Nos. 11-5683 and 11-5721

IN THE

Supreme Court of the United States

EDWARD DORSEY, SR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

COREY HILL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AND NATIONAL ASSOCIATION OF FEDERAL DEFENDERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

The National Association of Criminal Defense Lawyers ("NACDL") is a non-profit professional bar association that represents the nation's criminal defense attorneys. Its mission is to promote the proper and fair administration of criminal justice and to ensure justice and due process for those accused of crime or misconduct. Founded in 1958, NACDL has a membership of approximately 10,000 direct members and an additional 35,000 affiliate members in all 50 states and 30 nations. Its members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL has frequently appeared as *amicus curiae* before the United States Supreme Court, the federal courts of appeal, and the highest courts of numerous states.

The National Association of Federal Defenders ("NAFD") was formed in 1995 to enhance the representation provided to indigent criminal defendants under the Criminal Justice Act, 18 U.S.C. 3006A, and the Sixth Amendment to the Constitution. NAFD is a nationwide, non-profit, volunteer organization. Its membership is comprised of attorneys who work for federal public and community defender organizations authorized under the Criminal Justice Act.

The broad application of the Fair Sentencing Act is vital to the interests of NACDL and NAFD's members, as is an interpretation of the General Saving Statute, 1 U.S.C. § 109, that is narrow and limited to the purpose of preventing technical abatement.[1]

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in

SUMMARY OF ARGUMENT

Section 109 of title 1, U.S. Code, precludes only "technical abatement," which operates to deprive the government of the power to continue ongoing prosecutions. Under the common law rule of technical abatement, an amended statute is regarded as effectively repealed through repeal and re-enactment, and the government's power to prosecute pending crimes is thereby extinguished. In 1871, Congress was engaged in an effort to re-enact U.S. law in codified form, which became the Revised Statutes of 1874. What is now 1 U.S.C. § 109 was adopted at that time for the limited purpose of preventing widespread technical abatement, which otherwise would have resulted from the re-enactment of U.S. law in codified form.

This Court in *Warden* v. *Marrero*, 417 U.S. 653 (1974), departed from the narrow purpose of § 109. In an alternate holding that was unnecessary to the decision, the Court misconstrued technical abatement to preclude application of ameliorated penalties to pending proceedings. This Court should take the occasion in this case to repudiate the discussion of § 109 in *Marrero*, on which the court below wrongly relied. Section 109 does not prevent the application of the Fair Sentencing Act to pending proceedings because the application of an ameliorated penalty does not come within the technical abatement rule. Deciding otherwise would misconstrue § 109 and

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part and that no entity or person, aside from *amici curiae*, their members, and counsel, made any monetary contribution towards the preparation and submission of this brief. Pursuant to Supreme Court Rule 37.2(a), *amici curiae* certifies that counsel of records for both parties received timely notice of *amici curiae's* intent to file this brief and have consented to its filing in letter on file with the Clerk's office.

frustrate the intent of Congress in passing the Fair Sentencing Act.

ARGUMENT

I. SECTION 109 PRECLUDES ONLY TECHNICAL ABATEMENT AND SHOULD NOT BE READ TO FRUSTRATE THE IMMEDIATE APPLICATION OF AMELIORATIVE STATUTES

A. Technical abatement was a loophole in the common law.

Technical abatement is a common law rule that entirely deprives the government of the power to prosecute offenses committed prior to a statutory amendment. As this Court recognized in *Bradley* v. *United States*, 410 U.S. 605, 608 (1973), a classic example of technical abatement is the case of *R.* v. *M'Kenzie*, 168 Eng. Rep. 881 (Ct. Cr. Cas. Rev. 1820). The defendants were convicted of "feloniously stealing . . . , on the 11th of July, 1820, twenty-three yards of lace, value one pound three shillings . . . ." *Id.* However, on July 25, 1820, Parliament amended the grand larceny statute, reducing the penalty from death to life imprisonment. The English court held that the defendants could not be held liable under *either* statute—the new one because it was enacted after the crime and the old one because it had been effectively repealed. *Id.*

