No. 16-_____

In The
Supreme Court of the United States

DANIEL BINDERUP AND JULIO SUAREZ,

Cross-Petitioners,

v.

DANA J. BOENTE AND THOMAS E. BRANDON,

Cross-Respondents.

On Conditional Cross-Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Title 18 U.S.C. § 922(g)(1) prohibits the possession of firearms by any person convicted of "a crime punishable by imprisonment for a term exceeding one year."

"The term 'crime punishable by imprisonment for a term exceeding one year' does not include – . . . (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less." 18 U.S.C. § 921(a)(20).

Courts have inconsistently defined "punishable by" as it appears in the federal criminal code, alternately defining the term as "capable of being punished by" or "subject to" a punishment. While either definition operates identically within Section 922(g)(1), read in isolation, the alternate definitions yield different results in Section 921(a)(20)'s context. Section 922(g)(1) has a narrower scope if it excludes state misdemeanors that *could have been punished* by imprisonment of two years or less, rather than excluding only state misdemeanors *subject to* a sentencing range of two years or less. The court below adopted the latter definition of "punishable by" for purposes of Section 921(a)(20).

The question presented is:

As used in 18 U.S.C. § 921(a)(20)(B), does the term "punishable by a term of imprisonment of two years or less" mean "capable of being punished by a term of imprisonment of two years or less," or "subject to a term of imprisonment of two years or less"?

LIST OF PARTIES

Respondents and Cross-Petitioners Daniel Binderup and Julio Suarez initiated the proceedings below by each filing a complaint, in the United States District Courts for the Eastern and Middle Districts of Pennsylvania, respectively, against former Attorney General Eric Holder and BATFE Director B. Todd Jones in their official capacities.

Loretta E. Lynch and Thomas E. Brandon substituted for Holder and Jones, respectively, by operation of law, and petitioned for certiorari. Petitioner and Cross-Respondent Dana J. Boente has since substituted for Lynch as Acting Attorney General, while Brandon remains Acting BATFE Director.

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Daniel Binderup and Julio Suarez respectfully cross-petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

INTRODUCTION

This Court may again need to clarify a critical ambiguity afflicting the Gun Control Act of 1968, as amended, 18 U.S.C. § 921 *et seq.*[1]

1. The Government's petition suggests a potentially significant (if premature and inaccurately-framed) constitutional question: whether the so-called "felon in possession" firearms prohibition can be constitutionally applied on the basis of long-ago, nonviolent misdemeanors, which were treated leniently by convicting courts and committed by otherwise law-abiding, responsible citizens. Both district judges below, and the en banc Third Circuit, held that such applications violate a fundamental constitutional right. And while the circuits have thus far largely acknowledged that this Court sanctions as-applied constitutional challenges such as those Respondents won below, the courts have fractured as to the methodology by which Respondents prevailed.

That is not to suggest that the Government's petition should be granted. It should be denied, for the reasons Respondents brief separately. But were this Court inclined to look past the petition's shortcomings and consider a properly framed constitutional question that might be raised from this case's circumstances, it

[1] All further statutory references are to Title 18 of the United States Code unless otherwise noted.

should pause to consider whether the statute the Government would apply against Respondents addresses their situation in the first instance.

If ever the constitutional avoidance doctrine called upon this Court to consider an alternative method for resolving a dispute, it would do so should the underlying petition be granted. In reference to a sentencing range, this Court and the lower federal courts have usually understood "punishable" to describe a range of potential outcomes. That has always been the interpretation afforded to Section 922(g)(1)'s language extending its application to "a crime punishable by imprisonment for a term exceeding one year." Yet somehow, that common understanding of "punishable by" has eluded application to Section 921(a)(20), which utilizes the same words to *exclude* crimes from Section 922(g)(1)'s scope.

This inconsistency, hiding in plain sight, calls out for review. It does not matter, in reading Section 922(g)(1), whether "punishable by" means (as courts usually hold it to mean) "capable of being punished" or "subject to" a term of punishment. The alternative definitions of "punishable by" function identically within that provision. But the alternative definitions yield very different results in the context of Section 921(a)(20)(B)'s exclusion of state misdemeanors "punishable by a term of imprisonment of two years or less."

