No. 24-522

In The

# Supreme Court of the United States

Eghbal Saffarinia (A/K/A Eddie Saffarinia),
*Petitioner,*

v.

United States of America,
*Respondent.*

On Petition for a Writ of Certiorari
to the United States of Appeals
for the District of Columbia Circuit

## BRIEF OF PROFESSOR JOHN F. STINNEFORD AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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## IDENTITY AND INTEREST OF AMICUS CURIAE[1]

John F. Stinneford is a professor at the University of Florida Levin College of Law in Gainesville, Florida, where he researches, teaches, and consults on issues of criminal law, criminal procedure, and constitutional law. Professor Stinneford is the author of many scholarly articles in these fields, including articles published in the Georgetown Law Journal, Northwestern University Law Review, Virginia Law Review, Notre Dame Law Review, and William & Mary Law Review. He is also a Senior Fellow at the Hamilton Center for Classical and Civic Education at the University of Florda, which focuses on helping students develop the knowledge, habits of thought, analytical skills, and character necessary to be citizens and leaders in a free society.

This brief draws on Professor Stinneford's scholarship to address a fundamental question raised by this case: the historical scope of the rule of strict construction of penal statutes and its application to the statute underlying Petitioner's conviction.

## SUMMARY OF ARGUMENT

The rule of strict construction of penal statutes, now often called the rule of lenity, derives from a key premise of our legal and constitutional order: "The law delights in the life, liberty, and happiness of the

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[1] No counsel for any party has authored this brief in whole or in part, and no person other than the *amicus* or counsel have made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented in writing to the filing of this brief.

subject; consequently it deems statutes which deprive him of these, or his property, however necessary they may be, in a sense odious." Joel Prentiss Bishop, *Commentaries on the Law of Statutory Crimes* 185 (Boston, Little, Brown & Co. 2d ed. 1883). As Chief Justice Marshall wrote more than two hundred years ago, this rule "is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not the judicial department." *United States v. Wiltberger*, 18 U.S. 76, 95 (1820). *See generally*, John F. Stinneford, *Dividing Crime, Multiplying Punishments*, 48 U.C.Davis L. Rev. 1955, 2001 (2015).

The rule of strict construction is, in effect, a clear statement rule requiring that statutes expanding the scope of criminal law beyond its traditional common law bounds do so with absolute clarity. In this sense, it is related to the Cruel and Unusual Punishments Clause, which classifies drastic increases in punishment beyond traditional limits as unconstitutional. Both doctrines are based on the core premise that the best way to determine whether a given criminal prohibition or punishment is just is to compare it to longstanding prior practice. New prohibitions or punishments that are broader or harsher than traditionally permitted create a grave risk of injustice. It is thus the duty of courts to read new penal statutes narrowly, with the presumption that the legislature would not intend to deprive individuals of life, liberty, or property unless their culpability clearly justifies it.

The rule of strict construction came under attack during the early twentieth century because it was seen as an obstacle to using criminal law as a form of social engineering. Specifically, early-twentieth-century thinkers rejected the idea that punishment should be based on the culpability of the offender and rejected traditional methods of determining culpability. As a result, the rule of strict construction was severely undermined (alongside the *mens rea* requirement and other traditional limits on governmental punishment power). The "rule of lenity" currently applied by many courts is a pale shadow of the rule of strict construction, flitting in and out of cases with no consistency and little bite.

The attack on traditional limits to the government's power to punish has contributed to the unprecedented expansion of criminal law to the point where no one has "a clue how many federal regulatory crimes are out there" and "the best anyone can do is guess that they number over 300,000." Neil Gorsuch and Janie Nitze, *Over Ruled: The Human Toll of Too Much Law*, 104–08, 119–21 (2024). Too often "judges will thumb through reams of legislative history or speculate about a statute's purpose to resolve perceived ambiguity *before* consulting the rule of lenity. Exactly the sort of enterprise Chief Justice Marshall refused to countenance back in 1820 . . . ." *Id.* at 121 (emphasis in original).

This case presents an ideal vehicle for clarifying the scope of the rule of strict construction and correcting the slide away from its historical scope and purpose. Petitioner was convicted of violating 18 U.S.C. § 1519—which authorizes a prison sentence of up to 20 years for the making of false entries on a

government form "with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case"—because he failed to disclose two personal loans on annual financial disclosure forms required of all federal officials. The processing of such forms is a routine administrative matter that does not involve any investigation. The evident purpose of the statute is to prevent obstruction of justice in bankruptcy cases and federal investigations. If this statute is read broadly and without reference to its purpose, it subjects petitioner's conduct—along with an astonishingly broad range of minor acts of dishonesty—to a potential sentence of 20 years in prison. If it is read more narrowly, considering the two primary clauses (relating to bankruptcy cases and federal investigations), it likely does not cover petitioner's conduct.

