (5th ed. 2015) (with Jerold Israel).

Professor Ira P. Robbins is the Barnard T. Welsh Scholar and Professor of Law and Justice at American University, Washington College of Law. He has served as Special Consultant to the Advisory Committee on Criminal Rules of the Judicial Conference of the United States, as well as a reporter for or member of several American Bar Association criminal-justice-related task forces and committees. Professor Robbins has authored many books and articles on criminal law and procedure, including *Prisoners and the Law* (Thomson Reuters, six vols. 2018) and *Habeas Corpus Checklists* (Thomson Reuters 2018).

Professor Abbe Smith is Director of the Criminal Defense and Prisoner Advocacy Clinic, Co-Director

of the E. Barrett Prettyman Fellowship Program, and Professor of Law at Georgetown University. Professor Smith teaches and writes on criminal defense, juvenile justice, legal ethics, and clinical legal education. In addition to numerous law journal articles, she is the author of *Case of a Lifetime: A Criminal Defense Lawyer's Story* (2008), co-editor with Monroe Freedman of *How Can You Represent Those People?* (2013), co-author with Monroe Freedman of *Understanding Lawyers' Ethics* (5th ed. 2016), and co-editor with Alice Woolley and Monroe Freedman of *Lawyers' Ethics* (2017).

Professor Chris Slobogin is Milton R. Underwood Chair in Law Director, Criminal Justice Program at Vanderbilt University Law School. Professor Slobogin has authored more than 100 articles, books and chapters on topics relating to criminal law and procedure, mental health law and evidence.

Professor Charles Weisselberg is the Shannon Cecil Turner Professor of Law at University of California, Berkeley, School of Law. Weisselberg directs the Sho Sato Program on Japanese and U.S. Law, and teaches criminal procedure, criminal law, and related courses. Professor Weisselberg's research focuses primarily on criminal procedure, immigration detention, and clinical legal education. For ten Terms, from the October 2007 Term through the October 2016 Term, Professor Weisselberg published reviews of the Supreme Court's criminal cases in Court Review, the journal of the American Judges Association.