No. _____

In the Supreme Court of the United States

Brandon David McCarthy and
Rachel Christine McCarthy,

Petitioners,

v.

United States of America

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The McCarthys were charged with drug crimes related to their alleged online business of selling poppy seeds, which are naturally coated in opium latex when harvested. The Controlled Substances Act ("CSA") specifically excludes poppy seeds from the relevant definitions of controlled substances, 21 U.S.C. § 802(19)-(20), meaning that it does not regulate the possession or distribution of raw poppy seeds, even to persons seeking to consume the seeds for their opioid qualities.

The overarching issue in this case is whether the CSA's precursor statute, 21 U.S.C. § 843(a)(6)-(7), nonetheless criminalizes the possession or distribution of poppy seeds when the defendants know that the recipients plan to wash off the seeds' natural coating of opium latex with water and drink that water as "poppy-seed tea." The district court said no and dismissed the indictment, but the Tenth Circuit disagreed and reversed.

The specific questions presented are:

1. Whether the CSA's precursor statute, 21 U.S.C. § 843(a)(6)-(7), unambiguously reaches the knowing possession or distribution of poppy seeds—an item Congress specifically exempted from the Act's definitions of controlled substances—to recipients who will consume the seeds via poppy-seed tea.

2. Whether, at a minimum, the precursor statute is sufficiently ambiguous, with respect to poppy seeds that will be consumed via poppy-seed tea, that the rule of lenity requires the ambiguity to be resolved in Petitioners' favor.

3. Whether the precursor statute, as construed by the Tenth Circuit, is unconstitutionally vague as applied.

PARTIES TO THE PROCEEDING

The Petitioners in this case are Brandon David McCarthy and Rachel Christine McCarthy, and the Respondent is the United States of America. Petitioners are individuals and therefore a Rule 29.6 disclosure is not required.

RELATED PROCEEDINGS

U.S. District Court:

On January 31, 2025, the United States District Court for the Northern District of Oklahoma dismissed the indictment against the McCarthys in *United States v. McCarthy*, et al, No. 4:23-cr-00359. That decision appears in the Appendix at A25–A40.

U.S. Court of Appeals:

On May 6, 2026, the United States Court of Appeals for the Tenth Circuit reversed the district court's decision, in part, in *United States v. McCarthy*, Case No. 25-5026. That opinion, which is the subject of this Petition, appears in the Appendix at A41-A48. In addition, the Tenth Circuit denied the McCarthys' petition for rehearing on July 17, 2026. That denial appears in the Appendix at A49.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Brandon McCarthy and Rachel McCarthy respectfully petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Tenth Circuit.

OPINIONS AND ORDERS BELOW

The ruling of the United States District Court for the Northern District of Oklahoma is unreported and available at *United States v. McCarthy,* No. 23-cr-00359-SEH, 2025 WL 360952 (N.D. Okla. Jan. 31, 2025). *See* Pet. App. A25. The Tenth Circuit's opinion is reported at *United States v. McCarthy*, 174 F.4th 1254 (10th Cir. 2026). *See* Pet. App. A41. The Tenth Circuit denied rehearing and rehearing en banc on July 17, 2026. Pet. App. A49.

JURISDICTION

The United States District Court for the Northern District of Oklahoma had jurisdiction in this criminal action pursuant to 18 U.S.C. § 3231. The Tenth Circuit entered judgment on May 6, 2026. It exercised jurisdiction over the government's appeal from the dismissal of counts of an indictment under 18 U.S.C. § 3731. The Tenth Circuit denied a timely petition for panel rehearing and rehearing en banc on July 17, 2026. On October 13, 2026, this Court extended the time within which to file a petition for a writ of certiorari until November 16, 2026. Pet. App. A50. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

21 U.S.C. § 843(a) provides, in relevant part, that it is "unlawful for any person knowingly or intentionally":

> (6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical . . . ; [or]
>
> (7) to manufacture, distribute, export, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical . . . .

21 U.S.C. § 802(15) provides:

> The term "manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term "manufacturer" means a person who manufactures a drug or other substance.

21 U.S.C. § 802(19) provides:

> The term "opium poppy" means the plant of the species Papaver somniferum L., except the seed thereof.