The D.C. Circuit's refusal to apply the rule of strict construction in this case reflects a broad misunderstanding of the rule among lower federal courts, stemming ultimately from efforts during the early twentieth century to transform criminal punishment into a mere instrument of governmental social control. The Court's resolution of the issues presented by Mr. Saffarinia's petition has implications far beyond his case. This Court should therefore grant the petition and restore the rule of strict construction to its historical scope and potency.

## ARGUMENT

### I. The D.C. Circuit's decision reflects a widespread misunderstanding of the historical scope and substance of the rule of strict construction.

The phrase "rule of lenity" is a historical misnomer: until the 1950s, it was called the rule of strict construction of penal statutes. Stinneford, *supra*, at 1995. This rule has ancient common-law origins, being—as Chief Justice Marshall said—"perhaps not much less old than construction itself." *Wiltberger*, 18 U.S. at 95. Although scholars and courts today often assert that the purpose of this rule is to advance values of fair notice and separation of powers, these are not the fundamental basis for the rule. Rather, the rule reflects the law's systemic commitment to protect life and liberty and to avoid over punishment. Stinneford, *supra*, 1995-2001. This commitment is also reflected in many provisions of the Bill of Rights—particularly in the Due Process Clauses of the Fifth and Fourteenth Amendments.

The rule came into prominence in the 1600s in the face of Parliament's increasing attempts to use statutory law to increase the severity of criminal punishment and remove protective doctrines, like the benefit of clergy. *Id.* at 1997–98. For example, Parliament passed laws "transforming numerous crimes into capital offenses, including minor crimes like cutting down a tree in an orchard." *Id.* In response, English courts invoked the rule of strict construction "based on the presumption that the legislature would want the new penal statute to be interpreted consistently with basic principles of justice as revealed through the long usage of common law,"

which "reflect [a] systemic bias in favor of life and liberty, and against overpunishment." *Id*. at 1995–97.

For example, Blackstone notes that English courts construed a statute withdrawing the benefit of clergy from those "convicted of stealing horses" not to cover a defendant who stole only one horse. William Blackstone, *Commentaries on the Laws of England, Volume 1,* 88. Similarly, they construed a statute that withdrew benefit of clergy from those convicted of stealing sheep "or other cattle" to reach only sheep theft, because the phrase "or other cattle" was "much too loose to create a capital offense." *Id*.

Similarly, courts in the early American republic employed the rule of strict construction in a muscular and liberty-protective fashion. Thus, in *Wiltberger*, Chief Justice Marshall wrote for the Supreme Court that a federal statute criminalizing manslaughter on the high seas did not reach a crime committed on a river. 18 U.S. at 104–05. The Court recognized that Congress might have intended the statute to reach conduct on rivers (after all, it had explicitly extended a prohibition on murder to cover conduct on rivers), but Chief Justice Marshall did not spend time reviewing Congressional transcripts or otherwise deeply exploring that possibility. *Id*. at 95–105; Gorsuch & Nitze, *supra*, at 119–21. Instead, he simply found the rule of strict construction applicable and then asked if there was any clear statutory text that would countermand that principle. *Wiltberger*, 18 U.S. at 95–105.

So too in state courts. For example, in *Mayor v. Ordrenan*, the Supreme Court of New York held that a statute authorizing a fine for storing more than

twenty-eight pounds of gunpowder only permitted the government to charge a defendant with one offense per storage site, rather than a separate offense for each hundred weight of gunpowder over the limit. 12 Johns 122 (1815). In so doing, the court did not attempt to exhaustively review every possible contrary indicator of legislative intent before reaching this conclusion. Instead, it applied the presumption, required by the rule of strict construction, that the legislature intended the narrower view. *See id*. at 125.

Similarly, the North Carolina Supreme Court, considering a claim that defendants violated a statutory duty to keep streets in good repair, rejected an attempt to bring a separate indictment for every substandard street. *State v. Commissioners of Fayetteville*, 6 N.C. 371 (1818). The court found it necessary to apply the rule of strict construction because of the potential injustice of allowing prosecutors to multiply the number of offenses charged in this way was "repugnant to the spirit and policy of the law." *Id*. at 371–72.

In sum, the historical rule of strict construction (or, in today's parlance, the rule of lenity) was and today should be a primary interpretive tool with substantive bite rooted in fundamental considerations of liberty and due process. It is not an afterthought or a tiebreaker to be employed when all else fails.

