



# The Supreme Court's Narrow Construction of Federal Criminal Laws: 2023 Term

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Criminal law [marks](#) a boundary between conduct that society deems permissible and behavior that it deems worthy of punishment. Courts have expressed that those who cross the line may be subject to penalty and [social](#) disapproval. In addition to punishment, transgressors may face wide-ranging [collateral consequences](#), among other things.

Defendants charged with criminal offenses have mounted various legal challenges to the line drawn by criminal law itself. One category of legal challenge centers on arguments related to where or how the boundary between lawful and unlawful conduct is set. For example, a defendant may argue that

- the law is vague and fails to give fair notice as to what conduct is wrongful;
- Congress may not have intended for the law to be applied to the defendant's particular conduct or circumstances;
- enforcement of the law against the defendant would fail to reserve criminal punishment for those with a sufficiently culpable mental state;
- the law clashes with countervailing constitutional values, such as federalism; and
- the law is ambiguous, and under the rule of lenity, ambiguous criminal statutes are to be construed against the government and in favor of the defendant.

In recent years, the Supreme Court has issued a series of decisions agreeing with defendants that have raised each of these arguments, narrowly construing federal criminal statutes in the process. A federal appellate judge [described](#) these rulings as “nearly an annual event.” A previous [Sidebar](#) surveyed the substantive reasons why the Court has limited the scope of criminal statutes, offering historical examples and discussing opinions from the Court's 2022 term. This Sidebar summarizes three cases from the 2023 Supreme Court term—*Fischer v. United States*, *Snyder v. United States*, and *Garland v. Cargill*—that seemingly continue this trend, providing some considerations for Congress with respect to the Court's interpretation of federal criminal laws.

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## ***Fischer v. United States*: Limiting the Scope of an Obstruction of Justice Offense in Light of Congressional Intent**

In *Fischer v. United States*, the Court addressed whether individuals alleged to have attempted to disrupt congressional certification of the 2020 presidential election results on January 6, 2021, may be charged under 18 U.S.C. § 1512(c)(2), which makes it unlawful to “otherwise obstruct[], influence[], or impede[] any official proceeding, or attempt[] to do so.” The Court [determined](#) that Section 1512(c)(1), which “consists of many specific examples of prohibited actions undertaken with the intent to impair an object’s integrity or availability for use in an official proceeding,” necessarily focuses the meaning of the residual provision in Section 1512(c)(2). Relying on the text of Section 1512(c)(2) and the words surrounding it, the Court held that this provision “applies only to acts that affect the integrity or availability of evidence,” declining to endorse the government’s broader reading that Section 1512(c)(2) “captures all forms of obstructive conduct *beyond* Section 1512(c)(1)’s focus on evidence impairment.” The Court [reasoned](#) that if it were to accept the government’s reading that Section 1512(c)(2) prohibits “*all* means of obstructing, influencing, or impeding any official proceeding,” “there would have been scant reason for Congress” to include Section 1512(c)(1). (A separate [Sidebar](#) discusses this case in greater depth.)

## ***Snyder v. United States*: Limiting the Scope of a Bribery Offense in Light of Congressional Intent, Countervailing Constitutional Considerations, and the Rule of Lenity**

In *Snyder v. United States*, the Court agreed to resolve a circuit split as to whether a specific federal bribery provision also extends to gratuities, which are rewards for actions the payee has already taken or is already committed to take without any quid pro quo agreement. The provision at issue, [18 U.S.C. § 666\(a\)\(1\)\(B\)](#), generally makes it a crime for a state or local government agent to corruptly solicit, demand, or agree to accept anything of value with the intent “to be influenced or rewarded in connection” with government action valued at \$5,000 or more. The Court [held](#) that Section 666(a)(1)(B) does not cover gratuities for a state or local government actor’s official past acts, relying in part on congressional intent—in particular, the Court pointed to differences between the provision at issue and another federal bribery [statute](#) covering gratuities. The Court added that its reading would [avoid](#) any federalism problems, as a prohibition on state and local officials accepting gratuities could interfere with the judgment of the states as to when the taking of gratuities by their officials should be unlawful. Finally, the Court was [troubled](#) that the government’s proposed limiting principle—that “innocuous” or “obviously benign” gratuities would not be covered by the statute—did not draw a clear or workable line between prohibited and permitted gratuities, thereby depriving state and local officials of fair notice as to what would be unlawful. Justice Gorsuch authored a concurring opinion, expressing his view that the Court’s holding was based on the rule of lenity. “Whatever the label, lenity is what’s at work behind today’s decision,” he [wrote](#).

