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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2015

MARCH 29 THROUGH JUNE 6, 2016

CHRISTINE LUCHOK FALLON

REPORTER OF DECISIONS

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JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

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SUPREME COURT OF THE UNITED STATES

Allotment of Justices

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective February 25, 2016, viz.:

For the District of Columbia Circuit, John G. Roberts, Jr., Chief Justice.

For the First Circuit, Stephen Breyer, Associate Justice.

For the Second Circuit, Ruth Bader Ginsburg, Associate Justice.

For the Third Circuit, Samuel A. Alito, Jr., Associate Justice.

For the Fourth Circuit, John G. Roberts, Jr., Chief Justice.

For the Fifth Circuit, Clarence Thomas, Associate Justice.

For the Sixth Circuit, Elena Kagan, Associate Justice.

For the Seventh Circuit, Elena Kagan, Associate Justice.

For the Eighth Circuit, Samuel A. Alito, Jr., Associate Justice.

For the Ninth Circuit, Anthony M. Kennedy, Associate Justice.

For the Tenth Circuit, Sonia Sotomayor, Associate Justice.

For the Eleventh Circuit, Clarence Thomas, Associate Justice.

For the Federal Circuit, John G. Roberts, Jr., Chief Justice.

February 25, 2016.

(For next previous allotment, see 577 U. S., p. v.)

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2015

FRIEDRICHS ET AL. *v.* CALIFORNIA TEACHERS ASSOCIATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14–915. Argued January 11, 2016—Decided March 29, 2016

Affirmed by an equally divided court.

Michael A. Carvin argued the cause for petitioners. With him on the briefs were *Hashim M. Mooppan*, *James M. Burnham*, *William D. Coglianese*, and *Michael E. Rosman*.

Edward C. DuMont, Solicitor General of California, argued the cause for respondent Kamala D. Harris, Attorney General. With him on the brief were *Ms. Harris*, *pro se*, *Douglas J. Woods*, Senior Assistant Attorney General, *Tamar Pachter*, Supervising Deputy Attorney General, *Alexandra Robert Gordon*, Deputy Attorney General, *Aimee Feinberg* and *Joshua A. Klein*, Deputy Solicitors General, and *Kathleen Vermazen Radez* and *Samuel P. Siegel*, Associate Deputy Solicitors General.

David C. Frederick argued the cause for the Union respondents. With him on the brief were *Derek T. Ho*, *Jeremiah A. Collins*, *Alice O'Brien*, *Jason Walta*, *Lisa Powell*,

Counsel

Eric A. Harrington, *Laura P. Juran*, *Jacob F. Rukeyser*, and *Jeffrey B. Demain*.

Solicitor General Verrilli argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Deputy Solicitor General Kneedler*, *John F. Bash*, *M. Patricia Smith*, and *Edward D. Sieger*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Michigan et al. by *Bill Schuette*, Attorney General of Michigan, *Aaron D. Lindstrom*, Solicitor General, and *Kathryn M. Dalzell*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Mark Brnovich* of Arizona, *Leslie Rutledge* of Arkansas, *Cynthia Coffman* of Colorado, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *Lawrence G. Wasden* of Idaho, *Gregory F. Zoeller* of Indiana, *Derek Schmidt* of Kansas, *Douglas J. Peterson* of Nebraska, *Adam Paul Laxalt* of Nevada, *E. Scott Pruitt* of Oklahoma, *Alan Wilson* of South Carolina, *Ken Paxton* of Texas, *Sean D. Reyes* of Utah, *Patrick Morrisey* of West Virginia, and *Brad Schimel* of Wisconsin; for the Atlantic Legal Foundation by *Martin S. Kaufman*; for the Becket Fund for Religious Liberty by *Eric C. Rassbach* and *Adèle Auxier Keim*; for the Buckeye Institute for Public Policy Solutions by *John J. Park, Jr.*; for the Cato Institute by *David B. Rivkin, Jr.*, *Andrew M. Grossman*, and *Ilya Shapiro*; for the Center on National Labor Policy, Inc., et al. by *Michael E. Avakian*; for Constitutional Law Professors et al. by *Bradley A. Benbrook*, *Stephen M. Duvernay*, *Carrie Severino*, and *John C. Eastman*; for Former California Governor Pete Wilson et al. by *Theodore B. Olson* and *Amir C. Tayrani*; for Former California State Senate Majority Leader Gloria Romero et al. by *Michael J. Edney*, *Shannen W. Coffin*, and *Jill C. Maguire*; for the Freedom Foundation et al. by *James G. Abernathy*; for the Friedman Foundation for Educational Choice, Inc., by *David A. Schwarz*; for the Goldwater Institute by *Clint Bolick* and *James M. Manley*; for Illinois State Workers by *Joseph J. Torres*; for Mackinac Center for Public Policy by *Patrick J. Wright*; for the Mountain States Legal Foundation by *Steven J. Lechner*; for Public School Teachers Who Favor School Choice by *Dana Berliner* and *Robert Everett Johnson*; for the National Federation of Independent Business Small Business Legal Center by *Ronald A. Cass* and *Karen R. Harned*; for the National Right To Work Legal Defense Foundation, Inc., by *William L. Messenger* and *Milton L. Chappell*; for the Pacific Legal Foundation et al. by *Deborah J. La Fetra* and *Timothy Sandefur*; for The Rutherford Institute by *D. Alicia Hickok*, *Chanda A. Miller*, and *John W. Whitehead*; for State Public Policy Research Organizations by *Jeffrey M. Harris*; for Daniel DiSalvo by *Thomas R. McCarthy*

PER CURIAM.

The judgment is affirmed by an equally divided Court.

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and *William S. Consovoy*; for Susana Martinez, Governor of New Mexico, by *Jerry A. Walz*; for Bruce Rauner, Governor of Illinois, et al. by *David L. Applegate*, *Jason Barclay*, and *Dennis Murashko;* and for Glenn J. Schworak et al. by *Jill Gibson* and *James Huffman*.

Briefs of *amici curiae* urging affirmance were filed for the State of New York et al. by *Eric T. Schneiderman*, Attorney General of New York, *Barbara D. Underwood*, Solicitor General, *Anisha Dasgupta*, Deputy Solicitor General, and *Valerie Figueredo*, Assistant Solicitor General, by *Bruce R. Beemer*, First Deputy Attorney General of Pennsylvania, and by the Attorneys General for their respective jurisdictions as follows: *Craig W. Richards* of Alaska, *George Jepsen* of Connecticut, *Matthew P. Denn* of Delaware, *Karl A. Racine* of the District of Columbia, *Douglas S. Chin* of Hawaii, *Lisa Madigan* of Illinois, *Tom Miller* of Iowa, *Jack Conway* of Kentucky, *Janet T. Mills* of Maine, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Lori Swanson* of Minnesota, *Chris Koster* of Missouri, *Joseph A. Foster* of New Hampshire, *Hector H. Balderas* of New Mexico, *Ellen F. Rosenblum* of Oregon, *Peter F. Kilmartin* of Rhode Island, *William H. Sorrell* of Vermont, *Mark R. Herring* of Virginia, and *Robert W. Ferguson* of Washington; for Alameda Unified School District et al. by *Seth P. Waxman*, *Bruce M. Berman*, *Jonathan G. Cedarbaum*, *Alan Schoenfeld*, and *Joshua Civin*; for the American Federation of Labor and Congress of Industrial Organizations et al. by *Lynn K. Rhinehart*, *Harold C. Becker*, *James B. Coppess*, *William Lurye*, and *Laurence Gold*; for the American Federation of Teachers et al. by *Kevin K. Russell*, *Rhonda Weingarten*, *David J. Strom*, *Mark Richard*, *Risa L. Lieberwitz*, and *Aaron Nisenson*; for the California School Employees Association by *Michael R. Clancy* and *Christina C. Bleuler*; for Cities, Counties, and Elected Officials by *Samuel R. Bagenstos*, *Dennis J. Herrera*, *Christine Van Aken*, *Michael N. Feuer*, *James P. Clark*, *Benna Ruth Solomon*, *Marc P. Hansen*, *Joseph Martuccio*, *Robert Triozzi*, *Adam W. Loukx*, *Martin S. Hume*, *Rebecca M. Gerson*, and *Michael P. May*; for the City of New York by *Zachary W. Carter* and *Richard Dearing*; for Constitutional Law Scholars by *Andrew J. Pincus*, *Charles A. Rothfeld*, *Michael B. Kimberly*, *Paul W. Hughes*, and *Eugene R. Fidell*; for Corporate Law Professors by *Anna-Rose Mathieson*; for the International Association of Fire Fighters by *Thomas A. Woodley*; for Labor Law and Labor Relations Professors by *Charlotte Garden*; for Los Angeles County's Department of Health Services et al. by *Claire Prestel*, *Judith A. Scott*, *Nicole G. Berner*, and *Walter Kamiat*; for the National Council on Teacher Retirement et al. by

Per Curiam

Adam C. Toosley, *John T. Shapiro*, and *Terrence J. Sheahan*; for the National Fraternal Order of Police by *Christina L. Corl* and *Larry H. James*; for the National Women's Law Center et al. by *Matthew S. Hellman*, *Marcia D. Greenberger*, *Emily J. Martin*, *Andrea Johnson*, *Wade J. Henderson*, and *Lisa M. Bornstein*; for the New York City Municipal Labor Committee by *Alan M. Klinger* and *Harry Greenberg*; for the Peace Officers Research Association of California et al. by *Pamela S. Karlan*, *Jeffrey L. Fisher*, *Brian Wolfman*, *Gary M. Messing*, and *Gregg M. Adam*; for Republican Current and Former Members of State Legislatures and Congress by *Elizabeth B. Wydra*, *Brianne J. Gorod*, and *David H. Gans*; for Social Scientists by *Joel Rogers*; for Brittany Alexander, Public School Teachers, et al. by *Bruce H. Lederman*; for Steve Bullock, Governor of Montana, by *Deepak Gupta* and *Matthew W. H. Wessler*; for Cynthia L. Estlund et al. by *Samuel Estreicher*, *pro se*; and for 21 Past Presidents of the D. C. Bar by *John W. Nields, Jr.*

Syllabus

LUIS *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 14–419. Argued November 10, 2015—Decided March 30, 2016

A federal statute provides that a court may freeze before trial certain assets belonging to a defendant accused of violations of federal health care or banking laws. Those assets include (1) property "obtained as a result of" the crime, (2) property "traceable" to the crime, and (3), as relevant here, other "property of equivalent value." 18 U. S. C. § 1345(a)(2). The Government has charged petitioner Luis with fraudulently obtaining nearly $45 million through crimes related to health care. In order to preserve the $2 million remaining in Luis' possession for payment of restitution and other criminal penalties, the Government secured a pretrial order prohibiting Luis from dissipating her assets, including assets unrelated to her alleged crimes. Though the District Court recognized that the order might prevent Luis from obtaining counsel of her choice, it held that the Sixth Amendment did not give her the right to use her own untainted funds for that purpose. The Eleventh Circuit affirmed.

Held: The judgment is vacated, and the case is remanded.

564 Fed. Appx. 493, vacated and remanded.

JUSTICE BREYER, joined by THE CHIEF JUSTICE, JUSTICE GINSBURG, and JUSTICE SOTOMAYOR, concluded that the pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment. The nature and importance of the constitutional right taken together with the nature of the assets lead to this conclusion. Pp. 10–23.

(a) The Sixth Amendment right to counsel grants a defendant "a fair opportunity to secure counsel of his own choice," *Powell* v. *Alabama*, 287 U. S. 45, 53, that he "can afford to hire," *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617, 624. This Court has consistently referred to the right to counsel of choice as "fundamental." Pp. 10–12.

