

DOCKET NO. 23 -

IN THE  
UNITED STATES SUPREME COURT

MICHAEL LAURY,  
Petitioner

v.

UNITED STATES OF AMERICA,  
Appellant

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

**PETITION FOR A WRIT OF CERTIORARI**

Joseph G. McGraw, Esquire  
Nepa & McGraw, P.C.  
Attorney for Appellant  
Attorney I.D. No. 202942  
41 N. Main Street  
Carbondale, PA 18407  
Telephone: (570) 282-1475  
Fax: (570) 282-2912  
Email: joe@attorneymcgraw.com

## **QUESTIONS PRESENTED**

21 U.S.C. § 856 (A)(2) makes it unlawful to manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employe, occupant, or mortgagee, and knowingly and intentionally rent, lease profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance. To establish the element of “purpose” is the Government required to show that the drug activity constitutes either the primary or principal purpose of the property as some circuits have held (The Ninth, Tenth), or is the Government required to show only that drug distribution was a significant purpose as other circuits have held (The Third, The Fifth, The Sixth Circuits)?

## **PARTIES TO THE PROCEEDINGS**

Petitioner, the Defendant below, is Michael Laury.

The Respondent, the Appellee below, is the United States of America.

## **ACTIONS BELOW**

*U.S. v. Laury*, No. 21-2703 (3<sup>rd</sup> Cir. 11/21/2022)

*U.S. v. Laury*, No. 3-17 CR 313 (M.D.P.A. 7/30/2021).

## TABLE OF CONTENTS

Questions Presented.....	ii
Parties to the Proceedings.....	iii
Table of Contents .....	iv
Table of Authorities.....	v
Petition for Writ of Certiorari.....	1
Orders Below.....	1
Jursidiction.....	1
Statutory Provisions.....	2
Introduction.....	4
Statement of the Case.....	5
Reasons for Granting the Petition .....	7
<b>A. There is a deep, intractable and recurring division among the courts of appeal over the interpretation of “The Crackhouse Statute”, Title 21, Section 856(A)(2) involving the definition of the words purpose in describing a drug involved premises .....</b>	<b>9</b>
Conclusion.....	10
Appendix.....	11

## TABLE OF AUTHORITIES

### Cases

<i>United States v. Barnes</i> , 803 F.3d 209 (5 <sup>th</sup> Cir. 2015).....	9
<i>United States v. Mancuso</i> , 708 F.3d 780 (9 <sup>th</sup> Cir. 2013).....	9
<i>United States v. Russell</i> , 595 F.3d 633, 643 (6th Cir. 2010).....	9
<i>Safehouse v. United States</i> , 985 F.3d 225 (3rd Cir. 2021).....	6, 9, 10
<i>United States v. Soto-Silva</i> , 129 F.3d 340, 342 (5th Cir. 1997).....	10
<i>United States v. Verners</i> , 53 F.3d 291 (10 <sup>th</sup> Cir. 1995).....	9
<i>United States v. Wooden</i> , 595 U.S. ____ (2022).....	5

### Statutes and Regulations

21 U.S.C. § 856.....	2, 4, 5, 7, 8
----------------------	---------------

**PETITION FOR WRIT OF CERTIORARI**

The Petitioner, Michael Laury, petitions this Court for a Writ of Certiorari to review the final order of the Court of Appeals for the Third Circuit.

**ORDERS BELOW**

The order of the Third Circuit is not reported but is at Petition Appendix. The Order of the district court is reproduced in the appendix.

**JURSIDICTION**

The Court of Appeals entered Judgment on November 21, 2022. Pet. App. 1a-4a. This Court has jurisdiction over this timely filed petition under 28 U.S.C. §1254(1).

## STATUTORY PROVISIONS

21 U.S.C. § 856 – Maintaining a Drug Involved Premises States:

**(a)Unlawful acts**

Except as authorized by this subchapter, it shall be unlawful to—

**(1)** knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance;

**(2)** manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

**(b)Criminal penalties**

Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than \$500,000, or both, or a fine of \$2,000,000 for a person other than an individual.

**(c)Violation as offense against property**

A violation of subsection (a) shall be considered an offense against property for purposes of section 3663A(c)(1)(A)(ii) of title 18.

**(d)Civil penalties**

**(1)** Any person who violates subsection (a) shall be subject to a civil penalty of not more than the greater of—

**(A)**\$250,000; or

**(B)**2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person.

**(2)** If a civil penalty is calculated under paragraph (1)(B), and there is more than 1 defendant, the court may apportion the penalty between multiple violators, but each violator shall be jointly and severally liable for the civil penalty under this subsection.

**(e)Declaratory and injunctive remedies**

Any person who violates subsection (a) shall be subject to declaratory and injunctive remedies as set forth in section 843(f) of this title.

## **INTRODUCTION**

21 U.S.C. § 856 (A)(2) makes it unlawful to manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

Does the word purpose as used in the statute require that the Government show that the drug activity constitutes either the primary or principal purpose of the property as circuits have held (The Ninth, Tenth,), or is the Government required to show only that drug distribution was a significant purpose (The Third, The Fifth Circuits)?

## STATEMENT OF THE CASE

On or about October 17, 2017, the Government filed an Indictment, in which the Defendant, Michael Laury (hereinafter “Laury”), was charged with Maintaining Controlling Premises for the Purpose of Distributing a Controlled Substance 18 U.S.C. §856(a)(2), and related offenses. The charges followed the service of a search warrant of a rental property that he owned in Wilkes Barre, Pennsylvania.