2. Respondents were convicted of state misdemeanors carrying maximum sentences exceeding two years, but no mandatory minimums. If these crimes

were "capable of being punished" by sentences "of two years or less," they are not subject to Section 922(g)(1)'s prohibition; it would not matter that they could *also* be punished by sentences exceeding two years. But if these crimes were "subject to" punishment exceeding two years, then they were not "subject to" a "term of imprisonment of two years or less"; consequently, they would then trigger Section 922(g)(1)'s prohibition.

Respondents' convictions can be fairly described either way. Their zero jail time sentences underscore the fact that their crimes were punishable by less than two years, while the statutes they violated spell out sentencing ranges exceeding two years. But which "punishable by" definition does Section 921(a)(20) utilize? In seeking to narrow the scope of the so-called "felon in possession" firearms ban, did Congress nonetheless retain the law's application to a wide array of nonviolent or relatively unserious misdemeanors? Or did Congress exclude from the law's scope state misdemeanors generally, targeting only misdemeanors carrying significant mandatory minimum sentences as predicates for a firearms prohibition?

The narrower, less lenient definition excludes fewer crimes from Section 922(g)(1)'s scope, thus expanding the constitutional problems inherent in permanently depriving people convicted of misdemeanors of fundamental constitutional rights. Before entering

that constitutional thicket, this Court should determine whether the statute so applies. The lower court erred in holding that it does.

OPINIONS BELOW

The Third Circuit's opinion (App. 1a-161a) is reported at 836 F.3d 336. The district courts' opinions (App. 162a-239a, 243a-271a) are not published in the Federal Supplement but are available at 2014 WL 4764424, 2014 U.S. Dist. LEXIS 135110, and 2015 WL 685889, 2015 U.S. Dist. LEXIS 19378.[2]

JURISDICTION

The judgment of the court of appeals was entered on September 7, 2016. Petitioners sought and obtained an extension of time for filing a petition for a writ of certiorari to and including January 5, 2017. The petition was filed on January 5, 2017, and placed on the Court's docket that day under case number 16-847. This conditional cross-petition is being filed pursuant to Rule 12.5 of the Rules of the Court. The Court has jurisdiction under 28 U.S.C. § 1254(1).

[2] References to "App." are to the appendix to the petition for a writ of certiorari in *Boente* v. *Binderup*, No. 16-847.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution, and 18 U.S.C. §§ 921(a)(20) and 922(g)(1), are reproduced in the appendix to the petition. App. 274a-276a.

STATEMENT

1. Federal law prohibits the possession of firearms by any person convicted of "a crime punishable by imprisonment for a term exceeding one year," Section 922(g)(1), excluding "any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less," Section 921(a)(20)(B).

2a. In 1998, Cross-Petitioner and Respondent Binderup "pled guilty in a Pennsylvania state court to corrupting a minor, a misdemeanor subject to possible imprisonment for up to five years. 18 Pa. Cons. Stat. §§ 6301(a)(1)(i), 1104." App. 6a. The court saw fit to issue Binderup "the colloquial slap on the wrist: probation (three years) and a $300 fine plus court costs and restitution." *Id.*

Binderup brought suit in the United States District Court for the Eastern District of Pennsylvania against Attorney General Eric Holder and ATF Director B. Todd Jones, in their official capacities, challenging Section 922(g)(1)'s application against him on

account of his 1998 misdemeanor conviction. The district court had subject-matter jurisdiction under 28 U.S.C. §§ 1331, 1343, 1346, 2201 and 2202. App. 9a.

Binderup set out two claims for relief: first, that Section 922(g)(1) does not cover his conduct, because his crime was "punishable by a term of imprisonment of two years or less," Section 921(a)(20)(B); second, that even if Section 922(g)(1)'s term extended to his conviction, its application would violate Binderup's fundamental Second Amendment right to keep and bear arms, given his particular circumstances.