21 U.S.C. § 802(20) provides:

> The term "poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

STATEMENT OF THE CASE

Petitioners Brandon and Rachel McCarthy were charged in the Northern District of Oklahoma with various drug and financial crimes related to their alleged business of reselling poppy seeds online. The district court dismissed the indictment in its entirety; the government appealed the dismissal of some, but not all, of the counts; and the Tenth Circuit reversed the district court's dismissal of the appealed counts. Because this case comes up on the dismissal of an indictment, the allegations in the indictment are taken as true and summarized below.

I. THE INDICTMENT ALLEGED THAT THE MCCARTHYS KNOWINGLY SOLD UNPROCESSED POPPY SEEDS TO OPIUM USERS WHO INGESTED THE POPPY SEEDS' NATURAL COATING OF OPIUM LATEX VIA POPPY-SEED TEA.

According to the superseding indictment, poppy seeds are a "naturally derived product" from a poppy plant known as "papaver somniferum." Pet. App. A2. That plant is the source of "opium latex"—a "sap-like substance from which opiate alkaloids, including morphine, codeine, and thebaine, can be extracted." *Id.*

When poppy seeds are harvested from their pods in the poppy plant, they are naturally coated in opium latex. *Id.* The indictment referred to poppy seeds that have been harvested from their pods without any processing as "unprocessed poppy seeds." *Id.* It differentiated such seeds from seeds that are subsequently "processed or washed"—pursuant to "[i]ndustry standard"—to remove some of their opium latex coating. *Id.* at A2–A3. The indictment did not provide any specifics about the "industry standard"; nor did it allege that "processed" seeds are free of opium latex. *See id.* To the contrary, it implicitly recognized that all poppy seeds—processed and unprocessed—retain some amount of opium latex. *Id.* at A2.

The indictment alleged that the McCarthys "purchased bulk quantities of unprocessed poppy seeds coated in opium latex from suppliers" and resold smaller quantities to "opiate users" through Amazon and other online sale platforms, *id.* at A5–A6, A8, for personal consumption. It alleged that the McCarthys knew that their customers would soak the seeds "in water to remove the opium latex" and then drink "the water with opium latex." *Id.* at A3, A7. It described this process as "brewing poppy seed tea"—which is allegedly the "most common method of ingesting unprocessed poppy seeds[.]" *Id.* at A3. It did not allege that the McCarthys purchased the seeds unlawfully. Nor did it allege that they altered the seeds' natural state in any way before reselling them.

Based on this alleged conduct, the government originally contended that the McCarthys trafficked controlled substances (the unprocessed poppy seeds) under 21 U.S.C. § 841(a)(1). It also contended, based on the exact same conduct, that they trafficked precursor substances (the unprocessed poppy seeds) under 21 U.S.C. § 843(a)(6)-(7). The district court dismissed all charges. *See* Pet. App. A25. The government did not challenge the district court's dismissal of the controlled-substances charges under § 841(a)(1), instead appealing only the dismissal of the precursor charges under § 843(a)(6)-(7) (and certain related charges based on that theory of liability). The Tenth Circuit reversed the district court's decision with respect to the precursor-based charges, and those charges are the subject of this petition.

II. THE CONTROLLED SUBSTANCES ACT DEFINES WHAT IS AND IS NOT A CONTROLLED SUBSTANCE, AND IT SPECIFICALLY EXCLUDES POPPY SEEDS.

The CSA, 21 U.S.C. § 801 *et seq.*, makes it unlawful to manufacture, distribute, or possess a controlled substance except as the CSA authorizes. *See Gonzales v. Raich*, 545 U.S. 1, 13 (2005). The CSA's statutory definition section and the federal drug schedules define what is and is not a controlled substance. Two Schedule II substances describe parts of the poppy plant: "opium poppy" and "poppy straw." *See* 21 U.S.C. § 812; 21 C.F.R. § 1308.12. But Congress carved the seeds out of both. "Opium poppy" is defined as "the plant of the species Papaver somniferum L., *except the seed thereof*," and "poppy straw" as "all parts, *except the seeds*, of the opium poppy, after mowing." 21 U.S.C. § 802(19)-(20) (emphases added). On this appeal, the government is not arguing that poppy seeds are controlled substances.