A Jury Trial was convened on September 9, 2020, with a verdict of guilty returned as to all counts on September 15, 2020.

At trial as to the offense of maintaining a drug involved premise, in its charge to the jury, the Court provided instructions on the “crack house statute” 21 U.S.C 856. The court defined the element of “purpose” as a “significant”, important or “one of the primary reasons” why the defendant used the premises.<sup>1</sup> Counsel for the Defendant objected to the instruction and asked for a more narrow definition of the word purpose that would require the Government to show that it was either

---

<sup>1</sup> This definition is contrary to the natural construction of the term and how an ordinary person using the language would use the term. This is contrary to this Courts most recent guidance on statutory interpretation as announced in *U.S. v. Wooden*, 595 U.S. \_\_ (2022).

the primary or principal purpose of the property, as required by the Ninth and Tenth Circuits.

Mr. Laury appealed his conviction. Following briefing the Court affirmed. During the pendency of Laury's appeal the Third Circuit announced its decision in *United States v. Safehouse*, 985 F.3d 225 (3d Cir. 2021) defining "purpose" in the context of 856(A)(2) to mean only a "significant purpose" ruling that the Government need only prove that the drug activity was a "significant or important or one of primary reasons" why Laury used the home.

## **REASONS FOR GRANTING THE PETITION**

- A. There is a deep, intractable and recurring division among the courts of appeal over the interpretation of “The Crackhouse Statute”, Title 21, Section 856(A)(2) involving the definition of the word “purpose” in describing a drug involved premises.**

During the 1980s, The United States saw the rise of crackhouses, apartments or houses, often abandoned, where people got together to buy sell, use, or even cook drugs. These “very dirty and unkempt houses” burdened their neighborhoods, attracting a stream of unsavory characters at all hours. But there were limited legal means to shut crackhouses down. There was no law targeting the owner or maintainer of these premises.

In an effort to plug the gap, Congress enacted the Anti-Drug Abuse act of 1986, now codified at 21 U.S.C. §856. This law banned, maintaining a place for the purpose of manufacturing, selling or using drugs.

In cases charged under the Statute circuit courts have struggled to determine exactly what kind of “purpose” is sufficient to establish criminal liability under the statute. The courts all agree that the statue

requires less than a showing that the sole purpose of the property is that of drug activity, like that of a crackhouse. They also seem to agree that the statute does not apply to activities that are purely incidental, such as a high school student smoking marijuana in their parents' home. However, there is no consensus on a standard or test to determine the meaning of purpose. Up to now, the courts have only ruled on cases involving manufacturing or distributing. Now that the courts have ruled on a case involving use, the law is even less clear. The circuit courts are applying different standards with differing results across the nation.

The Third Circuit in *Safehouse* defined the element of "purpose" of within the context of third party drug use. It is the only circuit in the country to have adopted the "significant purpose" test in a drug use context. Before other circuits tackle this issue, it would be helpful to have a clear controlling definition of the element "purpose" as used in the Statute.

The Courts of Appeals are divided over the meaning of "purpose" in 21 USC 856 (A)(2). This Court has not yet reached the subject. Some Circuits have in fact required that the Government show that the drug

activity constitutes either the primary or principal purpose of the property. The 10<sup>th</sup> Circuit in *United States v. Verners*, 53 F.3d 291, 296 (10<sup>th</sup> Cir. 1995) ruled that a mother whose son's bedroom was used to store firearms and drug packaging materials primarily maintained her residence as a family home. As such she could not be punished under the statute. The 9<sup>th</sup> Cir. In *United States v. Mancuso*, 718 F.3d 780, 794-96 (9<sup>th</sup> Cir. 2013), ruled that a dentist who trafficked cocaine out of his home and dental office primarily used the locations as a residence and dental practice and as such did not maintain the premises for drug trafficking. This standard appears to be the one that most conforms to the meaning that Congress intended in passing the statute.

Other Circuits have adopted the standard which requires that the government need not prove that drug distribution was the primary purpose but merely requiring that drug distribution was a significant purpose. See *United States v. Barnes*, 803 F. 3d 209, 216–17 n.6 (5<sup>th</sup> Cir. 2015). In that case, the Court found that a BBQ restaurant from which drug sales were made was controlled and maintained for the purpose of drug trafficking. The Sixth and Fifth Circuit adopted the same standard. See *United States v. Russell*, 595 F.3d 633, 643 (6th Cir. 2010),

*United States v. Soto-Silva*, 129 F.3d 340, 342 (5th Cir 1997).

The Third Circuit adopted the “significant purpose” meaning adopted by the Fifth and Tenth Circuits and applied it for the first time to the context of drug use. In *Safehouse v. United States*, 985 F.3d 225 (3rd Cir 2021), It found that an owner of a premise who operated a clinic and charity who gave out needles or allowed drug users to use drugs bought elsewhere on the site would run afoul of the statute. There currently exists a deep, intractable and recurring division among the courts of appeal over the interpretation of the crackhouse statute. A situation which continues to grow and that is ripe for this Court’s intervention.

## **CONCLUSION**

This Honorable Court should grant the Writ of Certiorari.

Respectfully Submitted,

**JOSEPH G. MCGRAW, ESQ., LLC**

By: s/ Joseph G. McGraw, Esquire  
Joseph G. McGraw, Esquire  
Nepa & McGraw, P.C.  
Attorney for Appellant  
Attorney I.D. No. 202942  
41 N. Main Street  
Carbondale, PA 18407  
Telephone: (570) 282-1475  
Fax: (570) 282-2912  
Email: joe@attorinemcgraw.com

February 15, 2023