(b) While the Government does not deny Luis' fundamental right to be represented by a qualified attorney whom she chooses and can afford to hire, it would nonetheless undermine the value of that right by taking from Luis the ability to use funds she needs to pay for her chosen attorney. The Government attempts to justify this consequence by pointing out that there are important interests on the other side of the legal equation. It wishes to guarantee that funds will be available later to

help pay for statutory penalties and restitution, for example. The Government further argues that two previous cases from this Court, *Caplin & Drysdale*, *supra*, at 619, and *United States* v. *Monsanto*, 491 U. S. 600, 615, support the issuance of a restraining order in this case. However, the nature of the assets at issue here differs from the assets at issue in those earlier cases. And that distinction makes a difference. Pp. 12–23.

(1) Here, the property is untainted, *i. e.*, it belongs to Luis. As described in *Caplin & Drysdale* and *Monsanto*, the Government may well be able to freeze before trial "tainted" assets—*e. g.*, loot, contraband, or property otherwise associated with the planning, implementing, or concealing of a crime. As a matter of property law, the defendant's ownership interest in such property is imperfect. For example, a different federal statute provides that title to property used to commit a crime (or otherwise "traceable" to a crime) passes to the Government at the instant the crime is planned or committed. See 21 U. S. C. § 853(c). But here, the Government seeks to impose restrictions upon Luis' untainted property without any showing of any equivalent governmental interest in that property. Pp. 12–17.

(2) This distinction does not by itself answer the constitutional question because the law of property may allow a person without a present interest in a piece of property to impose restrictions upon a current owner, say, to prevent waste. However, insofar as innocent funds are needed to obtain counsel of choice, the Sixth Amendment prohibits the court order sought here.

Three basic considerations lead to this conclusion. First, the nature of the competing interests argues against this kind of court order. On the one side is a fundamental Sixth Amendment right to assistance of counsel. On the other side is the Government's interest in securing its punishment of choice, as well as the victim's interest in securing restitution. These latter interests are important, but—compared to the right to counsel—they seem to lie somewhat further from the heart of a fair, effective criminal justice system. Second, relevant, common-law legal tradition offers virtually no significant support for the Government's position and in fact argues to the contrary. Indeed, there appears to be no decision of this Court authorizing unfettered, pretrial forfeiture of the defendant's own "innocent" property. Third, as a practical matter, accepting the Government's position could erode the right to counsel considerably. It would, in fact, unleash a principle of constitutional law with no obvious stopping place, as Congress could write more statutes authorizing restraints in other cases involving illegal behavior that come with steep financial consequences. These defendants, often rendered indigent, would fall back upon publicly paid counsel, including over-

worked and underpaid public defenders. The upshot is a substantial risk that accepting the Government's views would render less effective the basic right the Sixth Amendment seeks to protect. Pp. 17–22.

(3) The constitutional line between a criminal defendant's tainted funds and innocent funds needed to pay for counsel should prove workable. Money may be fungible, but courts, which use tracing rules in cases of, *e. g.*, fraud and pension rights, have experience separating tainted assets from untainted assets, just as they have experience determining how much money is needed to cover the costs of a lawyer. Pp. 22–23.

JUSTICE THOMAS concluded that the rule that a pretrial freeze of untainted assets violates a defendant's Sixth Amendment right to counsel of choice rests strictly on the Sixth Amendment's text and common-law backdrop. Pp. 24–35.

(a) The Sixth Amendment abolished the common-law rule that generally prohibited representation in felony cases. "The right to select counsel of one's choice" is thus "the root meaning" of the Sixth Amendment right to counsel. *United States* v. *Gonzalez-Lopez*, 548 U. S. 140, 147–148. Constitutional rights protect the necessary prerequisites for their exercise. As a result, the Sixth Amendment denies the Government unchecked power to freeze a defendant's assets before trial simply to secure potential forfeiture upon conviction. Unless the right to counsel protects the right to use lawfully owned property to pay for an attorney, the right to counsel—originally understood to protect only the right to hire counsel of choice—would be meaningless. Without pretrial protection for at least *some* of a defendant's assets, the Government could nullify the right to counsel of choice, eviscerating the Sixth Amendment's original meaning and purpose. The modern, judicially created right to government-appointed counsel does not obviate these concerns. Pp. 25–28.

(b) History confirms this textual understanding. The common-law forfeiture tradition provides an administrable rule for the Sixth Amendment's protection: A criminal defendant's untainted assets are protected from government interference before trial and judgment, but his tainted assets may be seized before trial as contraband or through a separate *in rem* proceeding. Reading the Sixth Amendment to track the historical line between tainted and untainted assets avoids case-by-case adjudication and ensures that the original meaning of the right to counsel does real work. Here, the incursion of the pretrial asset freeze into untainted assets, for which there is no historical tradition, violates the Sixth Amendment. Pp. 28–32.

(c) This conclusion leaves no room for an atextual balancing analysis. Pp. 32–35.

BREYER, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., and GINSBURG and SOTOMAYOR, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, *post*, p. 24. KENNEDY, J., filed a dissenting opinion, in which ALITO, J., joined, *post*, p. 35. KAGAN, J., filed a dissenting opinion, *post*, p. 51.

Howard Srebnick argued the cause for petitioner. With him on the briefs were *Scott A. Srebnick* and *Ricardo J. Bascuas.*

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Caldwell*, *Elaine J. Goldenberg*, and *Sonja M. Ralston.**

JUSTICE BREYER announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, JUSTICE GINSBURG, and JUSTICE SOTOMAYOR join.

A federal statute provides that a court may freeze before trial certain assets belonging to a criminal defendant accused of violations of federal health care or banking laws. See 18 U. S. C. § 1345. Those assets include: (1) property "obtained as a result of" the crime, (2) property "traceable" to the crime, and (3) other "property of equivalent value." § 1345(a)(2). In this case, the Government has obtained a court order that freezes assets belonging to the third cate-

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*Briefs of *amici curiae* urging reversal were filed for the American Bar Association by *Paulette Brown*, *Jerrold J. Ganzfried*, and *Terrance G. Reed*; for the Cato Institute et al. by *Ilya Shapiro*; for the National Association of Criminal Defense Lawyers et al. by *Courtney J. Linn*, *Robert Loeb*, *David B. Smith*, *John T. Philipsborn*, *Jonathan D. Hacker*, *Karen M. Gottlieb*, *Sonya Rudenstine*, and *A. Margot Moss*; for The Rutherford Institute by *Anand Agneshwar*, *Carl S. Nadler*, and *John W. Whitehead*; and for the United States Justice Foundation et al. by *William J. Olson*, *Herbert W. Titus*, *Jeremiah L. Morgan*, and *John S. Miles.*

Briefs of *amici curiae* were filed for Americans for Forfeiture Reform by *Mahesha P. Subbaraman*; for the National Association of State Legislatures et al. by *Mary Massaron* and *Lisa Soronen*; and for the New York Council of Defense Lawyers by *Jonathan P. Bach.*

gory of property, namely, property that is untainted by the crime, and that belongs fully to the defendant. That order, the defendant says, prevents her from paying her lawyer. She claims that insofar as it does so, it violates her Sixth Amendment "right . . . to have the Assistance of Counsel for [her] defence." We agree.

I

In October 2012, a federal grand jury charged the petitioner, Sila Luis, with paying kickbacks, conspiring to commit fraud, and engaging in other crimes all related to health care. See § 1349; § 371; 42 U. S. C. § 1320a–7b(b)(2)(A). The Government claimed that Luis had fraudulently obtained close to $45 million, almost all of which she had already spent. Believing it would convict Luis of the crimes charged, and hoping to preserve the $2 million remaining in Luis' possession for payment of restitution and other criminal penalties (often referred to as criminal forfeitures, which can include innocent—not just tainted—assets, a point of critical importance here), the Government sought a pretrial order prohibiting Luis from dissipating her assets. See 18 U. S. C. § 1345(a)(2). And the District Court ultimately issued an order prohibiting her from "dissipating, or otherwise disposing of . . . assets, real or personal . . . up to the equivalent value of the proceeds of the Federal health care fraud ($45 million)." App. to Pet. for Cert. A–6.

The Government and Luis agree that this court order will prevent Luis from using her own untainted funds, *i. e.*, funds not connected with the crime, to hire counsel to defend her in her criminal case. See App. 161 (stipulating "that an unquantified amount of revenue not connected to the indictment [had] flowed into some of the accounts" subject to the restraining order); *ibid.* (similarly stipulating that Luis used "revenue not connected to the indictment" to pay for real property that she possessed). Although the District Court recognized that the order might prevent Luis from obtaining counsel of her choice, it held "that there is no Sixth Amend-

ment right to use untainted, substitute assets to hire counsel." 966 F. Supp. 2d 1321, 1334 (SD Fla. 2013).

The Eleventh Circuit upheld the District Court. See 564 Fed. Appx. 493, 494 (2014) (*per curiam*) (referring to, *e. g.*, *Kaley* v. *United States*, 571 U. S. 320 (2014); *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617, 631 (1989); *United States* v. *Monsanto*, 491 U. S. 600, 616 (1989)). We granted Luis' petition for certiorari.

II

The question presented is "[w]hether the pretrial restraint of a criminal defendant's legitimate, untainted assets (those not traceable to a criminal offense) needed to retain counsel of choice violates the Fifth and Sixth Amendments." Pet. for Cert. ii. We see no reasonable way to interpret the relevant statutes to avoid answering this constitutional question. Cf. *Monsanto*, *supra*, at 614. Hence, we answer it, and our answer is that the pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment. The nature and importance of the constitutional right taken together with the nature of the assets lead us to this conclusion.

A

No one doubts the fundamental character of a criminal defendant's Sixth Amendment right to the "Assistance of Counsel." In *Gideon* v. *Wainwright*, 372 U. S. 335 (1963), the Court explained:

> " 'The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evi-

> dence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.'" *Id.*, at 344–345 (quoting *Powell* v. *Alabama*, 287 U. S. 45, 68–69 (1932)).

It is consequently not surprising: *first*, that this Court's opinions often refer to the right to counsel as "fundamental," *id.*, at 68; see *Grosjean* v. *American Press Co.*, 297 U. S. 233, 243–244 (1936) (similar); *Johnson* v. *Zerbst*, 304 U. S. 458, 462–463 (1938) (similar); *second*, that commentators describe the right as a "great engin[e] by which an innocent man can make the truth of his innocence visible," Amar, Sixth Amendment First Principles, 84 Geo. L. J. 641, 643 (1996); see *Herring* v. *New York*, 422 U. S. 853, 862 (1975); *third*, that we have understood the right to require that the Government provide counsel for an indigent defendant accused of all but the least serious crimes, see *Gideon*, *supra*, at 344; and *fourth*, that we have considered the wrongful deprivation of the right to counsel a "structural" error that so "affec[ts] the framework within which the trial proceeds" that courts may not even ask whether the error harmed the defendant, *United States* v. *Gonzalez-Lopez*, 548 U. S. 140, 148 (2006) (internal quotation marks omitted); see *id.*, at 150.

Given the necessarily close working relationship between lawyer and client, the need for confidence, and the critical importance of trust, neither is it surprising that the Court has held that the Sixth Amendment grants a defendant "a fair opportunity to secure counsel of his own choice." *Powell*, *supra*, at 53; see *Gonzalez-Lopez*, *supra*, at 150 (describing "these myriad aspects of representation"). This "fair opportunity" for the defendant to secure counsel of choice has limits. A defendant has no right, for example, to an at-

torney who is not a member of the bar, or who has a conflict of interest due to a relationship with an opposing party. See *Wheat* v. *United States*, 486 U. S. 153, 159 (1988). And an indigent defendant, while entitled to adequate representation, has no right to have the Government pay for his preferred representational choice. See *Caplin & Drysdale*, 491 U. S., at 624.