The CSA's precursor statute, in turn, reaches certain items that are not necessarily controlled substances themselves, but that may be used to manufacture controlled substances. As relevant here, 21 U.S.C. § 843(a)(6)-(7) makes it a felony to possess or distribute "any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical," knowing, intending, or having reasonable cause to believe it will be so used. The CSA defines "manufacture" to mean, in relevant part, "the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin[.]" 21 U.S.C. § 802(15). That definition of "manufacture" applies throughout the CSA.

III. THE TENTH CIRCUIT DETERMINED THAT A POPPY SEED IS A "MATERIAL" UNDER THE PRECURSOR STATUTE; THAT THE RULE OF LENITY DID NOT APPLY; AND THAT THE STATUTE WAS NOT VAGUE AS APPLIED.

On appeal, the Petitioners (the Defendant-Appellees at the time) made several interrelated arguments, all of which the Tenth Circuit rejected.

First, the Petitioners explained that the district court was correct to dismiss the precursor-based charges because the government's interpretation of the precursor statute was an end run around Congress's express decision to exempt poppy seeds from regulation as a controlled substance. Because poppy seeds are not a controlled substance, the CSA does not prohibit a person from possessing or distributing poppy seeds (whether unprocessed or processed), even knowing that the whole seeds will be consumed raw by opium users. The Petitioners explained that it does not make sense to interpret the precursor statute as prohibiting the same person from possessing or distributing poppy seeds to the same opium users, if they know the users will not consume the seeds raw but will instead consume only the seeds' opium latex coating via poppy-seed tea.

The Tenth Circuit recognized that it is "unusual for a potential precursor to be explicitly excluded from a controlled-substance schedule." *McCarthy*, 174 F.4th at 1261. The court nonetheless determined that it was "eminently reasonable to limit regulation and prosecution to those who possess or distribute the unprocessed poppy seeds for their opioid qualities as opposed to their qualities for baking." *Id.* at 1262. The Tenth Circuit did not address the point that, even under its view, the CSA permits a person to distribute unprocessed poppy seeds to those who will eat them raw, even if that person knows the seeds will be consumed for their opioid qualities.

Second, the Petitioners argued that, even when viewed in isolation from the broader context of the CSA, the precursor statute could not be read to include poppy seeds sold to opium users who planned to drink poppy-seed tea, for two reasons. First, under the *noscitur a sociis* and *ejusdem generis* canons, the enumerated list of precursor items does not include naturally occurring raw substances that do not require any deliberate production processes before the end user consumes them. And second, the CSA's definition of "manufacture" cannot be interpreted to cover minor actions taken by end users for personal consumption—or else the CSA's distinction between mere possession and use of a controlled substance and manufacturing a controlled substance would be effectively eradicated.

The Tenth Circuit disagreed. It began by interpreting "manufacture" to cover the act of washing off the opium latex from poppy seeds. In doing so, the court declined to consider the full statutory definition, reasoning that "the only language of interest here is 'extraction from substances of natural origin.'" Pet. App. A43. Focusing on dictionary definitions of "extraction," the court concluded that steeping poppy seeds in water is "extracting controlled substances from unprocessed poppy seeds," and therefore that "producing poppy-seed tea is manufacturing." *Id.*

The court then turned to the meaning of the word "material" in the precursor statute and adopted a "very broad" dictionary definition. *Id.* at A43–44. It determined that the *noscitur a sociis* and *ejusdem generis* canons did not apply, reasoning that the four specific listed items ("any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule") and the four general listed items ("any

equipment, chemical, product, or material") were "two groupings" that need not be interpreted together. *Id.* at A46. The Tenth Circuit acknowledged that its reading of the word "material" rendered the four specific items surplusage, but it deemed the surplusage permissible. *Id.* at A46–47.

Third, the Petitioners argued that, at minimum, the rule of lenity and the canon of constitutional avoidance counsel in favor of narrowly interpreting the criminal statute. The Tenth Circuit "summarily dispose[d]" of those arguments because it found "no ambiguity" in the statute. *Id.* at A47.

Finally, the Petitioners argued that, as interpreted by the government, the precursor statute was unconstitutionally vague as applied to Petitioners. That was at least in part because the CSA's exemption of poppy seeds from regulation as a controlled substance is affirmatively misleading if the precursor statute extends to the conduct in this case. In response, the Tenth Circuit declined to "recognize a doctrine excusing criminal conduct by supposing that a perpetrator was misled by reading only a 'helpful' (although cabined) portion of a statute (the CSA provision excluding poppy seeds from Schedule II), while ignoring the portion (§ 843(a)(6) and (7)) that the perpetrator violated." *Id.* at A47.