## ***Garland v. Cargill*: Excluding Bump-Stock Devices from the Statutory Definition of a Prohibited “Machinegun” in Light of Statutory Text**

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) published a final rule in 2018 that classified bump-stock devices—accessories that allow semiautomatic rifles effectively to mimic the firing capabilities of fully automatic weapons—as prohibited “machineguns.” Federal law [26 U.S.C. § 5845\(b\)](#) defines a “machinegun” as a “weapon which shoots . . . automatically more than one shot, without manual reloading, by a single function of the trigger.” It is unlawful (with some exceptions) to possess a machinegun under 18 U.S.C. § 922(o). Michael Cargill [surrendered](#) two bump stocks to the ATF in response to the agency’s rule and then instituted a lawsuit in federal court contesting the legality of the rule itself.

In *Garland v. Cargill*, the Supreme Court held that a bump-stock device does not meet the statutory definition of a machinegun and that in issuing a contrary rule, ATF exceeded its statutory authority. With respect to the statutory phrase “single function of the trigger,” the Court [determined](#) that firearms equipped with bump-stock devices do not meet this element of the definition because the shooter must pull the trigger *and* maintain forward pressure on the front grip of the firearm to fire multiple rounds. As to the term “automatically” in the statutory definition, the Court [observed](#) that, for a shooter to fire more than one shot with a nonautomatic firearm, “the shooter must do more than simply engage the trigger one time.” Here, the Court [said](#) that the shooter does do something more: the shooter “actively maintains just the right amount of forward pressure on the rifle’s front grip with his nontrigger hand.” Thus, the Court concluded that a bump-stock device does not fall within the statutory definition of a machinegun and that ATF exceeded its authority in issuing a rule concluding otherwise.

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Although the cases described above appear to continue a trend of narrowly construing some federal criminal laws, the Court decided other criminal-law cases in the 2023 term that permitted specific federal and local criminal provisions to be enforced as is. In *United States v. Rahimi*, the Court determined that the Second Amendment did not bar facial application of a federal statute prohibiting possession of firearms by persons subject to certain domestic-violence restraining orders, [reasoning](#) under a Second-Amendment-specific test that sufficient historical support existed for the principle that “[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed” temporarily. In *City of Grants Pass v. Johnson*, the Court held that local laws regulating camping on public property did not violate the Eighth Amendment’s prohibition of “cruel and unusual” punishments, as the laws at issue punished conduct rather than the involuntary status of homelessness itself. The Court also issued opinions in several cases implicating other aspects of criminal law enforcement, including a high-profile case holding that the Constitution grants presidents and former presidents “[some immunity](#)” from criminal liability for acts taken while in office; a case [interpreting](#) a statute that authorizes relief from an otherwise applicable mandatory minimum; and a case [holding](#) that an alien ordered removed in absentia could not seek rescission of that order when the initial notice to appear at a removal proceeding was defective but the alien later received adequate notice of the impending proceedings and nonetheless failed to appear.

## **Congressional Considerations**

Though there are different reasons why the Supreme Court might read a federal criminal statute narrowly, the Court will not necessarily adopt such a reading in every case. The principles and examples discussed

in the [2022 term Sidebar](#) and this 2023 term Sidebar generally suggest, however, that the Court continues to be willing to narrowly construe federal criminal statutes in particular cases. Should Congress disagree with the Court's construction of a federal criminal statute, it remains free (within constitutional bounds) to amend the statute. Such an effort might encompass defining or clarifying an ambiguous term or adding or refining an express requirement. These considerations may further the goals of ensuring adequate notice to individuals as to what is unlawful, providing guardrails against inconsistent enforcement and averting court challenges, among other things.

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