The technical abatement that occurred in *M'Kenzie* is best understood as a counterintuitive loophole in the common law that is different from classic abatement. Abatement—as distinguished from technical abatement—is the "universal common-law rule that when the legislature repeals a criminal statute or otherwise removes the State's

condemnation from conduct that was formerly deemed criminal, this action requires the dismissal of a pending criminal proceeding charging such conduct." *Bell* v. *Maryland*, 378 U.S. 226, 230 (1964). Abatement applies purely to "unqualified repeal of a criminal statute." Note, *Today's Law & Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 121 (1972). Abatement *per se* is a sound legal principle, for it makes little sense to continue to hold individuals liable for behavior that is no longer condemned by the law as culpable. See *id.* at 122 n.16 (noting that it is "logical and reasonable" to conclude that an unqualified repeal is a legislative "determination that that the former legislation was no longer socially necessary or desirable").

Classic abatement doctrine "has also been consistently recognized and applied by this Court," especially in the criminal context. *Bell*, 378 U.S. at 231 n.2; accord *Massey* v. *United States*, 291 U.S. 608, 609 (1934) (per curiam); *United States* v. *Chambers*, 291 U.S. 217, 223 (1934). In *Chambers*, the Court affirmed dismissal of a prosecution brought under the National Prohibition Act. 291 U.S. at 222–23. The indictment was filed on June 5, 1933, six months before enactment of the Twenty-First Amendment on December 5 of that year. *Id.* at 221–22. On December 6, "Chambers then filed a plea in abatement, and . . . [t]he District Judge sustained the contention and dismissed the indictment." *Id.* This Court affirmed the dismissal because "[t]he continuance of the prosecution of the defendants . . . would involve an attempt to continue the application of the statutory provisions after they had been deprived of force." *Id.* at 222–23. The Court stated that "it has long been settled, on general principles, that after the

expiration or repeal of a law, no penalty can be enforced, nor punishment inflicted, for violations of the law committed while it was in force, unless some special provision be made for that purpose by statute." *Id.* at 223 (internal quotation marks omitted) (quoting *Yeaton* v. *United States*, 9 U.S. (5 Cranch) 281, 283 (1809) (Marshall, C.J.)).

Technical abatement, by contrast, occurs because "[a]t common law, . . . abatement by repeal included a statute's repeal and re-enactment with different penalties." *Bradley*, 410 U.S. at 607–08 (citing 1 J. Sutherland, Statutes and Statutory Construction § 2031 n.2 (3d ed. 1943)); see also Note, *supra*, at 123 ("[R]epeal also historically include[d] the situation of repeal and re-enactment with different penalties . . . ."). For technical abatement, it made no difference if the new penalties were harsher or more lenient. *Bradley*, 410 U.S. at 607–08. Thus, if a legislature replaced the penalty for a crime by repealing the old statute and simultaneously replacing it with a new one—even one that "covers the whole subject of the first," *United States* v. *Tynen*, 78 U.S. 88, 92 (1870)—the technical abatement doctrine would entirely deprive the government from proceeding with pending prosecutions. The amendment of a statute was interpreted to express "the legislative will . . . that no further proceedings be had under the [A]ct repealed." *Id.* at 95. As a result, all prosecutions of offenses committed prior to the amending statute had to cease. "The continued prosecution necessarily depends upon the continued life of the statute which the prosecution seeks to apply." *Chambers*, 291 U.S. at 223. This was precisely the scenario in *M'Kenzie*, and precisely the scenario that § 109 was enacted to correct. The power to prosecute such offenses had to be preserved.

B. Section 109 was only intended to close the technical-abatement loophole as part of the codification effort.

The General Saving Statute provides, in relevant part:

> The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

1 U.S.C. § 109. On its face, the General Saving Statute only operates (absent contrary congressional intent, express or implied, in the statute at hand) to preserve a penalty that has already been "incurred" and only when the prior statute has been "repealed." Amici NACDL and NAFD endorse the arguments of the parties that the Fair Sentencing Act demonstrates such a contrary intent and the arguments of petitioners that § 109, by its plain language, does not operate to preserve the prior mandatory minimums in any event. The argument presented here is that the General Saving Statute does not apply for yet another, historical reason—that the immediate application of the FSA's penalties to ongoing prosecutions does not create what would at common law be considered a technical abatement. Technical abatement is the complete deprivation of the power to prosecute, not an amelioration of penalties.