In the present case, the District of Columbia Circuit erred by failing to consider the rule of strict construction, despite the vagueness and ambiguity of Section 1519. It relied instead on a Senate committee report that did not address the issue in this case and that was neither read nor voted on by most members

of Congress. *United States v. Saffarinia*, 101 F.4th 933, 939–40 (D.C. Cir. 2024).

The D.C. Circuit's interpretive failure reflects the fact that Circuit courts around the country labor under the misapprehension that the rule of strict construction is, at best, an anachronistic afterthought to be reached (if at all) when there is no other alternative. *See, e.g., United States v. Tony*, 121 F.4th 56, 69 (10th Cir. 2024) ("The rule of lenity is a rule of last resort, and as such will apply 'only when, after consulting traditional canons of statutory construction, we are left with an ambiguous [law]" (citation omitted)); *United States v. Arrieta*, 862 F.3d 512, 516 (5th Cir. 2017) ("[T]he rule of lenity represents a last resort that "comes into operation 'at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers." (citation omitted)); *Hosh v. Lucero*, 680 F.3d 375, 383 (4th Cir. 2012) ("[T]he rule of lenity is a last resort, not a primary tool of construction." (citation omitted). Unfortunately, this Court's discussions of the rule have sometimes aided and abetted this incorrect view, stating at times that it applies only in cases of "grievous ambiguity" and so on. *Muscarello v. United States*, 524 U.S. 125, 138–39 (1998); *see also Barber v. Thomas*, 560 U.S. 474, 488 (2010) ("[T]he rule of lenity only applies if, after considering text, structure, history, and purpose, there remains a 'grievous ambiguity or uncertainty in the statute'" (citation omitted)).

This contrasts with Chief Justice Marshall's analysis in *Wiltberger*, which applies the rule of strict construction to the statute in light of the law's

"tenderness for the rights of individuals" and the legislature's concomitant duty to define criminal statutes with clarity. Chief Justice Marshall did not pause to scour the legislative history before applying the rule of strict construction, and neither should courts today. This Court should grant Mr. Saffarinia's petition to clarify its past rulings and correct the lower courts' departure from the historical understanding of the rule in line with *Wiltberger's* reasoning.

## II. The modern misunderstanding of the rule's scope, of which the decision below is an example, reflects troubling early-twentieth-century views concerning social engineering and eugenics.

The rise of moral skepticism in the decades between the Civil War and the New Deal, "fueled by the writings of Charles Darwin and Herbert Spenser among others" led many early-twentieth-century legal writers to consider "the old common law system hopelessly antiquated, based upon outdated ideas of morality and social organization." Stinneford, *supra*, at 2012. These thinkers viewed the law as simply "the preference of a given body in a given time and place," resulting from a "concealed, half-conscious battle" among competing interests and policy preferences. *Id.* at 2012 (quoting Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 Harv. L. Rev. 457, 464, 474 (1897)). Because "the law was simply the product of political struggle, it had no predetermined ends, no built-in 'delight' in life, liberty, and happiness." *Id.* On this view, "the role of judges is to effectuate the will of the [political] victor," not to protect the rights of the accused. *Id.* at 2013.

Early-twentieth-century thinkers attacked the idea that criminal punishment should be based on (and limited by) moral culpability. *Id*. They argued that the focus should be on the dangerousness of the criminal, which at least some of them claimed could be traced to genetics. *Id*. For example, Justice Holmes wrote that "well known men of science" believed that "the typical criminal is a degenerate, bound to swindle or to murder by as deep seated an organic necessity as that which makes the rattlesnake bite." *See* Holmes, *supra*, at 470. Thus "criminal law should focus on social control rather than culpability." Stinneford, *supra*, at 2014.

The focus on social danger over culpability led early-twentieth-century writers to attack both the rule of strict construction of penal statutes and the notion that governmental power should be limited by individual rights. Consider two examples:

- "Changing conditions of modern civilization, and the growth of scientific knowledge of criminology, render imperative a new approach to the problems of crime. New categories of crimes and criminals cannot always be accurately defined on the first attempt. Shall the new machinery be nullified from the start under the guise of 'strict construction,' or shall it be carried out liberally in the spirit in which it is conceived?" Roscoe Pound, *Criminal Justice in America* 143–44 (1930).

- "[If] once the whole idea of punishment be discarded and the objective of every prosecution be recognized as the removal of a particular social danger . . . quibble, casuistry,

> technicality in the fabrication of 'rights,' will no longer seem legitimate defenses in a contest, but must appear in their true character as obstacles to the progress of social prophylaxis." John Barker Waite, *Criminal Law in Action* 320 (1934).

