

**08-1341 UNITED STATES V. MARCUS**

DECISION BELOW: 538 F.3d 97

LOWER COURT CASE NUMBER: 07-4005-cr

**QUESTION PRESENTED:**

Whether the court of appeals departed from this Court's interpretation of Rule 52(b) of the Federal Rules of Criminal Procedure by adopting as the appropriate standard for plain-error review of an asserted ex post facto violation whether "there is any possibility, no matter how unlikely, that the jury could have convicted based exclusively on pre-enactment conduct."

**JUSTICE SOTOMAYOR TOOK NO PART.**

**CERT. GRANTED 10/13/2009**