The Tenth Circuit denied panel rehearing and rehearing en banc, *id.* at A49, and this petition follows.

REASONS FOR GRANTING THE PETITION

This Court has repeatedly said that a broadly worded federal criminal statute will not be read to its dictionary limits when doing so would sweep in conduct Congress did not clearly target. *See Fischer v. United States*, 603 U.S. 480 (2024); *Yates v. United States*, 574 U.S. 528 (2015) (plurality opinion). The plainness of statutory language "does not turn solely on dictionary definitions of its component words," but on "the specific context in which that language is used, and the broader context of the statute as a whole." *Yates*, 574 U.S. at 537 (quotation omitted). The decision below is a textbook departure from this rule.

Petitioners sold poppy seeds. Congress specifically exempted poppy seeds from the CSA's definitions of the only two controlled substances that describe the poppy plant. 21 U.S.C. § 802(19)–(20). It is no crime to possess a poppy seed, to eat one, or to put one in a muffin. Yet the circuit court below held that Petitioners allegedly committed a felony carrying years in prison because they knew some of their customers steeped the seeds in water to make "poppy-seed tea." In the circuit court's view, brewing tea is the "manufacture" of a controlled substance because it involves the "extraction from substances of natural origin," 21 U.S.C. § 802(15), and the exempted seed is therefore a "material" precursor under 21 U.S.C. § 843(a)(6)-(7). To reach that result, the circuit court isolated a single phrase of the definition of "manufacture" as "the only language of interest," gave "material" its broadest possible reading, brushed aside the specific items that surround the general terms in the precursor statute as mere surplusage, and discounted the significance of the poppy-

seed exemption. That is precisely the mode of interpretation this Court has repeatedly rejected.

The decision below also disregards the rule of lenity and raises a serious vagueness problem of national importance. This petition should be granted.

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S CONSISTENT INTERPRETIVE APPROACH TO CRIMINAL STATUTES, ITS RULE-OF-LENITY PRECEDENTS, AND THE VAGUENESS DOCTRINE.

A. This Court has repeatedly declined to read criminal statutes to their dictionary limits where context shows Congress did not clearly reach the conduct.

Time and again, this Court has confronted a criminal statute whose text, read in isolation and broadly, could be stretched to cover a defendant's conduct—and it has refused to read it that way. This Court has already established a settled interpretive method: courts must determine the reach of a penal statute from its whole text, structure, and context. They may not simply assume that Congress hid a sweeping prohibition in capacious general words, especially when those words are constrained or countermanded by other aspects of the statutory text and surrounding context.

Yates is a paradigmatic example. In that case, this Court considered whether a provision in the Sarbanes-Oxley Act that makes it a crime to destroy "any record, document, or tangible object" to obstruct a federal investigation, 18 U.S.C. § 1519, applies to a fish. A fish is a tangible object under a broad dictionary definition of that term. But a plurality of this Court held that "it would cut § 1519 loose from its financial-fraud mooring to hold that it encompasses any and all objects, whatever their size or significance." *Yates*, 574 U.S. at 532. Instead, it construed "tangible object" to mean an object "used to record or preserve information." *Id.* Central to that

decision was the principle that "[w]hether a statutory term is unambiguous . . . does not turn solely on dictionary definitions of its component words"; rather, the meaning of the text is best ascertained "by reference to . . . the specific context in which that language is used, and the broader context of the statute as a whole." *Id.* at 537 (quotation omitted). As part of its statutory analysis, this Court invoked *noscitur a sociis*, *ejusdem generis*, and the presumption against surplusage to cabin the general term "tangible object" based on its surrounding context. *Id.* at 543–545.