If the core function of government is to eliminate social danger, these thinkers argued, it should not be hamstrung by outdated notions of free will, culpability, or individual rights.

This thinking was linked to early-twentieth-century views of race and eugenics. Many early-twentieth-century thinkers believed that criminality was an inherited trait, not a matter of personal responsibility. If this is the case, then the law is justified in treating them as dangerous animals rather than individuals possessing dignity and individual rights. It is no coincidence that the same Justice Holmes who compared criminals to "rattlesnakes" also authored the infamous decision in *Buck v. Bell*, 274 U.S. 200 (1927), authorizing the state to force sterilization upon hereditary "imbeciles."

Our Constitutional order does not give courts the power to take sides in the debates over free will versus determinism and culpability versus social danger in their interpretation of criminal statutes. "The basis for [the rule of strict construction] in the modern American legal system is . . . the preference for life and liberty reflected in . . . the Fifth and Fourteenth Amendments' Due Process Clauses, and the numerous protections the Constitution provides criminal defendants." Stinneford, *supra*, at 2029–30. Unfortunately, many modern courts, influenced in

part by the legacy of early-twentieth-century ideas about social engineering and criminality have taken sides in a manner that has warped and eviscerated the traditional rule of strict construction of penal statutes. This Court should grant this petition to clarify that the rule of the strict construction today, as it was at the time of the Founding, stands for the proposition that "any reasonable doubt about the law" must "be resolved in favor of liberty." Gorsuch and Nitze, *supra*, at 120.

## III. This Court's recent decisions run contrary to the D.C. Circuit's ruling below and already reflect a shift towards the view of criminal statutes embodied by the historical rule of strict construction.

In fact, this Court's recent decisions, which the D.C. Circuit's decision below defies, already reflect a shift towards reviving the historical rule of strict construction. This case presents an opportunity to place those decisions on a more solid historical footing and make the tie to the rule explicit.

As Mr. Saffarinia points out in his petition, [Pet. at 24], this Court has repeatedly stressed that the federal courts must "exercise[ ] restraint in assessing the reach of a federal criminal statute," *see Fischer v. United States*, 603 U.S. 480, 497 (2024), and has repeatedly rejected overly broad interpretations of criminal laws, particularly in the obstruction context and including the statute here.

Consider *Yates v. United States*, 574 U.S. 528 (2015), a case about (of all things) whether Section 1519, a criminal obstruction provision of the Sarbanes-

Oxley Act of 2002 adopted in response to the Enron scandal and targeted at financial crimes, applied to a fisherman who allegedly disposed of some undersized fish. Gorsuch and Nitze, *supra*, at 10–12. While this seems absurd on its face, the question nonetheless made it all the way to this Court on the government's theory (adopted by the lower courts) that a fish counted as a "tangible thing" under the statute. *Id*.

This Court rejected that notion. A majority of the Court, albeit in two opinions, adopted the common-sense position that, viewed in context, the statute applied only to items similar to those expressly listed in the statute: "record[s]" and "document[s]." *Yates*, 574 U.S. at 539–47 (plurality opinion); 574 U.S. at 549–52 (Alito, J., concurring). *Yates* is of a piece with similar cases rejecting overbroad readings of federal criminal statutes over the past decade. *See Snyder v. United States*, 603 U.S. 1 (2024); *United States v. Hansen*, 599 U.S. 762 2023); *Dubin v. United States*, 599 U.S. 110 (2023); *Criminelli v. United States*, 598 U.S. 306 (2023); *Percoco v. United States*, 598 U.S. 319 (2023); *Ruan v. United States*, 597 U.S. 450 (2022), *Van Buren v. United States*, 593 U.S. 374 (2021); *Kelly v. United States*, 590 U.S. 391 (2020); *McDonnell v. United States*, 579 U.S. 550, 576 (2016); *Bond v. United States*, 572 U.S. 844 (2014).

These cases generally do not mention or rely on the rule of strict construction. *But see Synder*, 603 U.S. at 20–21 (Gorsuch, J., concurring); *Yates*, 574 U.S. at 547–48 (plurality opinion). But they all reflect the core value that drives the rule: that because the law loves life and liberty, courts should not, as a matter of due process and separation of powers, adopt broad

readings of federal criminal statutes that use amorphous and capacious language.