The above-quoted portion of § 109 was originally enacted—verbatim—in 1871 as § 4 of a larger bill

entitled "An Act Prescribing the form of the enacting and resolving clauses of acts and resolutions of Congress, and rules for the construction thereof." H.R. 1351, 41st Cong. (3d Sess. 1871). The bill was requested by the Committee on Revision of Laws of the United States, Cong. Globe, 41st Cong., 2d Sess. 2464 (1870), and was primarily concerned with semantic matters, such as prescribing the exact phrase to be used in the enacting clause of bills, or specifying that masculine pronouns can be assumed to refer to both men and women. *Id.* at §§ 1–2; 16 Stat. 431, 431–32 (1871).

The bulk of the debate in Congress focused on the semantic issues, with no discussion of § 4 itself. See Cong. Globe, 41st Cong., 2d Sess. 2464–67 (recording the floor debate in the House); Cong. Globe, 41st Cong., 3d Sess. 775–78 (1871) (recording the floor debate in the Senate); see generally John P. Mackenzie, *Hamm v. City of Rock Hill and the Federal Savings Statute*, 54 Geo. L.J. 173, 177–80 (1965). The overall purpose of the bill, though, was to "save a good deal of verbiage in the statutes," to "simplify the phraseology of our statutes," and to "simplif[y] the mode of enactment." Cong. Globe, 41st Cong., 3d Sess. 775 (statement of Senator Trumbull). The original sponsor of the bill, Congressman Poland, maintained that "[t]he object is merely to secure a better style for bills and to dispense with the tautology which is in such common use." Cong. Globe, 41st Cong., 2d Sess. 2465.

Key to understanding § 109 is that it was introduced to assist in the effort to codify the laws of the United States. See generally Mackenzie, *supra*, at 176. The Commission assigned to this "mammoth task"—comprised of commissioners appointed by the President and confirmed by the Senate—was to issue

reports with "proposed *reenactments* of the laws into code arrangements," and "suggest to Congress such . . . statutes or parts of statutes as, in their judgment, ought to be repealed, with their reasons for such repeal." *Id.* (emphasis added). The effort culminated in the adoption of the original Revised Statutes, in 1874. In this light, it is clear why the general saving clause was required—*to prevent a wave of technical abatements as a result of the reenactment of United States criminal law as part of the codification process.*

The floor debates confirm this interpretation of § 109. As Congressman Hoar put it, "the scope of this bill [is] to construe ordinarily recurring words and phrases *in existing laws*." Cong. Globe, 41st Cong., 2d Sess. 2465 (emphasis added). Congressman Hoar continued: "It seems, with the exception of the provision about the enacting clause, this is a bill for construing the phrases in *existing* laws, *not laws to be hereafter enacted*." *Id.* (emphases added). Indeed, the Senate sponsor, Lyman Trumbull, explicitly recognized that "[w]e cannot pass a law that will bind other Congresses." Cong. Globe, 41st Cong., 3d Sess. 775; cf. *Lockhart* v. *United States*, 546 U.S. 142, 149-50 (2005) (Scalia, J., concurring) (pointing out the "invalidity of [any] express-reference provision" that "attempt[s] to burden the future exercise of legislative power").

This Court recognized in *Hamm* v. *Rock Hill*, 379 U.S. 306, 314 (1964), that the limited purpose of § 109 was "to obviate mere technical abatement," such as what would result from the re-enactment of all criminal law during codification or the amendment of a law to increase its penalty. *Id.* It was not intended to bind the hands of future Congresses in prospectively applying reduced penalties. Indeed,

Congress re-enacted into positive law § 109 itself in 1947, 61 Stat. 635 (July 30, 1947)—this time, as part of an "ambitious" program "having as [its] ultimate purpose the enactment into positive law of all the titles of the United States Code." H.R. Rep. No. 80-251, at 2 (1947). The enactment into positive law would have presented the same risk of a wave of technical abatements, just as did the codification effort in the 1870s. Section 109 was enacted—and re-enacted—to prevent this from happening.