We nonetheless emphasize that the constitutional right at issue here is fundamental: "[T]he Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire." *Ibid.*

B

The Government cannot, and does not, deny Luis' right to be represented by a qualified attorney whom she chooses and can afford. But the Government would undermine the value of that right by taking from Luis the ability to use the funds she needs to pay for her chosen attorney. The Government points out that, while freezing the funds may have this consequence, there are important interests on the other side of the legal equation: It wishes to guarantee that those funds will be available later to help pay for statutory penalties (including forfeiture of untainted assets) and restitution, should it secure convictions. And it points to two cases from this Court, *Caplin & Drysdale*, *supra*, at 619, and *Monsanto*, 491 U. S., at 615, which, in the Government's view, hold that the Sixth Amendment does not pose an obstacle to its doing so here. In our view, however, the nature of the assets at issue here differs from the assets at issue in those earlier cases. And that distinction makes a difference.

1

The relevant difference consists of the fact that the property here is untainted; *i. e.*, it belongs to the defendant, pure and simple. In this respect it differs from a robber's loot, a drug seller's cocaine, a burglar's tools, or other property

associated with the planning, implementing, or concealing of a crime. The Government may well be able to freeze, perhaps to seize, assets of the latter, "tainted" kind before trial. As a matter of property law the defendant's ownership interest is imperfect. The robber's loot belongs to the victim, not to the defendant. See *Telegraph Co.* v. *Davenport*, 97 U. S. 369, 372 (1878) ("The great principle that no one can be deprived of his property without his assent, except by the processes of the law, requires . . . that the property wrongfully transferred or stolen should be restored to its rightful owner"). The cocaine is contraband, long considered forfeitable to the Government wherever found. See, *e. g.*, 21 U. S. C. § 881(a) ("[Controlled substances] shall be subject to forfeiture to the United States and no property right shall exist in them"); *Carroll* v. *United States*, 267 U. S. 132, 159 (1925) (describing the seizure of "contraband forfeitable property"). And title to property used to commit a crime (or otherwise "traceable" to a crime) often passes to the Government at the instant the crime is planned or committed. See, *e. g.*, § 853(c) (providing that the Government's ownership interest in such property relates back to the time of the crime).

The property at issue here, however, is not loot, contraband, or otherwise "tainted." It belongs to the defendant. That fact undermines the Government's reliance upon precedent, for both *Caplin & Drysdale* and *Monsanto* relied critically upon the fact that the property at issue was "tainted," and that title to the property therefore had passed from the defendant to the Government before the court issued its order freezing (or otherwise disposing of) the assets.

In *Caplin & Drysdale*, the Court considered a post-conviction forfeiture that took from a convicted defendant funds he would have used to pay his lawyer. The Court held that the forfeiture was constitutional. In doing so, however, it emphasized that the forfeiture statute at issue provided that "'[a]ll right, title, and interest in property [constituting

or derived from any proceeds obtained from the crime] vests in the United States *upon the commission of the act* giving rise to [the] forfeiture.' " 491 U. S., at 625, n. 4 (quoting § 853(c); emphasis added). It added that the law had "long-recognized" as "lawful" the "practice of vesting title to any forfeitable asset[s] in the United State[s] at the time of the crim[e]." *Id.*, at 627. It pointed out that the defendant did not "claim, as a general proposition, that the [vesting] provision is unconstitutional, or that Congress cannot, as a general matter, vest title to assets derived from the crime in the Government, as of the date of the criminal act in question." *Id.*, at 627–628. And, given the vesting language, the Court explained that the defendant "did not hold good title" to the property. *Id.*, at 627. The Court therefore concluded that "[t]here is no constitutional principle that gives one person [namely, the defendant] the right to give another's [namely, the Government's] property to a third party," namely, the lawyer. *Id.*, at 628.

In *Monsanto*, the Court considered a pretrial restraining order that prevented a not-yet-convicted defendant from using certain assets to pay for his lawyer. The defendant argued that, given this difference, *Caplin & Drysdale*'s conclusion should not apply. The Court noted, however, that the property at issue was forfeitable under the same statute that was at issue in *Caplin & Drysdale*. See *Monsanto*, *supra*, at 614. And, as in *Caplin & Drysdale*, the application of that statute to Monsanto's case concerned only the pretrial restraint of assets *that were traceable to the crime*, see 491 U. S., at 602–603; thus, the statute passed title to those funds at the time the crime was committed (*i. e.*, before the trial), see § 853(c). The Court said that *Caplin & Drysdale* had already "weigh[ed] . . . th[e] very interests" at issue. *Monsanto*, *supra*, at 616. And it "rel[ied] on" its "conclusion" in *Caplin & Drysdale* to dispose of, and to reject, the defendant's "similar constitutional claims." 491 U. S., at 614.

JUSTICE KENNEDY prefers to read *Caplin & Drysdale* and *Monsanto* broadly, as holding that "[t]he Government, having established probable cause to believe that Luis' substitute [*i. e.*, innocent] assets will be forfeitable upon conviction, should be permitted to obtain a restraining order barring her from spending those funds prior to trial." *Post*, at 41 (dissenting opinion). In other words, he believes that those cases stand for the proposition that property—whether tainted or untainted—is subject to pretrial restraint, so long as the property might someday be subject to forfeiture. But this reading asks too much of our precedents. For one thing, as discussed, *Caplin & Drysdale* and *Monsanto* involved the restraint only of tainted assets, and thus we had no occasion to opine in those cases about the constitutionality of pretrial restraints of other, untainted assets.

For another thing, JUSTICE KENNEDY's broad rule ignores the statutory background against which *Caplin & Drysdale* and *Monsanto* were decided. The Court in those cases referenced § 853(c) more than a dozen times. And it acknowledged that whether property is "forfeitable" or subject to pretrial restraint under Congress' scheme is a nuanced inquiry that very much depends on who has the superior interest in the property at issue. See *Caplin & Drysdale*, *supra*, at 626–628; *Monsanto*, 491 U. S., at 616. We see this in, for example, § 853(e)(1), which explicitly authorizes restraining orders or injunctions against "property described in subsection (a) of this section" (*i. e.*, *tainted* assets). We see this too in § 853(e)(1)(B), which requires the Government—in certain circumstances—to give "notice to persons appearing to have an interest in the property and opportunity for hearing" before obtaining a restraining order against such property. We see this in § 853(c), which allows "bona fide purchaser[s] for value" to keep property that would otherwise be subject to forfeiture. And we see this in § 853(n)(6)(A), which exempts certain property from forfeiture when a third party

can show a vested interest in the property that is "superior" to that of the Government.

The distinction that we have discussed is thus an important one, not a technicality. It is the difference between what is yours and what is mine. In *Caplin & Drysdale* and *Monsanto*, the Government wanted to impose restrictions upon (or seize) property that the Government had probable cause to believe was the proceeds of, or traceable to, a crime. See *Monsanto*, *supra*, at 615. The relevant statute said that the Government took title to those tainted assets as of the time of the crime. See § 853(c). And the defendants in those cases consequently had to concede that the disputed property was in an important sense the Government's at the time the court imposed the restrictions. See *Caplin & Drysdale*, *supra*, at 619–620; *Monsanto*, *supra*, at 602–603.

This is not to say that the Government "owned" the tainted property outright (in the sense that it could take possession of the property even before obtaining a conviction). See *post*, at 41–44 (KENNEDY, J., dissenting). Rather, it is to say that the Government even before trial had a "substantial" interest in the tainted property sufficient to justify the property's pretrial restraint. See *Caplin & Drysdale*, *supra*, at 627 ("[T]he property rights given the Government by virtue of [§ 853(c)'s relation-back provision] are more substantial than petitioner acknowledges"); *United States* v. *Stowell*, 133 U. S. 1, 19 (1890) ("As soon as [the possessor of the forfeitable asset committed the violation] . . . , the forfeiture . . . *took effect*, and (though needing judicial condemnation to perfect it) operated *from that time* as a statutory conveyance to the United States of all right, title and interest then remaining in the [possessor]; and was as valid and effectual, against all the world, as a recorded deed" (emphasis added)).

If we analogize to bankruptcy law, the Government, by application of § 853(c)'s relation-back provision, became something like a secured creditor with a lien on the defendant's tainted assets superior to that of most any other party. See

4 Collier on Bankruptcy ¶506.03[1] (16th ed. 2015). For this reason, § 853(c) has operated in our cases as a significant limitation on criminal defendants' property rights in such assets—even before conviction. See *Monsanto*, *supra*, at 613 ("Permitting a defendant to use [tainted] assets for his private purposes that, under this [relation-back] provision, will become the property of the United States if a conviction occurs cannot be sanctioned"); cf. *Grupo Mexicano de Desarrollo, S. A.* v. *Alliance Bond Fund, Inc.*, 527 U. S. 308, 326 (1999) (noting that the Court had previously authorized injunctions against the further dissipation of property where, among other things, "the creditor (the Government) asserted an equitable lien on the property").

Here, by contrast, the Government seeks to impose restrictions upon Luis' *un*tainted property without any showing of any equivalent governmental interest in that property. Again, if this were a bankruptcy case, the Government would be at most an unsecured creditor. Although such creditors someday might collect from a debtor's general assets, they cannot be said to have any present claim to, or interest in, the debtor's property. See *id.*, at 330 ("[B]efore judgment . . . an unsecured creditor has no rights at law or in equity in the property of his debtor"); see also 5 Collier on Bankruptcy ¶541.05[1][b] ("[G]eneral unsecured creditor[s]" have "no specific property interest in the goods held or sold by the debtor"). The competing property interests in the tainted- and untainted-asset contexts therefore are not "exactly the same." *Post*, at 53 (KAGAN, J., dissenting). At least regarding her untainted assets, Luis can at this point reasonably claim that the property is still "mine," free and clear.

2

This distinction between (1) what is primarily "mine" (the defendant's) and (2) what is primarily "yours" (the Government's) does not by itself answer the constitutional question posed, for the law of property sometimes allows a person

without a present interest in a piece of property to impose restrictions upon a current owner, say, to prevent waste. A holder of a reversionary interest, for example, can prevent the owner of a life estate from wasting the property. See, *e. g.*, *Peterson* v. *Ferrell*, 127 N. C. 169, 170, 37 S. E. 189, 190 (1900). Those who later may become beneficiaries of a trust are sometimes able to prevent the trustee from dissipating the trust's assets. See, *e. g.*, *Kollock* v. *Webb*, 113 Ga. 762, 769, 39 S. E. 339, 343 (1901). And holders of a contingent, future executory interest in property (an interest that might become possessory at some point down the road) can, in limited circumstances, enjoin the activities of the current owner. See, *e. g.*, *Dees* v. *Cheuvronts*, 240 Ill. 486, 491, 88 N. E. 1011, 1012 (1909) ("[E]quity w[ill] interfere . . . only when it is made to appear that the contingency . . . is reasonably certain to happen, and the waste is . . . wanton and conscienceless"). The Government here seeks a somewhat analogous order, *i. e.*, an order that will preserve Luis' untainted assets so that they will be available to cover the costs of forfeiture and restitution if she is convicted, and if the court later determines that her tainted assets are insufficient or otherwise unavailable.

The Government finds statutory authority for its request in language authorizing a court to enjoin a criminal defendant from, for example, disposing of innocent "property of equivalent value" to that of tainted property. 18 U. S. C. § 1345(a)(2)(B)(i). But Luis needs some portion of those same funds to pay for the lawyer of her choice. Thus, the legal conflict arises. And, in our view, insofar as innocent (*i. e.*, untainted) funds are needed to obtain counsel of choice, we believe that the Sixth Amendment prohibits the court order that the Government seeks.

Three basic considerations lead us to this conclusion. First, the nature of the competing interests argues against this kind of court order. On the one side we find, as we have previously explained, *supra*, at 10–12, a Sixth Amend-

ment right to assistance of counsel that is a fundamental constituent of due process of law, see *Powell*, 287 U. S., at 68–69. And that right includes "the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire." *Caplin & Drysdale*, 491 U. S., at 624. The order at issue in this case would seriously undermine that constitutional right.