Fischer reaffirmed the same approach. There, this Court rejected an interpretation of a statute that would have rendered four highly specific verbs—in a distinct subsection—surplusage. *Fischer*, 603 U.S. at 486-96. Specifically, it declined to read the phrase "otherwise obstructs, influences, or impedes any official proceeding" in 18 U.S.C. § 1512(c)(2) to reach all forms of obstructive conduct, instead holding that the phrase was "defined by reference" to the list of specific forms of obstruction that precede it in § 1512(c)(1). *Id.* at 490. That is because a boundless reading would have "swallowed" the specific provision and left it with "no work to do." *Id.* In so holding, the Court declined to adopt a reading that "would criminalize a broad swath of prosaic conduct," refusing to transform an "evidence-focused statute" into "a one-size-fits-all solution to obstruction of justice." *Id.* at 496–97. Instead, this Court "cabin[ed its] reading of subsection (c)(2) in light of the context of subsection (c)(1)." *Id.* at 497.

These decisions and others like them—*e.g.*, *Van Buren v. United States*, 593 U.S. 374 (2021), and *Marinello v. United States*, 584 U.S. 1 (2018)—share the

governing principle that a criminal statute cannot be read to reach conduct that falls within the broadest possible scope of its terms, without considering canons of construction, statutory context, and other textual indications of meaning. The Tenth Circuit's opinion is inconsistent with this longstanding principle. Rather than construe the precursor statute in light of its whole text and context, the Tenth Circuit seized on isolated words, gave them their broadest meaning, and dismissed any contextual signal that pointed the other way.

First, the Tenth Circuit declined to consider the full statutory definition of "manufacture." It declared "extraction from substances of natural origin" to be "the only language of interest," in the statutory definition, setting aside the five terms—"production, preparation, propagation, compounding, or processing"—that precede and frame that language. Pet. App. A43. That mirrors the *Yates* error: it is not permissible to resolve a statute's reach on a "dictionary definition[]" of one term while refusing to consider "the broader context of the statute as a whole." *Yates*, 574 U.S. at 537. Instead, read in the context of the CSA, "manufacture" describes a deliberate drug-production process, not a simple step an end user may take to more easily consume an existing substance.

Second, the Tenth Circuit gave "material" a "very broad" dictionary meaning, seeing "no reason to exclude poppy seeds" from it. Pet. App. A44. But *noscitur a sociis* and *ejusdem generis* exist precisely to prevent that move. The more general statutory language the circuit court highlighted—"equipment, chemical, product, or material"—follows four highly specific items—a "three-neck round-bottom flask,

tableting machine, encapsulating machine, or gelatin capsule,"—that describe the instruments of a deliberate drug-production process. Just as the phrase "otherwise obstructs [. . .]" in *Fischer* took meaning from four highly specific verbs in a preceding subsection, "material" here takes meaning from the highly specific nouns surrounding it.

Third, and relatedly, the Tenth Circuit acknowledged that its reading of the word "material" renders the four specific nouns "surplusage," yet it excused the surplusage as permissible without meaningfully articulating what made it permissible. This Court has taken the opposite approach in materially similar circumstances. *See, e.g.*, *Yates*, 574 U.S. at 543 (the "canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme") (quotation omitted); *Fischer*, 603 U.S. at 490 (rejecting a reading that would leave a separate subsection with "no work to do"). The Tenth Circuit's reading, which makes a "three-neck round-bottom flask," a "tableting machine," an "encapsulating machine," and a "gelatin capsule" all pointless illustrations of the word "material," cannot be squared with this bedrock interpretive principle.

Fourth, the Tenth Circuit did not meaningfully engage with Congress's decision to exempt poppy seeds from the relevant definitions of a controlled substance. In enumerating controlled substances, Congress explicitly and specifically excluded "the seed" from the definitions of "opium poppy" and "poppy straw." 21 U.S.C. §§ 802(19)–(20). The Tenth Circuit held that the exemption "does not imply that poppy seeds are not a *material*" precursor, at least in part because it is

"reasonable" to "limit" prosecution "to those who possess or distribute the unprocessed poppy seeds for their opioid qualities as opposed to their qualities for baking." Pet. App. A45. That analysis, however, glosses over the real tension. Because poppy seeds are not regulated as controlled substances, the CSA does not prohibit the possession or distribution of the seeds for their opioid qualities, at least when buyers consume the seeds whole. In other words, a person could sell seeds to opium users to eat raw, without any allegation that the buyers are "manufacturing" controlled substances. The Tenth Circuit's reasoning does not explain how or why that conduct is permissible, but distributing seeds to persons who plan to consume only the outer latex in poppy-seed tea is not. The more natural inference is that Congress, having specifically declined to regulate poppy seeds as controlled substances, did not silently criminalize their sale through the precursor statute's general terms.