Neither of the two purposes of the General Saving Statute—preventing technical abatement and simplifying the enactment process for future legislators—justifies using it to prevent the application of ameliorative statutes in ongoing prosecutions. Indeed, it would be the height of irony to use a statutory provision meant to simplify the lives of future legislators to bind their hands instead. The narrow purpose of § 109 was to preserve the powers of the government to punish defendants in cases of technical abatement, not to leave offenders subject to an amended law's penalties deemed by Congress to be unfair and unjust.

II. SECTION 109 DOES NOT APPLY TO THE FAIR SENTENCING ACT OF 2010

A. Ameliorative amendments are not barred by § 109, and Supreme Court precedent to the contrary is based on a misconstruction of technical abatement.

In *Hamm*, this Court recognized that § 109 was created for the limited purpose of rebutting the presumption of technical abatement, thereby preserving the power to prosecute ongoing proceedings. 306 U.S. at 312-14. "It was meant to obviate mere technical abatement such as that

illustrated by the application of the rule in *Tynen* decided in 1871. There a substitution of a new statute with a greater schedule of penalties was held to abate the previous prosecution." *Id.* at 314. Section 109 preserves the power to prosecute ongoing proceedings in cases of repeal and re-enactment but does not extend to preserve prior penalties. In *Hamm*, this meant that § 109 would not preserve a conviction inconsistent with the newly enacted Civil Rights Act of 1964. The Civil Rights Act "work[ed] no such technical abatement." *Id.* (Hence, this Court held, the Supremacy Clause invalidated the state convictions at issue there, which had not become final when the Civil Rights Act went into effect.) Here, § 109 operates to preserve the power to continue ongoing prosecutions, thereby rebutting the presumption of technical abatement. But that is the extent of its role. It cannot also operate to hamstring a later Congress intending to apply reduced penalties to ongoing prosecutions. Not only would this contravene Congress's intent in enacting the FSA, but it would work an extension of §109 beyond its original scope.

This Court in *Bradley* read the express savings clause of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236, against its explication of common law abatement to find the law's favorable parole eligibility rules to be inapplicable to defendants sentenced after its enactment but whose offenses occurred prior to that date. 410 U.S. 605. In a brief concurring opinion, two Justices opined that they would rest the decision on the additional ground that § 109 required the same result. *Id.* at 611-12.

The Court examined the parole provisions of the 1970 Act in another context in *Marrero*, 417 U.S. 653 (1974). In an alternate holding that was unnecessary

to the decision, the Court extended the *Bradley* concurrence and departed from the limited purpose of § 109. 417 U.S. at 659-64. At issue was whether defendants convicted under a narcotics statute that prevented offenders from seeking parole could take advantage of the later statute providing parole eligibility. As noted, the later statute included its own savings clause, and the Court held that the clause prohibited application of the ameliorated penalties. *Id.* at 657-59. But in an alternate holding, this Court went on to address whether § 109 independently prohibited the application of the ameliorative law. The Court correctly noted that the purpose of § 109 was to "abolish the common-law presumption that the repeal of a criminal statute resulted in the abatement of 'all prosecutions which had not reached final disposition in the highest court authorized to review them.'" *Id.* at 660 (quoting *Bradley*, 410 U.S. at 607). But the Court went on to improperly expand the scope of §109.

The Court in *Marrero*, citing the same two nineteenth century cases as *Bradley* without conducting any new historical analysis, misconstrued technical abatement. It found that if defendants convicted under the repealed statute received the benefits of the ameliorative law, their "prosecution would 'technically' abate under the common-law rule." *Id.* at 660 n.11. As a result, the Court held that the General Saving Statute prevented application of the ameliorative law and thereby prohibited parole eligibility. *Id.* at 659. But applying an amended sentence to reduce its severity does not implicate technical abatement; rather, technical abatement results in the dismissal of the indictment because the government is deprived of the power to prosecute offenses committed prior to the amending statute.