On the other side we find interests that include the Government's contingent interest in securing its punishment of choice (namely, criminal forfeiture) as well as the victims' interest in securing restitution (notably, from funds belonging to the defendant, not the victims). While these interests are important, to deny the Government the order it requests will not inevitably undermine them, for, at least sometimes, the defendant may possess other assets—say, "tainted" property—that might be used for forfeitures and restitution. Cf. *Gonzalez-Lopez*, 548 U. S., at 148 ("Deprivation of the right" to counsel of the defendant's choice "is 'complete' when the defendant is erroneously prevented from being represented by the lawyer he wants"). Nor do the interests in obtaining payment of a criminal forfeiture or restitution order enjoy constitutional protection. Rather, despite their importance, compared to the right to counsel of choice, these interests would seem to lie somewhat further from the heart of a fair, effective criminal justice system.

Second, relevant legal tradition offers virtually no significant support for the Government's position. Rather, tradition argues to the contrary. Describing the 18th-century English legal world (which recognized only a limited right to counsel), Blackstone wrote that "only" those "goods and chattels" that "a man has *at the time of conviction* shall be forfeited." 4 W. Blackstone, Commentaries on the Laws of England 388 (1765) (emphasis added); see 1 J. Chitty, Practical Treatise on the Criminal Law 737 (1816) ("[T]he party indicted may sell any of [his property] . . . to assist him in preparing for his defense on the trial").

Describing the common law as understood in 19th-century America (which recognized a broader right to counsel), Justice Story wrote:

> "It is well known, that at the common law, in many cases of felonies, the party forfeited his goods and chattels to the crown. The forfeiture . . . was a part, or at least a consequence, of the judgment of conviction. It is plain from this statement, that no right to the goods and chattels of the felon could be acquired by the crown by the mere commission of the offense; but the right attached only by the conviction of the offender. . . . In the contemplation of the common law, the offender's right was not devested until the conviction." *The Palmyra*, 12 Wheat. 1, 14 (1827).

See generally *Powell*, *supra*, at 60–61 (describing the scope of the right to counsel in 18th-century Britain and colonial America).

As we have explained, *supra*, at 13–17, cases such as *Caplin & Drysdale* and *Monsanto* permit the Government to freeze a defendant's assets pretrial, but the opinions in those cases highlight the fact that the property at issue was "tainted," *i. e.*, it did not belong entirely to the defendant. We have found no decision of this Court authorizing unfettered, pretrial forfeiture of the defendant's own "innocent" property—property with no connection to the charged crime. Nor do we see any grounds for distinguishing the historic preference against preconviction *forfeitures* from the preconviction *restraint* at issue here. As far as Luis' Sixth Amendment right to counsel of choice is concerned, a restraining order might as well be a forfeiture; that is, the restraint itself suffices to completely deny this constitutional right. See *Gonzalez-Lopez*, *supra*, at 148.

Third, as a practical matter, to accept the Government's position could well erode the right to counsel to a considerably greater extent than we have so far indicated. To per-

mit the Government to freeze Luis' untainted assets would unleash a principle of constitutional law that would have no obvious stopping place. The statutory provision before us authorizing the present restraining order refers only to "banking law violation[s]" and "Federal health care offense[s]." 18 U. S. C. § 1345(a)(2). But, in the Government's view, Congress could write more statutes authorizing pretrial restraints in cases involving other illegal behavior—after all, a broad range of such behavior can lead to postconviction forfeiture of untainted assets. See, *e. g.*, § 1963(m) (providing for forfeiture of innocent, substitute assets for any violation of the Racketeer Influenced and Corrupt Organizations Act).

Moreover, the financial consequences of a criminal conviction are steep. Even beyond the forfeiture itself, criminal fines can be high, and restitution orders expensive. See, *e. g.*, § 1344 ($1 million fine for bank fraud); § 3571 (mail and wire fraud fines of up to $250,000 for individuals and $500,000 for organizations); *United States* v. *Gushlak*, 728 F. 3d 184, 187, 203 (CA2 2013) ($17.5 million restitution award against an individual defendant in a fraud-on-the-market case); *FTC* v. *Trudeau*, 662 F. 3d 947, 949 (CA7 2011) ($37.6 million remedial sanction for fraud). How are defendants whose innocent assets are frozen in cases like these supposed to pay for a lawyer—particularly if they lack "tainted assets" because they are innocent, a class of defendants whom the right to counsel certainly seeks to protect? See *Powell*, 287 U. S., at 69; Amar, 84 Geo. L. J., at 643 ("[T]he Sixth Amendment is generally designed to elicit truth and protect innocence").

These defendants, rendered indigent, would fall back upon publicly paid counsel, including overworked and underpaid public defenders. As the Department of Justice explains, only 27 percent of county-based public defender offices have sufficient attorneys to meet nationally recommended caseload standards. Dept. of Justice, Bureau of Justice Statistics, D. Farole & L. Langton, Census of Public Defender Of-

fices, 2007: County-based and Local Public Defender Offices, 2007, p. 10 (Sept. 2010). And as one *amicus* points out, "[m]any federal public defender organizations and lawyers appointed under the Criminal Justice Act serve numerous clients and have only limited resources." Brief for New York Council of Defense Lawyers 11. The upshot is a substantial risk that accepting the Government's views would—by increasing the government-paid-defender workload—render less effective the basic right the Sixth Amendment seeks to protect.

3

We add that the constitutional line we have drawn should prove workable. That line distinguishes between a criminal defendant's (1) tainted funds and (2) innocent funds needed to pay for counsel. We concede, as JUSTICE KENNEDY points out, *post*, at 46–47, that money is fungible; and sometimes it will be difficult to say whether a particular bank account contains tainted or untainted funds. But the law has tracing rules that help courts implement the kind of distinction we require in this case. With the help of those rules, the victim of a robbery, for example, will likely obtain the car that the robber used stolen money to buy. See, *e. g.*, 1 G. Palmer, Law of Restitution § 2.14, p. 175 (1978) ("tracing" permits a claim against "an asset which is traceable to or the product of" tainted funds); 4 A. Scott, Law of Trusts § 518, pp. 3309–3314 (1956) (describing the tracing rules governing commingled accounts). And those rules will likely also prevent Luis from benefiting from many of the money transfers and purchases JUSTICE KENNEDY describes. See *post*, at 46–47.

Courts use tracing rules in cases involving fraud, pension rights, bankruptcy, trusts, etc. See, *e. g.*, *Montanile* v. *Board of Trustees of Nat. Elevator Industry Health Benefit Plan*, 577 U. S. 136, 144–146 (2016). They consequently have experience separating tainted assets from untainted assets, just as they have experience determining how much

money is needed to cover the costs of a lawyer. See, *e. g.*, 18 U. S. C. § 1345(b) ("The court shall proceed as soon as practicable to the hearing and determination of [actions to freeze a defendant's tainted or untainted assets]"); 28 U. S. C. § 2412(d) (courts must determine reasonable attorney's fees under the Equal Access to Justice Act); see also *Kaley*, 571 U. S., at 324, and n. 3 ("Since *Monsanto*, the lower courts have generally provided a hearing . . . [to determine] whether probable cause exists to believe that the assets in dispute are traceable . . . to the crime charged in the indictment"). We therefore see little reason to worry, as JUSTICE KENNEDY seems to, that defendants will "be allowed to circumvent [the usual forfeiture rules] by using . . . funds to pay for a high, or even the highest, priced defense team [they] can find." *Post*, at 41.

* * *

For the reasons stated, we conclude that the defendant in this case has a Sixth Amendment right to use her own "innocent" property to pay a reasonable fee for the assistance of counsel. On the assumptions made here, the District Court's order prevents Luis from exercising that right. We consequently vacate the judgment of the Court of Appeals and remand the case for further proceedings.

It is so ordered.

APPENDIX

Title 18 U. S. C. § 1345 provides:

"(a)(1) If a person is—

"(A) violating or about to violate this chapter or section 287, 371 (insofar as such violation involves a conspiracy to defraud the United States or any agency thereof), or 1001 of this title;

"(B) committing or about to commit a banking law violation (as defined in section 3322(d) of this title); or

"(C) committing or about to commit a Federal health care offense;

"the Attorney General may commence a civil action in any Federal court to enjoin such violation.

"(2) If a person is alienating or disposing of property, or intends to alienate or dispose of property, obtained as a result of a banking law violation (as defined in section 3322(d) of this title) or a Federal health care offense or property which is traceable to such violation, the Attorney General may commence a civil action in any Federal court—

"(A) to enjoin such alienation or disposition of property; or

"(B) for a restraining order to—

"(i) prohibit any person from withdrawing, transferring, removing, dissipating, or disposing of any such property or property of equivalent value; and

"(ii) appoint a temporary receiver to administer such restraining order.

"(3) A permanent or temporary injunction or restraining order shall be granted without bond.

"(b) The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure."

JUSTICE THOMAS, concurring in the judgment.

I agree with the plurality that a pretrial freeze of untainted assets violates a criminal defendant's Sixth Amendment right to counsel of choice. But I do not agree with the plurality's balancing approach. Rather, my reasoning rests

strictly on the Sixth Amendment's text and common-law backdrop.

The Sixth Amendment provides important limits on the Government's power to freeze a criminal defendant's forfeitable assets before trial. And, constitutional rights necessarily protect the prerequisites for their exercise. The right "to have the Assistance of Counsel," U. S. Const., Amdt. 6, thus implies the right to use lawfully owned property to pay for an attorney. Otherwise the right to counsel—originally understood to protect only the right to hire counsel of choice—would be meaningless. History confirms this textual understanding. The common law limited pretrial asset restraints to tainted assets. Both this textual understanding and history establish that the Sixth Amendment prevents the Government from freezing untainted assets in order to secure a potential forfeiture. The freeze here accordingly violates the Constitution.

I

The Sixth Amendment provides, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." As originally understood, this right guaranteed a defendant the right "to employ a lawyer to assist in his defense." *Scott* v. *Illinois*, 440 U. S. 367, 370 (1979). The common law permitted counsel to represent defendants charged with misdemeanors, but not felonies other than treason. W. Beaney, The Right to Counsel in American Courts 8–9 (1955). The Sixth Amendment abolished the rule prohibiting representation in felony cases, but was "not aimed to compel the State to provide counsel for a defendant." *Betts* v. *Brady*, 316 U. S. 455, 466 (1942), overruled by *Gideon* v. *Wainwright*, 372 U. S. 335 (1963); see Beaney, *supra*, at 27–36. "The right to select counsel of one's choice" is thus "the root meaning" of the Sixth Amendment right to counsel. *United States* v. *Gonzalez-Lopez*, 548 U. S. 140, 147–148 (2006).

The Sixth Amendment denies the Government unchecked power to freeze a defendant's assets before trial simply to secure potential forfeiture upon conviction. If that bare expectancy of criminal punishment gave the Government such power, then a defendant's right to counsel of choice would be meaningless, because retaining an attorney requires resources. The law has long recognized that the "[a]uthorization of an act also authorizes a necessary predicate act." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 192 (2012) (discussing the "predicate-act canon"). As Thomas Cooley put it with respect to Government powers, "where a general power is conferred or duty enjoined, every particular power necessary for the exercise of the one, or the performance of the other, is also conferred." Constitutional Limitations 63 (1868); see 1 J. Kent, Commentaries on American Law 464 (13th ed. 1884) ("[W]henever a power is given by a statute, everything necessary to the making of it effectual or requisite to attain the end is implied"). This logic equally applies to individual rights. After all, many rights are powers reserved to the People rather than delegated to the Government. Cf. U. S. Const., Amdt. 10 ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people").