The district court "address[ed] plaintiff's statutory claim first. That order of analysis is consistent with the maxim that a court should 'not decide a constitutional question if there is some other ground upon which to dispose of the case.'" App. 193a (quoting *Bond* v. *United States*, 134 S. Ct. 2077, 2087 (2014)). Alas, the court concluded that Binderup's conviction falls within Section 922(g)(1)'s scope. But it held that such application is unconstitutional.

2b. Cross-Petitioner and Respondent Suarez "pled guilty in a Maryland state court to unlawfully carrying a handgun without a license, a misdemeanor subject to possible imprisonment for" a maximum of three years. App. 6a-7a (citing Md. Code Ann. art. 27, § 36B(b) (1990) (now codified at Md. Code Ann. Crim. Law § 4-203)).

Suarez brought suit in the United States District Court for the Middle District of Pennsylvania, also

against Holder and Jones in their official capacities, challenging Section 922(g)(1)'s application against him on account of his 1990 misdemeanor conviction for carrying a gun (in his car) without a license. Patterned upon Binderup's complaint, on the same jurisdictional grounds, Suarez asserted the same arguments: that Section 922(g)(1) didn't apply to his conviction, but that in the event that it would so apply, it would be unconstitutional considering his particular circumstances. And just as in Binderup's case, the district court rejected Suarez's statutory argument before affording him relief on his constitutional claim.

3. The Government appealed its losses in both cases. The two challengers cross-appealed to preserve their statutory argument. Following panel arguments in each case, but before either panel issued its opinion, the Third Circuit sua sponte consolidated the appeals for rehearing en banc.

The court found that "[t]he exception in § 921(a)(20)(B) covers any crime that *cannot* be punished by more than two years' imprisonment. It does not cover any crime that *can* be punished by more than two years in prison. In other words, § 921(a)(20)(B)'s use of 'punishable by' means 'subject to a maximum penalty of.'" App. 10a. The court acknowledged that "we have never explicitly defined it this way," but asserted that it had previously "relied on that understanding in interpreting the relationship between § 921(a)(20)(B) and § 922(g)(1)." *Id.* The court identified precedential support for this conclusion in *Schrader* v. *Holder*, 704 F.3d 980 (D.C. Cir. 2013), and

dictum from *Logan* v. *United States*, 552 U.S. 23 (2007). App. 10a-11a.

In sum, the court believed that "'subject to a maximum possible penalty of' is the best reading of the phrase 'punishable by' as used in § 921(a)(20)(B)." App. 11a. And it analogized to the Sentencing Guidelines' structure of overlapping probation and supervised release violations that utilize similar language. App. 11a-12a. Having concluded that the statute is unambiguous, the court declined to apply the rule of lenity and the constitutional avoidance doctrine and proceeded to the constitutional merits. App. 12a.

Respondents' statement in their brief opposing the underlying petition describes the lower court's approach to the constitutional question. That brief also addresses the underlying petition's various misstatements and other flaws. Sup. Ct. R. 15.2. This cross-petition is conditional upon the grant of the petition for certiorari.

REASONS FOR GRANTING THE CONDITIONAL CROSS-PETITION

All three lower courts saw fit to address Respondents' statutory claims (albeit incorrectly) before proceeding to the constitutional merits. Should this Court take it upon itself to engage a properly-framed and relevant constitutional question, it should also first consider the preliminary – and arguably, conclusive – statutory issue.

"Doubleness of meaning," a classic example of "ambiguity," BLACK'S LAW DICTIONARY 97 (10th ed. 2014), is patently presented by Section 921(a)(20)'s usage of "punishable by." Courts have long ascribed different meanings to this term as it appears in the federal criminal code – different meanings that would yield very different results in a large number of cases. The lower court erred in its ultimate definition of that term, first by disregarding the ambiguity, and then by applying neither the constitutional avoidance doctrine nor the rule of lenity." App. 12a.

The ambiguity, however, is significant. The constitutional avoidance doctrine, first as a procedural matter and then, along with the rule of lenity, as a substantive one, warrant review.