For example, in *McDonnell*, the Court reasoned that invoking a "'shapeless . . . provision to condemn someone to prison' for up to 15 years raises the serious concern that the provision 'does not comport with the Constitution's guarantee of due process'" and reacted strongly against the "breathtaking" expansion of federal criminal law the government's chosen interpretation represented. 579 U.S. at 575–76. Likewise, in *Kelly*, the Court expressed concern that the government's chosen reading of the honest-services fraud statute allowed an unwarranted "ballooning of federal power." 590 U.S. at 404. And in *Van Buren*, the Court grounded its decision in part on the fact that "the Government's interpretation of the statute would attach criminal penalties to a breathtaking amount of commonplace computer activity." 593 U.S. at 393.

These concerns echo the historical basis for the rule of strict construction. As discussed above, the rule "reflect[s] a systemic bias against overpunishment" and in favor of liberty. Stinneford, *supra*, at 2006. Had lower courts in the cases discussed immediately above possessed a proper, robust understanding of the rule of strict construction, they could have avoided adopting unreasonably broad readings of federal criminal statutes.

## IV. Reviving the historical scope of the rule of strict construction is especially important in an age of ever-expanding federal criminal law.

Finally, reviving the proper historical understanding of the rule of strict construction is critical in this time of ever expanding potential federal criminal liability.

Commentators have repeatedly noted that, despite many attempts to count them, no scholar or organization has been able to calculate the number of federal criminal offenses on the books today. *See, e.g.* Gorsuch & Nitze, *supra*, at 20. Even in 1982, when the United States' Code was roughly half the size it is today, the best the Department of Justice could do was say there were about 3,000 of them—this after spending roughly two years on the attempt. *Id*. And that's just the Code. "Our administrative agencies don't just turn out laws with civil penalties attached to them; every year, they generate more and more rules carrying criminal sanctions as well. How many? Here again, no one seems sure. But estimates suggest that at least 300,000 federal agency regulations carry criminal sanctions today." *Id*. at 21.

More and more often, unsuspecting citizens find themselves, like Mr. Yates, caught up in the nets of federal criminal law with little end in sight.

Worse still, "many federal criminal statutes overlap" either in whole or in part. *Id*. at 21. This overlap—often facilitated by broad readings of capaciously worded statutes—allow prosecutors to threaten criminal defendants with preposterously

long sentences to compel a guilty plea. *See* Carissa Byrne Hessick, *Punishment Without Trial: Why Plea Bargaining is a Bad Deal* 42, 45–48 (2021); Jed S. Rakoff, *Why the Innocent Plead Guilty and the Guilty Go Free* 28 (2021). Indeed, sometimes federal officials structure their investigations to allow just this sort of leverage.

Consider the case of Welden Angelos, a twenty-four-year-old aspiring musician and father of two with no criminal record. Stinneford, *supra*, at 1961. A federal informant made three controlled buys from Mr. Angelos, paying him $350 each time for eight ounces of marijuana. *Id*. at 1961–62. Because there were three buys instead of just one, and Mr. Angelos had a gun in his car or on his person during several of the buys, prosecutors were able to threaten Mr. Angelos with multiple gun charges that would subject him to a mandatory minimum sentence of more than 100 years in prison. *Id*. at 1962–63. They followed through on this threat when Mr. Angelos elected to go to trial. *Id*. at 1963. The result was that Mr. Angelos ended up being sentenced to more than 55 years in prison for conduct the government felt, before trial, warranted at most 15 years. *See id*. at 1962–63.

In a world where, "criminal justice . . . is for the most part a system of pleas, not a system of trials," *Lafler v. Cooper*, 566 U.S. 156 (2012), and more than ninety-seven percent of defendants plead guilty, U.S. Sentencing Commission, 2023 Annual Report 16 (2024), the rule of strict construction is an important bulwark against this kind of prosecutorial gamesmanship. In Mr. Angelos's case, it might have allowed him to argue that the statute prevented the stacking of gun charges in the case of a continuous

course of conduct. Stinneford, *supra*, at 1963–64. In other cases, like Mr. Yates's, it might protect them from the geometric expansion of federal criminal liability altogether by guiding lower courts away from the broad readings that this Court has spent the last ten years cautioning them against.

But that is only possible if the Court acts to restore the rule to its proper historical scope and correct the rampant misapprehension of its substantive bite among lower courts. Because Mr. Saffarinia's case exemplifies the injustice that may flow from broad readings of criminal statutes, his petition provides an ideal vehicle for doing so.

## CONCLUSION

For all these reasons, as well as the other considerations ably described in Mr. Saffarinia's petition, his petition for a writ of certiorari should be granted.

Respectfully submitted,

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