Constitutional rights thus implicitly protect those closely related acts necessary to their exercise. "There comes a point . . . at which the regulation of action intimately and unavoidably connected with [a right] is a regulation of [the right] itself." *Hill* v. *Colorado*, 530 U. S. 703, 745 (2000) (Scalia, J., dissenting). The right to keep and bear arms, for example, "implies a corresponding right to obtain the bullets necessary to use them," *Jackson* v. *City and County of San Francisco*, 746 F. 3d 953, 967 (CA9 2014) (internal quotation marks omitted), and "to acquire and maintain proficiency in their use," *Ezell* v. *Chicago*, 651 F. 3d 684, 704 (CA7 2011). See *District of Columbia* v. *Heller*, 554 U. S. 570, 617–618

(2008) (citing T. Cooley, General Principles of Constitutional Law 271 (2d ed. 1891) (discussing the implicit right to train with weapons)); *United States* v. *Miller*, 307 U. S. 174, 180 (1939) (citing 1 H. Osgood, The American Colonies in the 17th Century 499 (1904) (discussing the implicit right to possess ammunition)); *Andrews* v. *State*, 50 Tenn. 165, 178 (1871) (discussing both rights). Without protection for these closely related rights, the Second Amendment would be toothless. Likewise, the First Amendment "right to speak would be largely ineffective if it did not include the right to engage in financial transactions that are the incidents of its exercise." *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 252 (2003) (Scalia, J., concurring in part, concurring in judgment in part, and dissenting in part).

The same goes for the Sixth Amendment and the financial resources required to obtain a lawyer. Without constitutional protection for at least *some* of a defendant's assets, the Government could nullify the right to counsel of choice. As the plurality says, an unlimited power to freeze assets before trial "would unleash a principle of constitutional law that would have no obvious stopping place." *Ante*, at 21; cf. *McCulloch* v. *Maryland*, 4 Wheat. 316, 431 (1819) ("[T]he power to tax involves the power to destroy" and that "power to destroy may defeat and render useless the power to create"). Unless the right to counsel also protects the prerequisite right to use one's financial resources for an attorney, I doubt that the Framers would have gone through the trouble of adopting such a flimsy "parchment barrie[r]." The Federalist No. 48, p. 308 (C. Rossiter ed. 1961) (J. Madison).

An unlimited power to freeze a defendant's potentially forfeitable assets in advance of trial would eviscerate the Sixth Amendment's original meaning and purpose. At English common law, forfeiture of all real and personal property was a standard punishment for felonies. See 4 W. Blackstone, Commentaries on the Laws of England 95 (1769) (Blackstone). That harsh penalty never caught on in America.

See *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663, 682–683 (1974). The First Congress banned it. See Crimes Act of 1790, § 24, 1 Stat. 117 ("[N]o conviction or judgment for any of the offences aforesaid, shall work corruption of blood, or any forfeiture of estate"). But the Constitution did not. See Art. III, § 3, cl. 2 ("[N]o Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted"). If the Government's mere expectancy of a total forfeiture upon conviction were sufficient to justify a complete pretrial asset freeze, then Congress could render the right to counsel a nullity in felony cases. That would have shocked the Framers. As discussed, before adoption of the Sixth Amendment, felony cases (not misdemeanors) were *precisely* when the common law denied defendants the right to counsel. See *supra*, at 25. With an unlimited power to freeze assets before trial, the Government could well revive the common-law felony rule that the Sixth Amendment was designed to abolish.

The modern, judicially created right to Government-appointed counsel does not obviate these concerns. As understood in 1791, the Sixth Amendment protected a defendant's right to retain an attorney he could afford. It is thus no answer, as the principal dissent replies, that defendants rendered indigent by a pretrial asset freeze can resort to public defenders. *Post*, at 48 (opinion of KENNEDY, J.). The dissent's approach nullifies the *original understanding* of the right to counsel. To ensure that the right to counsel has meaning, the Sixth Amendment limits the assets the Government may freeze before trial to secure eventual forfeiture.

II

The longstanding rule against restraining a criminal defendant's untainted property before conviction guarantees a meaningful right to counsel. The common-law forfeiture tradition provides the limits of this Sixth Amendment guarantee. That tradition draws a clear line between tainted

and untainted assets. The only alternative to this common-law reading is case-by-case adjudication to determine which freezes are "legitimate" and which are an "abuse of . . . power." *McCulloch*, 4 Wheat., at 430. This piecemeal approach seems woefully inadequate. Such questions of degree are "unfit for the judicial department." *Ibid.* But see *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617, 635 (1989) (stating in dicta that "[c]ases involving particular abuses can be dealt with individually . . . when (and if) any such cases arise"). Fortunately the common law drew a clear line between tainted and untainted assets.

Pretrial freezes of untainted forfeitable assets did not emerge until the late 20th century. "'[T]he lack of historical precedent'" for the asset freeze here is "'[p]erhaps the most telling indication of a severe constitutional problem.'" *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 505–506 (2010) (quoting *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 537 F. 3d 667, 699 (CADC 2008) (Kavanaugh, J., dissenting)). Indeed, blanket asset freezes are so tempting that the Government's "prolonged reticence would be amazing if [they] were not understood to be constitutionally proscribed." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 230 (1995); see *Printz* v. *United States*, 521 U. S. 898, 907–908 (1997) (reasoning that the lack of early federal statutes commandeering state executive officers "suggests an assumed *absence* of such power" given "the attractiveness of that course to Congress").

The common law prohibited pretrial freezes of criminal defendants' untainted assets. As the plurality notes, *ante*, at 20, for *in personam* criminal forfeitures like that at issue here, any interference with a defendant's property traditionally required a conviction. Forfeiture was "a part, or at least a consequence, of the judgment of conviction." *The Palmyra*, 12 Wheat. 1, 14 (1827) (Story, J.). The defendant's "property cannot be touched before . . . the forfeiture is completed." 1 J. Chitty, A Practical Treatise on the Criminal

Law 737 (5th ed. 1847). This rule applied equally "to money as well as specific chattels." *Id.*, at 736–737. And it was not limited to full-blown physical seizures. Although the defendant's goods could be appraised and inventoried before trial, he remained free to "sell any of them for his own support in prison, or that of his family, *or to assist him in preparing for his defence on the trial*." *Id.*, at 737 (emphasis added). Blackstone likewise agreed that a defendant "may *bona fide* sell any of his chattels, real or personal, for the sustenance of himself and family between the [offense] and conviction." 4 Blackstone 380; see *Fleetwood's Case*, 8 Co. Rep. 171a, 171b, 77 Eng. Rep. 731, 732 (K. B. 1611) (endorsing this rule). At most, a court could unwind prejudgment fraudulent transfers after conviction. 4 Blackstone 381; see *Jones* v. *Ashurt*, Skin. 357, 357–358, 90 Eng. Rep. 159 (K. B. 1693) (unwinding a fraudulent sale after conviction because it was designed to defeat forfeiture). Numerous English authorities confirm these common-law principles. Chitty, *supra*, at 736–737 (collecting sources).

The common law did permit the Government, however, to seize tainted assets before trial. For example, "seizure of the *res* has long been considered a *prerequisite* to the initiation of *in rem* forfeiture proceedings." *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 57 (1993) (emphasis added); see *The Brig Ann*, 9 Cranch 289, 291 (1815) (Story, J.). But such forfeitures were traditionally "fixed . . . by determining what property has been 'tainted' by unlawful use." *Austin* v. *United States*, 509 U. S. 602, 627 (1993) (Scalia, J., concurring in part and concurring in judgment). So the civil *in rem* forfeiture tradition tracks the tainted-untainted line. It provides no support for the asset freeze here.

There is a similarly well-established Fourth Amendment tradition of seizing contraband and stolen goods before trial based only on probable cause. See *Carroll* v. *United States*, 267 U. S. 132, 149–152 (1925) (discussing this history); *Boyd* v.

United States, 116 U. S. 616, 623–624 (1886) (same). Tainted assets fall within this tradition because they are the fruits or instrumentalities of crime. So the Government may freeze tainted assets before trial based on probable cause to believe that they are forfeitable. See *United States* v. *Monsanto*, 491 U. S. 600, 602–603, 615–616 (1989). Nevertheless, our precedents require "a nexus . . . between the item to be seized and criminal behavior." *Warden, Md. Penitentiary* v. *Hayden*, 387 U. S. 294, 307 (1967). Untainted assets almost never have such a nexus. The only exception is that some property that is evidence of crime might technically qualify as "untainted" but nevertheless has a nexus to criminal behavior. See *ibid.* Thus, untainted assets do not fall within the Fourth Amendment tradition either.

It is certainly the case that some early American statutes did provide for civil forfeiture of untainted substitute property. See Registry Act, § 12, 1 Stat. 293 (providing for forfeiture of a ship or "the value thereof"); Collection Act of July 31, 1789, § 22, 1 Stat. 42 (similar for goods); *United States* v. *Bajakajian*, 524 U. S. 321, 341 (1998) (collecting statutes). These statutes grew out of a broader "six-century-long tradition of *in personam* customs fines equal to one, two, three, or even four times the value of the goods at issue." *Id.*, at 345–346 (KENNEDY, J., dissenting).

But this long tradition of *in personam* customs fines does not contradict the general rule against *pretrial* seizures of untainted property. These fines' *in personam* status strongly suggests that the Government did not collect them by seizing property at the outset of litigation. As described, that process was traditionally required for *in rem* forfeiture of tainted assets. See *supra*, at 30. There appears to be scant historical evidence, however, that forfeiture ever involved seizure of untainted assets before trial and judgment, except in limited circumstances not relevant here. Such summary procedures were reserved for collecting taxes and seizures during war. See *Phillips* v. *Commissioner*, 283

U. S. 589, 595 (1931); *Miller* v. *United States*, 11 Wall. 268, 304–306 (1871). The Government's right of action in tax and custom-fine cases may have been the same—"'a civil action of debt.'" *Bajakajian*, *supra*, at 343, n. 18; *Stockwell* v. *United States*, 13 Wall. 531, 543 (1871); *Adams* v. *Woods*, 2 Cranch 336, 341 (1805). Even so, nothing suggests trial and judgment were expendable. See *Miller*, *supra*, at 304–305 (stating in dicta that confiscating Confederate property through *in rem* proceedings would have raised Fifth and Sixth Amendment concerns had they not been a war measure).

The common law thus offers an administrable line: A criminal defendant's untainted assets are protected from Government interference before trial and judgment. His tainted assets, by contrast, may be seized before trial as contraband or through a separate *in rem* proceeding. Reading the Sixth Amendment to track the historical line between tainted and untainted assets makes good sense. It avoids case-by-case adjudication, and ensures that the original meaning of the right to counsel does real work. The asset freeze here infringes the right to counsel because it "is so broad that it differs not only in degree, but in kind, from its historical antecedents." *James Daniel Good*, *supra*, at 82 (THOMAS, J., concurring in part and dissenting in part).

The dissenters object that, before trial, a defendant has an identical property interest in tainted and untainted assets. See *post*, at 42–43 (opinion of KENNEDY, J.); *post*, at 52–53 (opinion of KAGAN, J.). Perhaps so. I need not take a position on the matter. Either way, that fact is irrelevant. Because the pretrial asset freeze here crosses into untainted assets, for which there is no historical tradition, it is unconstitutional. Any such incursion violates the Sixth Amendment.