In short, the decision below adopted the broadest possible meaning of discrete terms in the precursor statute without meaningfully evaluating the terms in the context of that provision or the CSA more broadly. That is the interpretive approach this Court has repeatedly rejected, and this Court's review is needed.

B. The rule of lenity independently warrants review and requires reversal.

For the same reasons, even if the precursor statute could bear the Tenth Circuit's construction, it does not come close to unambiguously requiring it. The rule of lenity therefore requires reversal.

The rule of lenity reflects the basic principle that "ambiguities about the breadth of a criminal statute should be resolved in the defendant's favor." *United*

States v. Davis, 588 U.S. 445, 464 (2019). It is not permissible to penalize an individual under a federal criminal statute "based on no more than a guess as to what Congress intended." *Ladner v. United States*, 358 U.S. 169, 178 (1958). As the *Yates* plurality explained, when "recourse to traditional tools of statutory construction leaves any doubt about the meaning" of a statutory term, lenity applies. 574 U.S. at 547–48. Lenity matters here because the Tenth Circuit's interpretation of the precursor statute creates (or, at least, fails to resolve) several significant areas of ambiguity in the precursor statute.

First, as discussed in Section I.A., *supra*, the result of the Tenth Circuit's decision is that persons may sell unprocessed poppy seeds to opium users to consume whole (with their coating of opium latex), but not unprocessed poppy seeds to opium users to consume via poppy-seed tea. That is a counterintuitive result. At minimum, Congress's decision to exempt poppy seeds from the relevant definitions of Schedule II controlled substances makes it ambiguous whether the precursor statute can be read to cover the conduct in this case.

Second, the Tenth Circuit's decision implicitly accepts a significant overlap between conduct that constitutes "manufacturing" a controlled substance and conduct that constitutes *consuming* or *using* a controlled substance for personal use. It does not identify a line between the two types of conduct or otherwise explain when the government is free to prosecute other types of end-user conduct involved in the consumption of a product—*e.g.*, using a syringe, or a spoon, or a lighter. The McCarthys' position is that the word "manufacture" clearly does not extend to

washing the opium latex off seeds to drink poppy-seed tea. But it is at least ambiguous whether that conduct constitutes manufacturing or use, and that ambiguity means that the word "manufacture" should be interpreted narrowly to require a more deliberate drug-production process that does not sweep up end users consuming an existing product.

Finally, the Tenth Circuit arrived at its decision by rendering a significant portion of the statute surplusage. It did not clarify when it is appropriate to do that and when it is not—only that surplusage is sometimes appropriate and sometimes not. Cutting out four highly specific terms in a statute without any clear basis for doing so is a strong indicator of ambiguity that requires application of the rule of lenity.

C. As construed by the government and the Tenth Circuit, the precursor statute is unconstitutionally vague as applied.

The Tenth Circuit's interpretive approach—ignoring context and relying on dictionary definitions of isolated terms—also creates a serious vagueness problem that warrants this Court's review.

"[A] vague law is no law at all." *Davis*, 588 U.S. at 447. The Due Process Clause forbids taking a person's liberty "under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." *Johnson v. United States*, 576 U.S. 591, 595 (2015); *accord Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

Under the Tenth Circuit's interpretation, the precursor statute is unconstitutionally vague as applied. The CSA exempts all poppy seeds from

regulation as controlled substances, including unprocessed poppy seeds. That means, as already discussed, that the CSA does not prohibit distributing unprocessed poppy seeds to consumers who intend to eat them raw for their opiate effects. Instead, it apparently becomes illegal only when the distributors know that the individual opium users intend to "ingest unprocessed poppy seeds" by "brewing poppy seed tea." Pet. App. A3 (superseding indictment).

If that is correct, then the statutory exemption of all poppy seeds from regulation as a controlled substance is affirmatively misleading. That exemption is the clearest statutory statement on the issue, and it could "lull[]" a potential defendant "into a false sense of security," *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964), because it suggests to the ordinary person that Congress decided not to regulate poppy seeds under the CSA for any purpose. *Cf. Libertarian Party of Ohio v. Husted*, 751 F.3d 403, 421 (6th Cir. 2014) (citing *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1048 (1991), for the proposition that a "regulation is unconstitutionally vague if it misleads the individuals it regulates into thinking that their conduct is not proscribed").