Nowhere is abatement doctrine properly understood to include the mere reduction of a penalty. Technical abatement means that "there was no offence remaining for the court to punish in virtue of that section." *Tynen*, 78 U.S. at 95. It necessarily extinguishes the power of the prosecutor to proceed. "[I]f the prosecution continues the law must continue to vivify it." *Chambers*, 291 U.S. at 226.

Based on its misconstruction of the technical abatement doctrine, the Court in *Marrero* expanded the scope of § 109 to preclude application of ameliorated penalties. This Court should acknowledge and repudiate the error made in *Marrero* and confine the scope of § 109 to its original purpose of reversing the presumption of technical abatement, understood as "the legislative will . . . that no further proceedings be had under the [A]ct repealed." *Tynen*, 78 U.S. at 95.

B. Application of the Fair Sentencing Act to ongoing proceedings is otherwise consistent with this Court's jurisprudence.

In cases where § 109 does not apply, this Court has never hesitated to apply ameliorative statutes to pending proceedings. See *Dobbert* v. *Florida*, 432 U.S. 282, 294-95 (1977) (rejecting challenge to application of changed death penalty law to pending cases, because "[t]he Florida legislature enacted the new procedure specifically to provide . . . defendants with more, rather than less, judicial protection"); cf. *Weaver* v. *Graham*, 450 U.S. 24, 37–38 (1981) (Rehnquist, J., concurring) (finding that ameliorative sentence-adjustment laws could apply immediately to all prisoners, but that the challenged statute was, on balance, not ameliorative). At issue in *Weaver* was a Florida statute that changed the calculation of a

prisoner's "gain time for good behavior." 450 U.S. at 25-26, 34 n.20. In addressing an Ex Post Facto Clause challenge to the law, this Court squarely held that immediately applying the new statute—which lacked a saving clause—necessarily applied retroactively because it would inevitably affect prisoners who committed their crimes before the effective date of the statute. *Id.* at 27 n.4, 31–32. Although the Court struck down the Ex Post Facto portion of the statute in *Weaver* as it applied to the petitioner, it did so specifically because it was not ameliorative. *Id.* at 34–35; see *id.* at 36 n.22 ("[O]nly the *ex post facto* portion of the new law is void as to petitioner, and therefore any severable provisions which are not *ex post facto* may still be applied to him"); see also *id.* at 37–38 (Rehnquist, J., concurring) (finding "this case a close one" and stating that had the statute *in toto* been ameliorative, its immediate application should be upheld); *Dobbert*, 432 U.S. at 292 n.6 (emphasizing that the ameliorative nature of a statute is an "independent bas[i]s" for upholding immediate application of a criminal law). The logic of *Weaver* and *Dobbert* should apply with equal force here. The FSA is plainly ameliorative, it does not contain a specific saving clause, and § 109 is no bar. The ameliorative provisions of the Fair Sentencing Act should therefore apply at every sentencing taking place on or after August 3, 2010, the date the Act went into effect.

This result is particularly important in the criminal law context, where congressional reduction of a penalty represents a legislative recognition that the previous penalty no longer fulfills the purposes of punishment and sentencing, including "retribution, deterrence, incapacitation, and rehabilitation." *Tapia* v. *United States*, 131 S. Ct. 2382, 2384 (2011); see

also 18 U.S.C. § 3553(a)(2) (2006) (listing these four purposes as factors to be considered when imposing a sentence); Model Penal Code § 1.02(2) (2001) (listing eight purposes of sentencing); see generally S. David Mitchell, *In With the New, Out With the Old: Expanding the Scope of Retroactive Amelioration*, 37 Am. J. Crim. L. 1, 10–11 (2009).