III

Since the asset freeze here violates the Sixth Amendment, the plurality correctly concludes that the judgment below

must be reversed. But I cannot go further and endorse the plurality's atextual balancing analysis. The Sixth Amendment guarantees the right to counsel of choice. As discussed, a pretrial freeze of untainted assets infringes that right. This conclusion leaves no room for balancing. Moreover, I have no idea whether, "compared to the right to counsel of choice," the Government's interests in securing forfeiture and restitution lie "further from the heart of a fair, effective criminal justice system." *Ante*, at 19. Judges are not well suited to strike the right "balance" between those incommensurable interests. Nor do I think it is our role to do so. The People, through ratification, have already weighed the policy tradeoffs that constitutional rights entail. See *Heller*, 554 U. S., at 634–635. Those tradeoffs are thus not for us to reevaluate. "The very enumeration of the right" to counsel of choice denies us "the power to decide . . . whether the right is *really worth* insisting upon." *Id.*, at 634. Such judicial balancing "do[es] violence" to the constitutional design. *Crawford* v. *Washington*, 541 U. S. 36, 67–68 (2004). And it is out of step with our interpretive tradition. See Aleinikoff, Constitutional Law in the Age of Balancing, 96 Yale L. J. 943, 949–952 (1987) (noting that balancing did not appear in the Court's constitutional analysis until the mid-20th century).

The plurality's balancing analysis also casts doubt on the constitutionality of incidental burdens on the right to counsel. For the most part, the Court's precedents hold that a generally applicable law placing only an incidental burden on a constitutional right does not violate that right. See *R. A. V.* v. *St. Paul*, 505 U. S. 377, 389–390 (1992) (explaining that content-neutral laws do not violate the First Amendment simply because they incidentally burden expressive conduct); *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, 878–882 (1990) (likewise for religion-neutral laws that burden religious exercise).

Criminal-procedure rights tend to follow the normal incidental-burden rule. The Constitution does not "forbi[d] every government-imposed choice in the criminal process that has the effect of discouraging the exercise of constitutional rights." *Chaffin* v. *Stynchcombe*, 412 U. S. 17, 30 (1973). The threat of more severe charges if a defendant refuses to plead guilty does not violate his right to trial. See *Bordenkircher* v. *Hayes*, 434 U. S. 357, 365 (1978). And, in my view, prosecutorial arguments that raise the "cost" of remaining silent do not violate a defendant's right against self-incrimination (at least as a matter of original meaning). See *Mitchell* v. *United States*, 526 U. S. 314, 342–343 (1999) (THOMAS, J., dissenting); *id.*, at 331–336 (Scalia, J., dissenting).

The Sixth Amendment arguably works the same way. "[A] defendant may not insist on representation by an attorney he cannot afford." *Wheat* v. *United States*, 486 U. S. 153, 159 (1988). The Constitution perhaps guarantees only a "freedom of counsel" akin to the First Amendment freedoms of speech and religion that also "depen[d] in part on one's financial wherewithal." *Caplin & Drysdale*, 491 U. S., at 628. Numerous laws make it more difficult for defendants to retain a lawyer. But that fact alone does not create a Sixth Amendment problem. For instance, criminal defendants must still pay taxes even though "these financial levies may deprive them of resources that could be used to hire an attorney." *Id.*, at 631–632. So I lean toward the principal dissent's view that incidental burdens on the right to counsel of choice would not violate the Sixth Amendment. See *post*, at 40, 45–46 (opinion of KENNEDY, J.).

On the other hand, the Court has said that the right to counsel guarantees defendants "a *fair opportunity* to secure counsel of [their] choice." *Powell* v. *Alabama*, 287 U. S. 45, 52–53 (1932) (emphasis added). The state court in *Powell* denied the defendants such an opportunity, the Court held, by moving to trial so quickly (six days after indictment) that

the defendants had no chance to communicate with family or otherwise arrange for representation. *Ibid.* The schedule in *Powell* was not designed to block counsel, which suggests the usual incidental-burden rule might be inapt in the Sixth Amendment context. I leave the question open because this case does not require an answer.

The asset freeze here is not merely an incidental burden on the right to counsel of choice; it targets a defendant's assets, which are necessary to exercise that right, simply to secure forfeiture upon conviction. The prospect of that criminal punishment, however, is precisely why the Constitution guarantees a right to counsel. The Sixth Amendment does not permit the Government's bare expectancy of forfeiture to void that right. When the potential of a conviction is the only basis for interfering with a defendant's assets before trial, the Constitution requires the Government to respect the longstanding common-law protection for a defendant's untainted property.

For these reasons, I concur only in the judgment.

JUSTICE KENNEDY, with whom JUSTICE ALITO joins, dissenting.

The plurality and JUSTICE THOMAS find in the Sixth Amendment a right of criminal defendants to pay for an attorney with funds that are forfeitable upon conviction so long as those funds are not derived from the crime alleged. That unprecedented holding rewards criminals who hurry to spend, conceal, or launder stolen property by assuring them that they may use their own funds to pay for an attorney after they have dissipated the proceeds of their crime. It matters not, under today's ruling, that the defendant's remaining assets must be preserved if the victim or the Government is to recover for the property wrongfully taken. By granting a defendant a constitutional right to hire an attorney with assets needed to make a property-crime victim whole, the plurality and JUSTICE THOMAS ignore this Court's

precedents and distort the Sixth Amendment right to counsel.

The result reached today makes little sense in cases that involve fungible assets preceded by fraud, embezzlement, or other theft. An example illustrates the point. Assume a thief steals $1 million and then wins another $1 million in a lottery. After putting the sums in separate accounts, he or she spends $1 million. If the thief spends his or her lottery winnings, the Government can restrain the stolen funds in their entirety. The thief has no right to use those funds to pay for an attorney. Yet if the thief heeds today's decision, he or she will spend the stolen money first; for if the thief is apprehended, the $1 million won in the lottery can be used for an attorney. This result is not required by the Constitution.

The plurality reaches its conclusion by weighing a defendant's Sixth Amendment right to counsel of choice against the Government's interest in preventing the dissipation of assets forfeitable upon conviction. In so doing, it—like JUSTICE THOMAS—sweeps aside the decisions in *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617 (1989), and *United States* v. *Monsanto*, 491 U. S. 600 (1989), both of which make clear that a defendant has no Sixth Amendment right to spend forfeitable assets (or assets that will be forfeitable) on an attorney. The principle the Court adopted in those cases applies with equal force here. Rather than apply that principle, however, the plurality and concurrence adopt a rule found nowhere in the Constitution or this Court's precedents—that the Sixth Amendment protects a person's right to spend otherwise forfeitable assets on an attorney so long as those assets are not related to or the direct proceeds of the charged crime. *Ante*, at 8–9 (plurality opinion); *ante*, at 25 (THOMAS, J., concurring in judgment). The reasoning in these separate opinions is incorrect, and requires this respectful dissent.

I

This case arises from petitioner Sila Luis' indictment for conspiring to commit health care fraud against the United States. The Government alleges that, as part of her illegal scheme, Luis used her health care companies to defraud Medicare by billing for services that were not medically necessary or actually provided. The charged crimes, the Government maintains, resulted in the payment of $45 million in improper Medicare benefits to Luis' companies.

The same day Luis was indicted, the Government initiated a civil action under 18 U. S. C. § 1345 to restrain Luis' assets before her criminal trial, including substitute property of an amount equivalent to the value of the proceeds of her alleged crimes. To establish its entitlement to a restraining order, the Government showed that Luis and her co-conspirators were dissipating the illegally obtained assets. In particular, they were transferring money involved in the scheme to various individuals and entities, including shell corporations owned by Luis' family members. As part of this process, Luis opened and closed well over 40 bank accounts and withdrew large amounts of cash to hide the conspiracy's proceeds. Luis personally received almost $4.5 million in funds and used at least some of that money to purchase luxury items, real estate, and automobiles, and to travel. Based on this and other evidence, the District Court entered an order prohibiting Luis from spending up to $45 million of her assets.

Before the Court of Appeals for the Eleventh Circuit, Luis argued that the Sixth Amendment required that she be allowed to spend the restrained substitute assets on an attorney. The Court of Appeals disagreed, concluding that "[t]he arguments made by Luis . . . are foreclosed by the United States Supreme Court decisions in . . . *Caplin & Drysdale* [and] *Monsanto*." 564 Fed. Appx. 493, 494 (2014) (*per curiam*). In my view the Court of Appeals was correct, and its judgment should be affirmed.

II

A

In *Caplin & Drysdale*, a law firm had represented a defendant charged with running a massive drug-distribution scheme. The defendant pleaded guilty and agreed to forfeit his assets. The law firm then sought to recover a portion of the forfeited assets for its legal fees. The firm argued that, when a defendant needs forfeitable assets to pay for an attorney, the forfeiture of those assets violates the defendant's Sixth Amendment right to be represented by his counsel of choice.

The Court rejected the firm's argument. The Sixth Amendment, the Court explained, "guarantees defendants in criminal cases the right to adequate representation, but those who do not have the means to hire their own lawyers have no cognizable complaint so long as they are adequately represented by attorneys appointed by the courts." *Caplin & Drysdale*, 491 U. S., at 624. As for the right to choose one's own attorney, the Court observed that "nothing in [the forfeiture statute] prevents a defendant from hiring the attorney of his choice, or disqualifies any attorney from serving as a defendant's counsel." *Id.*, at 625. Even defendants who possess "nothing but assets the Government seeks to have forfeited . . . may be able to find lawyers willing to represent them, hoping that their fees will be paid in the event of acquittal, or via some other means that a defendant might come by in the future." *Ibid.* The burden imposed by forfeiture law, the Court concluded, is thus "a limited one." *Ibid.*

Caplin & Drysdale also repudiated the firm's contention that the Government has only a modest interest in forfeitable assets that may be used to retain an attorney. In light of the importance of separating criminals from their ill-gotten gains and providing restitution to victims of crime, the Court found "a strong governmental interest in obtain-

ing full recovery of all forfeitable assets, an interest that overrides any Sixth Amendment interest in permitting criminals to use assets adjudged forfeitable to pay for their defense." *Id.*, at 631.

The same day the Court decided *Caplin & Drysdale* it decided *Monsanto*, which addressed the pretrial restraint of a defendant's assets "where the defendant seeks to use those assets to pay an attorney." 491 U. S., at 602. The Court rejected the notion that there is a meaningful distinction, for Sixth Amendment purposes, between the restraint of assets before trial and the forfeiture of assets after trial: "[I]f the Government may, post-trial, forbid the use of forfeited assets to pay an attorney, then surely no constitutional violation occurs when, after probable cause is adequately established, the Government obtains an order barring a defendant from frustrating that end by dissipating his assets prior to trial." *Id.*, at 616. The Court noted, moreover, that "it would be odd to conclude that the Government may not restrain property . . . in [a defendant's] possession, based on a finding of probable cause, when we have held that (under appropriate circumstances), the Government may restrain *persons* where there is a finding of probable cause." *Id.*, at 615–616. When a defendant himself can be restrained pretrial, there is "no constitutional infirmity" in a similar pretrial restraint of a defendant's property "to protect its 'appearance' at trial and protect the community's interest in full recovery of any ill-gotten gains." *Id.*, at 616.

B

The principle the Court announced in *Caplin & Drysdale* and *Monsanto* controls the result here. Those cases establish that a pretrial restraint of assets forfeitable upon conviction does not contravene the Sixth Amendment even when the defendant possesses no other funds with which to pay for an attorney. The restraint itself does not prevent a defendant from seeking to convince his or her counsel of choice

to take on the representation without advance payment. See *Caplin & Drysdale*, 491 U. S., at 625. It does not disqualify any attorney the defendant might want. *Ibid.* And it does not prevent a defendant from borrowing funds to pay for an attorney who is otherwise too expensive. To be sure, a pretrial restraint may make it difficult for a defendant to secure counsel who insists that high defense costs be paid in advance. That difficulty, however, does not result in a Sixth Amendment violation any more than high taxes or other government exactions that impose a similar burden. See, *e. g.*, *id.*, at 631–632 ("Criminal defendants . . . are not exempted from federal, state, and local taxation simply because these financial levies may deprive them of resources that could be used to hire an attorney").