The Tenth Circuit's decision does not meaningfully grapple with the possibility that the CSA is misleading in this manner. Instead, the court simply concluded that the vagueness doctrine should not "excus[e]" conduct the court considers criminal. Pet. App. A47. But that conclusion does not answer the constitutional question. If anything, it illustrates that the statute is impermissibly vague because it invites courts to substitute their own policy judgment for the statutory text. And "judges

cannot enlarge ambiguous penal laws to cover problems Congress failed to anticipate in clear terms." *Wooden v. United States*, 595 U.S. 360, 391–92 (2022) (Gorsuch, J., concurring).

II. THIS IS AN IMPORTANT QUESTION OF FEDERAL LAW, AND THIS CASE IS AN IDEAL VEHICLE TO DECIDE IT.

The question whether the CSA's precursor statute criminalizes the knowing sale of poppy seeds to opium users who will drink the natural coating of opium latex in poppy-seed tea is an exceptionally important question of federal law for multiple reasons.

First, federal law treats users of controlled substances as significantly less culpable than manufacturers and distributors. But the practical reach of the Tenth Circuit's decision is that persons whom even the government has described as "opiate users," Pet. App. A5—*i.e.*, drinkers of poppy-seed tea—may be prosecuted as drug manufacturers under 21 U.S.C. § 841(a)(1). After all, and as described above, under the Tenth Circuit's reasoning, "the process of making poppy-seed tea can be described as extracting controlled substances from unprocessed poppy seeds," so that "producing poppy-seed tea is manufacturing." Pet. App. A43. Because the definition of "manufacture" applies throughout the CSA, the Tenth Circuit's ruling turns every consumer who brews a cup of poppy-seed tea into a manufacturer of Schedule II controlled substances—exposing them to some of the CSA's most serious penalties for conduct that looks much more like personal use.

Second, whether and how to regulate poppy seeds and poppy-seed tea has been the subject of sustained political attention. For example, in 2019, a senator proposed

a bill that would have added a provision to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 331, making it unlawful to "[s]ell . . . directly to consumers . . . poppy seeds . . . that contain levels of morphine, codeine, or other alkaloid compounds that may render the food injurious to health."[1] Congress members who have made statements in support of subsequent versions of the bill have insisted, *e.g.*, that it "would close loopholes that have allowed dangerous and deadly opiates to be sold online."[2] In addition, an article on the Food and Drug Administration ("FDA") website states that, although "[t]he FDA is committed to reducing consumer exposure to opiate alkaloids on poppy seeds," the FDA is "*not* advising consumers to avoid consuming poppy seed-containing foods."[3] Instead, it appears to be in the process of "establishing an action level for opiate alkaloids."[4] The Tenth Circuit's decision short circuits the ongoing legislative and regulatory debate about poppy seeds.

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[1] S.B. 1016, 116th Cong. (2019-2020), *available at* https://www.govinfo.gov/content/pkg/BILLS-116s1016is/pdf/BILLS-116s1016is.pdf (last visited November 10, 2026).

[2] Senator Cotton Press Release, Apr. 2, 2025, *available at* https://www.cotton.senate.gov/news/press-releases/cotton-colleagues-introduce-stephen-hacala-poppy-seed-safety-act (last visited November 10, 2026).

[3] FDA, Opiate Alkaloids on Poppy Seeds, Apr. 21, 2026, *available at* https://www.fda.gov/food/natural-toxins-food/opiate-alkaloids-poppy-seeds (emphasis added) (last visited November 10, 2026).

[4] *Id.*; *see also* FDA, Foods Program Guidance Under Development, https://www.fda.gov/food/guidance-documents-regulatory-information-topic-food-and-dietary-supplements/foods-program-guidance-under-development (last visited November 10, 2026).

This case is an excellent vehicle through which to resolve the questions presented. The questions are purely legal and were decided on a motion to dismiss, on the face of the indictment, without any disputed facts. They are squarely presented and outcome-determinative: the Tenth Circuit's judgment rests entirely on its reading of 21 U.S.C. §§ 843(a)(6)-(7), and it addressed each of the three questions presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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