An ameliorative statute "represents a legislative judgment that the lesser penalty . . . is sufficient to meet the legitimate ends of the criminal law." *People* v. *Oliver*, 134 N.E.2d 197, 202 (N.Y. 1956); accord Mitchell, *supra*, at 12–17. No social utility is gained from imposing "sentences that have been acknowledged by Congress as unjust." *United States* v. *Fisher*, 646 F.3d 429, 430 (7th Cir. 2011) (Williams, J., dissenting from a denial of rehearing), *cert. denied,* No. 11-6096, 2011 WL 3812692 (U.S. Nov. 28, 2011); cf. *Dobbert*, 432 U.S. at 294–95. Indeed, this Court has held that § 109, as applied to civil cases, "embodies a principle of fair dealing," *De La Rama S.S. Co.* v. *United States*, 344 U.S. 386, 389 (1953) (evaluating whether § 109 bars extinguishment of certain claims in admiralty), and using it—contrary to its original purpose—to *force* courts to apply an "unjust" sentence would patently violate this principle.

There is an "overriding necessity of a sentence which . . . adequately expresses the community's view of the gravity of the defendant's misconduct." Henry M. Hart, Jr., *The Aims of Criminal Law*, 23 Law & Contemp. Probs. 401, 437 (1958). And the "community's view," of course, is expressed through its elected representatives. See *id.* Congress passed the FSA "[t]o restore *fairness* to Federal cocaine sentencing." Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 8, 124 Stat. 2372 (emphasis added). As one

district court put it, "what possible reason could there be to want judges to *continue* to impose new sentences that are not 'fair' over the next five years while the statute of limitations runs?" *United States* v. *Douglas*, 746 F. Supp. 2d 220, 229 (D. Me. 2010) (emphasis in original), *aff'd*, 644 F.3d 39 (1st Cir. 2011).

C. The Seventh Circuit's rule, if applied broadly, will impose significant social costs, contrary to Congress's intent.

Enforcing a penalty harsher than Congress has deemed just imposes significant social costs, including the cost of incarceration. See Hart, *supra*, at 438 ("Of all the forms of treatment of criminals, prison sentences are the most costly to the community not only because of the out-of-pocket expenses of prison care, but because of the danger that the effect on the defendant's character will be debilitating rather than rehabilitating.").

Refusing to apply the FSA on the basis of § 109 would contravene Congress's clearly ameliorative intent. This Court has squarely held that § 109 "cannot justify a disregard of the will of Congress as manifested, either expressly or by necessary implication, in a subsequent enactment." *Great N. Ry. Co.* v. *United States*, 208 U.S. 452, 465 (1908). "[O]ne legislature cannot abridge the powers of a succeeding legislature," *Fletcher* v. *Peck*, 10 U.S. (6 Cranch) 87, 135 (1810), and § 109 simply cannot be construed to allow the 41st Congress to abridge the powers of the 111th.

Congress, after years of debate, decided to alleviate the 100:1 crack-to-cocaine sentencing disparity in light of its growing recognition of mistaken factual assumptions that led to establishment of the 100:1

ratio, as well as the "significant racial disparities that it produced in federal drug sentencing." *Douglas*, 746 F. Supp. 2d at 222; accord *Kimbrough* v. *United States*, 552 U.S. 85, 98 (2007) (noting that the 100:1 ratio "'fosters disrespect for and lack of confidence in the criminal justice system' because . . . the severe sentences required by the 100-to-1 ratio are imposed 'primarily upon black offenders.'" (quoting United States Sentencing Commission, Report to Congress: Cocaine and Federal Sentencing Policy, at iv (May 2002), available at http://www.ussc.gov/_congress/crack/crackrpt.pdf)).

Congress intended the ameliorative changes to apply as soon as possible, and gave the Sentencing Commission "emergency authority" to promulgate new guidelines "as soon as practicable." Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 8, 124 Stat. 2372, 2374. As Judge Williams pointed out, this emergency authority would be pointless—and § 8 of the FSA would be reduced to mere surplusage—if Congress intended the sentencing courts to look to the old, repealed statute for guidance. *Fisher*, 646 F.3d at 432 (Williams, J., dissenting from a denial of rehearing). Refusing to apply the ameliorative statute can "serve no purpose other than to satisfy a desire for vengeance." *Oliver*, 134 N.E.2d at 202.

CONCLUSION

For the foregoing reasons, in addition to those advanced by the petitioners, this Court should reverse the decisions of the U.S. Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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