The pretrial restraint in *Monsanto* was no more burdensome than the pretrial restraint at issue here. Luis, like the defendant in *Monsanto*, was not barred from obtaining the assistance of any particular attorney. She was free to seek lawyers willing to represent her in the hopes that their fees would be paid at some future point. In short, § 1345's authorization of a pretrial restraint of substitute assets places no greater burden on a defendant like Luis than the forfeiture and pretrial restraint statute placed on the defendant in *Monsanto*.

In addition, the Government has the same "strong . . . interest in obtaining full recovery of all forfeitable assets" here as it did in *Caplin & Drysdale* and *Monsanto*. See *Caplin & Drysdale*, *supra*, at 631. If Luis is convicted, the Government has a right to recover Luis' substitute assets—the money she kept for herself while spending the taxpayer dollars she is accused of stealing. Just as the Government has an interest in ensuring Luis' presence at trial—an interest that can justify a defendant's pretrial detention—so too does the Government have an interest in ensuring the availability of her substitute assets after trial, an interest that can justify pretrial restraint.

One need look no further than the Court's concluding words in *Monsanto* to know the proper result here: "[N]o constitutional violation occurs when, after probable cause [to believe that a defendant's assets will be forfeitable] is adequately established, the Government obtains an order barring a defendant from . . . dissipating his assets prior to trial." 491 U. S., at 616. The Government, having established probable cause to believe that Luis' substitute assets will be forfeitable upon conviction, should be permitted to obtain a restraining order barring her from spending those funds prior to trial. Luis should not be allowed to circumvent that restraint by using the funds to pay for a high, or even the highest, priced defense team she can find.

III

The plurality maintains that *Caplin & Drysdale* and *Monsanto* do not apply because "the nature of the assets at issue here differs from the assets at issue in those earlier cases." *Ante,* at 12. According to the plurality, the property here "belongs to the defendant, pure and simple." *Ibid.* It states that, while "title to property used to commit a crime . . . often passes to the Government at the instant the crime is planned or committed," title to Luis' untainted property has not passed to the Government. *Ante,* at 13. "That fact," the plurality concludes, "undermines the Government's reliance upon precedent, for both *Caplin & Drysdale* and *Monsanto* relied critically upon the fact that the property at issue was 'tainted,' and that title to the property therefore had passed from the defendant to the Government before the court issued its order freezing (or otherwise disposing of) the assets." *Ibid.*

These conclusions depend upon a key premise: The Government owns tainted assets before a defendant is convicted. That premise is quite incorrect, for the common law and this Court's precedents establish that the opposite is true. The Government does not own property subject to forfeiture,

whether tainted or untainted, until the Government wins a judgment of forfeiture or the defendant is convicted. As Blackstone noted with emphasis, "goods and chattels are forfeited by *conviction*." 4 W. Blackstone, Commentaries on the Laws of England 380 (1769) (Blackstone). Justice Story likewise observed that "no right to the goods and chattels of the felon could be acquired by the crown by the mere commission of the offence; but the right attached only by the conviction of the offender." *The Palmyra*, 12 Wheat. 1, 14 (1827); *ibid.* ("In the contemplation of the common law, the offender's right was not devested until the conviction").

These authorities demonstrate that *Caplin & Drysdale* and *Monsanto* cannot be distinguished based on "the nature of the assets at issue." Title to the assets in those cases did not pass from the defendant to the Government until conviction. As a result, the assets restrained before conviction in *Monsanto* were on the same footing as the assets restrained here: There was probable cause to believe that the assets would belong to the Government upon conviction. But when the court issued its restraining order, they did not. The Government had no greater ownership interest in Monsanto's tainted assets than it has in Luis' substitute assets.

The plurality seeks to avoid this conclusion by relying on the relation-back doctrine. In its view the doctrine gives the Government title to tainted assets upon the commission of a crime rather than upon conviction or judgment of forfeiture. Even assuming, as this reasoning does, that the relation-back doctrine applies only to tainted assets—but see *United States* v. *McHan*, 345 F. 3d 262, 270–272 (CA4 2003)—the doctrine does not do the work the plurality's analysis requires.

The relation-back doctrine, which is incorporated in some forfeiture statutes, see, *e. g.*, 21 U. S. C. § 853(c), has its origins in the common law. Under this legal construct, the Government's title to certain types of forfeitable property relates back to the time at which the defendant committed

the crime giving rise to the forfeiture. See 4 Blackstone 375 ("forfeiture [of real estates] relates backwards to the time of the treason committed; so as to avoid all intermediate sales and incumbrances"); *United States* v. *Parcel of Rumson, N. J., Land*, 507 U. S. 111, 125 (1993) (plurality opinion). The doctrine's purpose is to prevent defendants from avoiding forfeiture by transferring their property to third parties. The doctrine, however, does not alter the time at which title to forfeitable property passes to the Government. Title is transferred only when a conviction is obtained or the assets are otherwise forfeited; it is only once this precondition is met that relation back to the time of the offense is permitted. See *ibid.* (The relation-back doctrine's "fictional and retroactive vesting" is "not self-executing"); *id.*, at 132 (Scalia, J., concurring in judgment) ("The relation-back rule applies only in cases where the Government's title has been consummated by seizure, suit, and judgment, or decree of condemnation, whereupon the doctrine of relation *carries back* the title to the commission of the offense" (internal quotation marks, brackets, and citations omitted)); *United States* v. *Grundy*, 3 Cranch 337, 350–351 (1806) (Marshall, C. J., opinion for the Court) (a forfeitable asset does not "ves[t] in the government until some legal step shall be taken for the assertion of its right"); 4 Blackstone 375 ("But, though after attainder the forfeiture relates back to the time of the treason committed, yet it does not take effect unless an attainder be had"). In short, forfeitable property does not belong to the Government in any sense before judgment or conviction. Cf. *ante*, at 16 (plurality opinion). Until the Government wins a judgment or conviction, "someone else owns the property." *Parcel of Rumson*, *supra*, at 127.

The plurality is correct to note that *Caplin & Drysdale* discussed the relation-back provision in the forfeiture statute at issue. The *Caplin & Drysdale* Court did not do so, however, to suggest that forfeitable assets can be restrained only when the assets are tainted. Rather, the Court referred to

the provision to rebut the law firm's argument that the United States has less of an interest in forfeitable property than robbery victims have in their stolen property. 491 U. S., at 627–628. More to the point, central to the Court's decision was its observation that, because the Government obtained "title to [the defendant's] assets upon conviction," it would be "peculiar" to hold that the Sixth Amendment still gave the defendant the right to pay his attorney with those assets. *Id.*, at 628. *Monsanto* reinforced that view, holding that the pretrial restraint of assets—money to which the Government does not yet have title—is permissible even when the defendant wants to use those assets to pay for counsel. 491 U. S., at 616. True, the assets in *Caplin & Drysdale* and *Monsanto* happened to be derived from the criminal activity alleged; but the Court's reasoning in those cases was based on the Government's entitlement to recoup money from criminals who have profited from their crimes, not on tracing or identifying the actual assets connected to the crime. For this reason, the principle the Court announced in those cases applies whenever the Government obtains (or will obtain) title to assets upon conviction. Nothing in either case depended on the assets being tainted or justifies refusing to apply the rule from those cases here.

The plurality makes much of various statutory provisions that, in its view, give the United States a superior interest before trial in tainted assets but not untainted ones. See *ante*, at 15–16. That view, however, turns not on any reasoning specific to the Sixth Amendment but rather on Congress' differential treatment of tainted versus untainted assets. The plurality makes no attempt to explain why Congress' decision in § 1345 to permit the pretrial restraint of substitute assets is not also relevant to its analysis. More to the point, Congress' statutory treatment of property is irrelevant to a Sixth Amendment analysis. The protections afforded by the Sixth Amendment should not turn on congressional whims.

The plurality's concern over the implications of the Government's position appears animated by a hypothetical future case where a defendant's assets are restrained not to return stolen funds but, for example, to pay a fine. That case, however, is not the case before the Court. Section 1345 authorizes pretrial restraints to preserve substitute assets, not to provide for fines greater than the amounts stolen. The holdings in *Caplin & Drysdale* and *Monsanto*, and what should be the holding today, thus, do not address the result in a case involving a fine. The governmental interests at stake when a fine is at issue are quite separate and distinct from the interests implicated here. This case implicates the Government's interest in preventing the dissipation, transfer, and concealment of stolen funds, as well as its interest in preserving for victims any funds that remain. Those interests justify, in cases like this one, the pretrial restraint of substitute assets.

IV

The principle the plurality and JUSTICE THOMAS announce today—that a defendant has a right to pay for an attorney with forfeitable assets so long as those assets are not related to or the direct proceeds of the crime alleged—has far-reaching implications. There is no clear explanation why this principle does not extend to the exercise of other constitutional rights. "If defendants have a right to spend forfeitable assets on attorney's fees, why not on exercises of the right to speak, practice one's religion, or travel?" *Caplin & Drysdale*, 491 U. S., at 628. Nor does either opinion provide any way to distinguish between the restraint at issue here and other governmental interferences with a defendant's assets. If the restraint of Luis' assets violates the Sixth Amendment, could the same be said of any imposition on a criminal defendant's assets? Cf. *id.*, at 631 ("[S]eizures of assets to secure potential tax liabilities . . . may impair a defendant's ability to retain counsel . . . [y]et these assess-

ments have been upheld against constitutional attack"). If a defendant is fined in a prior matter, is the Government barred from collecting the fine if it will leave the defendant unable to afford a particular attorney in a current case? No explanation is provided for what, if any, limits there are on the invented exemption for attorney's fees.

The result today also creates arbitrary distinctions between defendants. Money, after all, is fungible. There is no difference between a defendant who has preserved his or her own assets by spending stolen money and a defendant who has spent his or her own assets and preserved stolen cash instead. Yet the plurality and concurrence—for different reasons—find in the Sixth Amendment the rule that greater protection is given to the defendant who, by spending, laundering, exporting, or concealing stolen money first, preserves his or her remaining funds for use on an attorney.

The true winners today are sophisticated criminals who know how to make criminal proceeds look untainted. They do so every day. They "buy cashier's checks, money orders, nonbank wire transfers, prepaid debit cards, and traveler's checks to use instead of cash for purchases or bank deposits." Dept. of Treasury, National Money Laundering Risk Assessment 2015, p. 3. They structure their transactions to avoid triggering recordkeeping and reporting requirements. *Ibid.* And they open bank accounts in other people's names and through shell companies, all to disguise the origins of their funds. *Ibid.*

The facts of this case illustrate the measures one might take to conceal or dispose of ill-gotten gains. In declarations relied on by the District Court, the Federal Bureau of Investigation (FBI) special agent investigating the case explained that "Luis transferred monies or caused the transfer of monies received from Medicare to . . . family members and companies owned by family members," including $1,471,000 to her husband, and over a million dollars to her children and former daughter-in-law. App. 72–73. She also

"used Medicare monies for foreign travel," including approximately 31 trips to Mexico, "where she owns several properties and has numerous bank accounts." *Id.*, at 73. She "transferred Medicare monies overseas through international wire transfers to Mexico." *Ibid.* And the Government was "able to trace Medicare proceeds going into [all but one of the] bank account[s] owned by Defendant Luis and/or her companies listed in the Court's" temporary restraining order. *Id.*, at 74. No doubt Luis would have enjoyed her travel and expenditures even more had she known that, were her alleged wrongs discovered, a majority of the Justices would insist that she be allowed to pay her chosen legal team at the price they set rather than repay her victim.

Notwithstanding that the Government established probable cause to believe that Luis committed numerous crimes and used the proceeds of those crimes to line her and her family's pockets, the plurality and JUSTICE THOMAS reward Luis' decision to spend the money she is accused of stealing rather than her own. They allow Luis to bankroll her private attorneys as well as "the best and most industrious investigators, experts, paralegals, and law clerks" money can buy—a legal defense team Luis claims she cannot otherwise afford. See Corrected Motion To Modify the Restraining Order in No. 12–Civ–23588, p. 13 (SD Fla., Nov. 16, 2012). The Sixth Amendment does not provide such an unfettered right to counsel of choice.