I. "Punishable By," As Used in Section 922(g)(1), Presents A Critical Ambiguity.

In general terms, "punishable" is defined as "deserving of, or liable to, punishment: capable of being punished by law or right." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1843 (1961). "[P]unishable" can mean "subject to a punishment" or "giving rise to a specified punishment." BLACK'S LAW DICTIONARY 1428 (10th ed. 2014).

If "punishable by a term of imprisonment of two years or less" refers to specific terms that define the sentencing range, Respondents' offenses do not qualify for Section 921(a)(20)'s exclusion, because their offenses carried maximum sentences exceeding two

years. Of course, if this is what Congress had intended, it could have drafted a more-direct statute, perhaps excluding misdemeanor offenses "*subject to* a term of imprisonment of two years or less," "*not* punishable by a term of imprisonment *exceeding* two years," or "punishable *only* by a term of imprisonment of two years or less."

But that is not what Congress did. Rather, Congress excluded from Section 922(g)(1)'s scope state misdemeanors "punishable by . . . two years or less." And if "punishable" means "capable of being punished" – the definition federal courts, including this Court, often afford that term – then Respondents' offenses come within the meaning of the exclusion. Their sentences actually received – including no jail time at all – demonstrate as much.

"The word 'punishable' in ordinary English simply means 'capable of being punished.'" *United States* v. *Nieves-Rivera*, 961 F.2d 15, 17 (1st Cir. 1992) (citations omitted) (Breyer, C.J.). *Nieves-Rivera* was among a series of cases rejecting the argument that former Section 3651, which had allowed for the suspension of sentences upon "a judgment of conviction of any offense not punishable by death or life imprisonment," allowed the suspension of sentences so long as a crime was not punishable "*only* by life imprisonment." *Id.* at 16.

In other words, *Nieves-Rivera* rejected the same construction of "punishable by" adopted by the court below: as referring to a defined term of punishment.

Since the defendant's crime did not require a life term, he argued that his crime was "not punishable by death or life imprisonment." But for the First Circuit, it was enough that Nieves-Rivera's crime was *capable of being punished* by a life term, and thus, it did not allow for a suspended sentence as might have been the case of an "offense not punishable by death or life imprisonment." "[I]t seems to us, as it has seemed to every other federal appellate court that has considered the matter, that a crime 'subject to imprisonment for any term of years or for life,' is a crime that is 'punishable by . . . life imprisonment.'" *Id.* (citing *United States* v. *Carter*, 704 F.2d 1063, 1064 (9th Cir. 1983); *United States* v. *Denson*, 588 F.2d 1112, 1116-17 (5th Cir.), *aff'd in part and modified in part*, 603 F.2d 1143 (5th Cir. 1979) (en banc)); see also *United States* v. *Dean*, 752 F.2d 535, 539 (11th Cir. 1985)).

Indeed, 180 degrees apart from the decision below's finding that "punishable by" unambiguously refers to a defined term of punishment, the Fifth Circuit declared that the term's usage as referring to a potential sentence "is so self-evident that it hardly admits of argument," and invoked "the 'plain meaning' rule of statutory interpretation" in adopting that definition. *Denson*, 588 F.2d at 1117 (internal quotation omitted).

Of course, context matters. That "punishable by" may refer, in one statutory scheme, to a potential range of punishment, does not preclude its definition as "subject to" the range specified in Section 921(a)(20)(B). But "[u]ndoubtedly, there is a natural presumption that identical words used in different parts of the same

act are intended to have the same meaning." *Atl. Cleaners & Dyers, Inc.* v. *United States*, 286 U.S. 427, 433 (1932).

And courts – including the Third Circuit – have adopted the potentiality-based definition of "punishable by" in interpreting Section 922(g)(1), the very provision whose definition Section 921(a)(20)(B) supplies. "[T]he only qualification imposed by § 922(g)(1) is that the predicate conviction carry a *potential* sentence of greater than one year of imprisonment." *United States* v. *Leuschen*, 395 F.3d 155, 158 (3d Cir. 2005) (emphasis added).

In one instance, an appellate court employed both definitions of "punishable by." Jefferson Schrader argued that Section 922(g)(1) did not cover his misdemeanor common-law offense, as common-law offenses are not subjected to any specific term of punishment. The D.C. Circuit disagreed:

> the common-sense meaning of the term "punishable" . . . refers to any punishment *capable of being imposed*, not necessarily a punishment specified by statute. Because common-law offenses carry no statutory maximum term of imprisonment, they are *capable of being punished* by a term of imprisonment exceeding one year and thus fall within section 922(g)(1)'s purview.

Schrader, 704 F.3d at 986 (citation omitted) (emphasis added).

Under this "any punishment capable of being imposed" view, Schrader's misdemeanor should have been

"punishable by a term of imprisonment of two years or less," and thus excluded by Section 921(a)(20)(B). Alas, the court held that for purposes of *that* provision, "punishable by" refers to a defined term. "[B]ecause such offenses are also capable of being punished by more than two years' imprisonment, they are ineligible for section 921(a)(20)(B)'s misdemeanor exception." *Id.* In other words, the exclusion benefits only those whose offenses were *subject to* "a term of imprisonment of two years or less."

This Court has not definitively addressed "punishable by's" precise meaning within Section 921(a)(20)(B). Twice, in dictum, this Court has suggested that "punishable by" as used in that provision refers to a specified term of punishment. In *Logan*, this Court remarked that Section 921(a)(20(B) "place[d] within ACCA's reach state misdemeanor convictions punishable by more than two years' imprisonment." *Logan*, 552 U.S. at 34. But *Logan* also provided that a state misdemeanor "*may* qualify as a 'violent felony' for ACCA-enhancement purposes (or as a predicate for a felon-in-possession conviction under § 922(g)) only if the offense is punishable by more than two years in prison." *Id.* at 27 (emphasis added). Logan did not press the matter; he "acknowledge[d]" that his earlier convictions "facially qualifie[d]" under Section 921(a)(20)(B). *Id.* at 30. "Thus the sole matter in dispute" was whether his rights had been sufficiently restored. *Id.* at 30-31.

In another peripheral discussion, this Court offered that Section 921(a)(20) excluded state misdemeanors "punishable by a term of imprisonment of up

to two years." *Small* v. *United States*, 544 U.S. 385, 392 (2005). This subtle and perhaps inadvertent rephrasing of the statutory text would eliminate the ambiguity, but it falls to Congress to take that initiative. In any event, the divergent impacts of the two "punishable by" definitions were not apparently considered.[3]

But this Court did address the meaning of "punishable by" in a different context, adopting the potentiality-based definition of "punishable by imprisonment at hard labor" as encompassing offenses for which hard labor *may* be imposed in the court's discretion. *In re Mills*, 135 U.S. 263, 266 (1890).

Ambiguity as to whether the *Mills* approach governs Section 921(a)(20)(B) remains.

II. Were Certiorari Granted, The Constitutional Avoidance Doctrine Would Counsel Preliminary Examination Of Section 921(a)(20)(B)'s Patent Ambiguity.

Applying the "felon-in-possession" ban against nonviolent misdemeanants raises serious constitutional

[3] Even were *Logan* and *Small* precedent as to Section 921(a)(20)'s definition of "punishable by," the fact that they predated this Court's acknowledgment of a fundamental right to keep and bear arms would undermine such holdings as the Court did not consider the constitutional consequences in selecting that definition. See *United States* v. *Rehlander*, 666 F.3d 45, 47 (1st Cir. 2012) (Second Amendment "claim is sufficiently powerful that the doctrine of constitutional avoidance requires us to revisit our prior interpretation").

questions, even if not the question that the Government's petition presents. This is reason alone to consider whether the statute applies to Respondents.

"[I]t is a well-established principle governing the prudent exercise of this Court's jurisdiction that normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case." *Bond*, 134 S. Ct. at 2087 (internal quotation marks omitted). "Where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *Gonzalez* v. *United States*, 553 U.S. 242, 251 (2008) (internal quotation marks omitted). "[T]he fact that one among alternative constructions would involve serious constitutional difficulties is reason to reject that interpretation in favor of another." Norman J. Singer, 2A SUTHERLAND ON STATUTORY CONSTRUCTION § 45.11, at 87 (7th ed. 2008) (collecting cases).

Accordingly, "[t]he question is not whether" an alternative statutory interpretation "is the most natural interpretation of the [law], but only whether it is a 'fairly possible' one. As we have explained, every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *Nat'l Fed'n of Indep. Bus.* v. *Sebelius*, 132 S. Ct. 2566, 2594 (2012) (Roberts, C.J.) (internal quotation marks and citation omitted); cf. *PDK Labs. Inc.* v. *United States DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment) ("if it is not

necessary to decide more, it is necessary not to decide more").

A fairly possible interpretation that would avoid the constitutional problems inherent in broadly applying a so-called "felon" ban against nonviolent misdemeanants stands readily apparent: affording the term "punishable by," as it appears in Section 921(a)(20)(B), its classic meaning – the same meaning already ascribed to the term as it appears in Section 922(g)(1).

If a constitutional question here sufficiently warrants resolution, it also warrants any possible avoidance.

III. The Lower Court Erred In Defining "Punishable By" As "Subject To A Maximum Possible Penalty Of," Rather Than "Capable Of Being Punished By."

If there is a unifying rule for how the lower courts have recently defined "punishable by," it is this: whichever definition yields the harshest result under the circumstances. But a different rule should govern. "[A]mbiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Yates* v. *United States*, 135 S. Ct. 1074, 1088 (2015) (internal quotation marks omitted).

"[B]ecause of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity." *United*

States v. *Bass*, 404 U.S. 336, 348 (1971). Accordingly, courts construe ambiguous criminal statutes narrowly to avoid "making criminal law in Congress's stead." *United States* v. *Santos*, 553 U.S. 507, 514 (2008) (plurality opinion).

> In various ways over the years, we have stated that when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.

Bass, 404 U.S. at 347-48 (internal quotation marks omitted).

The rule of lenity, along with the constitutional avoidance doctrine, should have guided the lower court's resolution of the ambiguity in the first instance.

Employing the potentiality definition in Section 921(a)(20)(B) enjoys other advantages. It bears repeating that "[t]he word 'punishable' in ordinary English simply means 'capable of being punished.'" *Nieves-Rivera*, 961 F.2d at 17; *Schrader*, 704 F.3d at 986; *Denson*, 588 F.2d at 1117. Beyond this plain meaning, the lower court's "subject to" alternative achieves nothing less than the insertion of the word "only" between "punishable" and "by." As the Government would have it, Section 921(a)(20)(B) excludes state misdemeanors "punishable *only* by a term of imprisonment of two

years or less," such that if a misdemeanor is *also* punishable by a term exceeding two years, it falls outside the exclusion.

Courts cannot "engage in a statutory rewrite" by "insert[ing] the word 'only' here and there. . . ." *Adirondack Med. Ctr.* v. *Sebelius*, 740 F.3d 692, 699 (D.C. Cir. 2014); *Public Citizen, Inc.* v. *Rubber Mfrs. Ass'n*, 533 F.3d 810, 817 (D.C. Cir. 2008) (footnote omitted) ("Congress knows well how to say that disclosures may be made *only* under specified provisions or circumstances, but it did not do so here").

> What the Government asks is not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably by inadvertence, may be included within its scope. To supply omissions transcends the judicial function.

Nichols v. *United States*, 136 S. Ct. 1113, 1118 (2016) (internal quotation marks and brackets omitted).

* * *

Many arguments might be advanced as to why some, all, or no state misdemeanors should be included within the "felon-in-possession" ban's scope. There are perhaps as many ways to draft a provision addressing state misdemeanor treatment under Section 922(g)(1) as there are federal legislators and staff. But it is, in the end, for Congress to write this language. If Congress truly wished to broadly disarm nonviolent misdemeanants that earn light sentences, it should have

done so clearly. And it can always revisit the issue having had the opportunity to digest post-1968 developments in constitutional law.

CONCLUSION

Should this Court grant a writ of certiorari to review the decision below, Respondents respectfully request that the Court grant this cross-petition as well.

Respectfully submitted,

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