It is well settled that the right to counsel of choice is limited in important respects. A defendant cannot demand a lawyer who is not a member of the bar. *Wheat* v. *United States*, 486 U. S. 153, 159 (1988). Nor may a defendant insist on an attorney who has a conflict of interest. *Id.*, at 159, 164. And, as quite relevant here, "a defendant may not insist on representation by an attorney he cannot afford." *Id.*, at 159. As noted earlier, "those who do not have the means to hire their own lawyers have no cognizable complaint so long as they are adequately represented by attorneys ap-

pointed by the courts." *Caplin & Drysdale*, *supra*, at 624. As a result of the District Court's order, Luis simply cannot afford the legal team she desires unless they are willing to represent her without advance payment. For Sixth Amendment purposes, the only question here is whether Luis' right to adequate representation is protected. That question is not before the Court. Neither Luis nor the plurality nor JUSTICE THOMAS suggests that Luis will receive inadequate representation if she is not able to use the restrained funds. And this is for good reason. Given the large volume of defendants in the criminal justice system who rely on public representation, it would be troubling to suggest that a defendant who might be represented by a public defender will receive inadequate representation. See generally T. Giovanni & R. Patel, *Gideon* at 50: Three Reforms To Revive the Right to Counsel 1 (2013), online at http://www.brennancenter.org/sites/default/files/publications/Gideon_Report_040913.pdf (as last visited Mar. 28, 2016). Since Luis cannot afford the legal team she desires, and because there is no indication that she will receive inadequate representation as a result, she does not have a cognizable Sixth Amendment complaint.

The plurality does warn that accepting the Government's position "would—by increasing the government-paid-defender workload—render less effective the basic right the Sixth Amendment seeks to protect." *Ante*, at 22. Public-defender offices, the plurality suggests, already lack sufficient attorneys to meet nationally recommended caseload standards. *Ante*, at 21–22. But concerns about the caseloads of public-defender offices do not justify a constitutional command to treat a defendant accused of committing a lucrative crime differently than a defendant who is indigent from the outset. The Constitution does not require victims of property crimes to fund subsidies for members of the private defense bar.

Because the rule announced today is anchored in the Sixth Amendment, moreover, it will frustrate not only the Federal

Government's use of § 1345 but also the States' administration of their forfeiture schemes. Like the Federal Government, States also face criminals who engage in money laundering through extensive enterprises that extend to other States and beyond. Where a defendant has put stolen money beyond a State's reach, a State should not be precluded from freezing the assets the defendant has in hand. The obstacle that now stands in the States' way is not found in the Constitution. It is of the Court's making.

Finally, the plurality posits that its decision "should prove workable" because courts "have experience separating tainted assets from untainted assets, just as they have experience determining how much money is needed to cover the costs of a lawyer." *Ante*, at 22–23. Neither of these assurances is adequate.

As to the first, the plurality cites a number of sources for the proposition that courts have rules that allow them to implement the distinction it adopts. *Ante*, at 22. Those rules, however, demonstrate the illogic of the conclusion that there is a meaningful difference between the actual dollars stolen and the dollars of equivalent value in a defendant's bank account. The plurality appears to agree that, if a defendant is indicted for stealing $1 million, the Government can obtain an order preventing the defendant from spending the $1 million he or she is believed to have stolen. The situation gets more complicated, however, when the defendant deposits the stolen $1 million into an account that already has $1 million. If the defendant then spends $1 million from the account, it cannot be determined with certainty whether the money spent was stolen money rather than money the defendant already had. The question arises, then, whether the Government can restrain the remaining million.

One of the treatises on which the plurality relies answers that question. The opinion cites A. Scott's Law of Trusts to support the claim that "the law has tracing rules that help courts implement the kind of distinction . . . require[d] in this case." *Ibid.* The treatise says that, if a "wrongdoer

has mingled misappropriated money with his own money and later makes withdrawals from the mingled fund," assuming the withdrawals do not result in a zero balance, a person who has an interest in the misappropriated money can recover it from the amount remaining in the account. 4 A. Scott, Law of Trusts § 518, pp. 3309–3310 (1956). Based on this rule, one would expect the plurality to agree that, in the above hypothetical, the Government could restrain up to the full amount of the stolen funds—that is, the full $1 million—without having to establish whether the $1 million the defendant spent was stolen money or not. If that is so, it is hard to see why its opinion treats as different a situation where the defendant has two bank accounts—one with the $1 million from before the crime and one with the stolen $1 million. If the defendant spends the money in the latter account, the Government should be allowed to freeze the money in the former account in the same way it could if the defendant spent the money out of a single, commingled account. The Sixth Amendment provides no justification for the decision to mandate different treatment in these all-but-identical situations.

The plurality sees "little reason to worry" about defendants circumventing forfeiture because courts can use rules like the tracing rule discussed above. *Ante*, at 23. It also asserts that these rules "will likely . . . prevent Luis from benefiting from many of [her] money transfers and purchases." *Ante*, at 22. That proposition is doubtful where, as here, "a lot of money was taken out in cash from the defendant's bank accounts" because "[y]ou can't trace cash." App. 155. Even were that not the case, this assertion fails to appreciate that it takes time to trace tainted assets. As the FBI agent testified, at the time of the hearing both the tracing and the FBI's analysis were "still ongoing." *Ibid.* The whole purpose of a pretrial restraint under § 1345 is to maintain the status quo in cases, like this one, where a defendant is accused of committing crimes that involve fungible property,

e. g., a banking law violation or a federal health care offense. The plurality's approach serves to benefit the most sophisticated of criminals whose web of transfers and concealment will take the longest to unravel. For if the Government cannot establish at the outset that every dollar subject to restraint is derived from the crime alleged, the defendant can spend that money on whatever defense team he or she desires.

Of equal concern is the assertion that a defendant's right to counsel of choice is limited to only those attorneys who charge a "reasonable fee." *Ante*, at 23. If Luis has a right to use the restrained substitute assets to pay for the counsel of her choice, then why can she not hire the most expensive legal team she can afford? In the plurality's view, the reason Luis can use the restrained funds for an attorney is because they are still hers. But if that is so, then she should be able to use all $2 million of her remaining assets to pay for a lawyer. The plurality's willingness to curtail the very right it recognizes reflects the need to preserve substitute assets from further dissipation.

* * *

Today's ruling abandons the principle established in *Caplin & Drysdale* and *Monsanto*. In its place is an approach that creates perverse incentives and provides protection for defendants who spend stolen money rather than their own.

In my respectful view this is incorrect, and the judgment of the Court of Appeals should be affirmed.

JUSTICE KAGAN, dissenting.

I find *United States* v. *Monsanto*, 491 U. S. 600 (1989), a troubling decision. It is one thing to hold, as this Court did in *Caplin & Drysdale*, *Chartered* v. *United States*, 491 U. S. 617 (1989), that a convicted felon has no Sixth Amendment right to pay his lawyer with funds adjudged forfeitable.

Following conviction, such assets belong to the Government, and "[t]here is no constitutional principle that gives one person the right to give another's property to a third party." *Id.*, at 628. But it is quite another thing to say that the Government may, prior to trial, freeze assets that a defendant needs to hire an attorney, based on nothing more than "probable cause to believe that the property will ultimately be proved forfeitable." *Monsanto*, 491 U. S., at 615. At that time, "the presumption of innocence still applies," and the Government's interest in the assets is wholly contingent on future judgments of conviction and forfeiture. *Kaley* v. *United States*, 571 U. S. 320, 327 (2014). I am not altogether convinced that, in this decidedly different circumstance, the Government's interest in recovering the proceeds of crime ought to trump the defendant's (often highly consequential) right to retain counsel of choice.

But the correctness of *Monsanto* is not at issue today. Petitioner Sila Luis has not asked this Court either to overrule or to modify that decision; she argues only that it does not answer the question presented here. And because Luis takes *Monsanto* as a given, the Court must do so as well.

On that basis, I agree with the principal dissent that *Monsanto* controls this case. See *ante*, at 39–41 (opinion of KENNEDY, J.). Because the Government has established probable cause to believe that it will eventually recover Luis's assets, she has no right to use them to pay an attorney. See *Monsanto*, 491 U. S., at 616 ("[N]o constitutional violation occurs when, after probable cause is adequately established, the Government obtains an order barring a defendant from . . . dissipating his assets prior to trial").

The plurality reaches a contrary result only by differentiating between the direct fruits of criminal activity and substitute assets that become subject to forfeiture when the defendant has run through those proceeds. See *ante*, at 12–13. But as the principal dissent shows, the Government's and the defendant's respective legal interests in those two

kinds of property, prior to a judgment of guilt, are exactly the same: The defendant maintains ownership of either type, with the Government holding only a contingent interest. See *ante*, at 41–44. Indeed, the plurality's use of the word "tainted," to describe assets at the pre-conviction stage, makes an unwarranted assumption about the defendant's guilt. See *ante*, at 12 (characterizing such assets as, for example, "robber's loot"). Because the Government has not yet shown that the defendant committed the crime charged, it also has not shown that allegedly tainted assets are actually so.

And given that money is fungible, the plurality's approach leads to utterly arbitrary distinctions as among criminal defendants who are in fact guilty. See *ante*, at 46 (opinion of KENNEDY, J.). The thief who immediately dissipates his ill-gotten gains and thereby preserves his other assets is no more deserving of chosen counsel than the one who spends those two pots of money in reverse order. Yet the plurality would enable only the first defendant, and not the second, to hire the lawyer he wants. I cannot believe the Sixth Amendment draws that irrational line, much as I sympathize with the plurality's effort to cabin *Monsanto*. Accordingly, I would affirm the judgment below.

Syllabus

EVENWEL ET AL. *v.* ABBOTT, GOVERNOR OF TEXAS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. 14–940. Argued December 8, 2015—Decided April 4, 2016

Under the one-person, one-vote principle, jurisdictions must design legislative districts with equal populations. See *Wesberry* v. *Sanders*, 376 U. S. 1, 7–8; *Reynolds* v. *Sims*, 377 U. S. 533, 568. In the context of state and local legislative districting, States may deviate somewhat from perfect population equality to accommodate traditional districting objectives. Where the maximum population deviation between the largest and smallest district is less than 10%, a state or local legislative map presumptively complies with the one-person, one-vote rule.

Texas, like all other States, uses total-population numbers from the decennial census when drawing legislative districts. After the 2010 census, Texas adopted a State Senate map that has a maximum total-population deviation of 8.04%, safely within the presumptively permissible 10% range. However, measured by a voter-population baseline—eligible voters or registered voters—the map's maximum population deviation exceeds 40%. Appellants, who live in Texas Senate districts with particularly large eligible- and registered-voter populations, filed suit against the Texas Governor and Secretary of State. Basing apportionment on total population, appellants contended, dilutes their votes in relation to voters in other Senate districts, in violation of the one-person, one-vote principle of the Equal Protection Clause. Appellants sought an injunction barring use of the existing Senate map in favor of a map that would equalize the voter population in each district. A three-judge District Court dismissed the complaint for failure to state a claim on which relief could be granted.

Held: As constitutional history, precedent, and practice demonstrate, a State or locality may draw its legislative districts based on total population. Pp. 63–75.

(a) Constitutional history shows that, at the time of the founding, the Framers endorsed allocating House seats to States based on total population. Debating what would become the Fourteenth Amendment, Congress reconsidered the proper basis for apportioning House seats. Retaining the total-population rule, Congress rejected proposals to allocate House seats to States on the basis of voter population. See U. S. Const., Amdt. 14, § 2. The Framers recognized that use of a total-

population baseline served the principle of representational equality. Appellants' voter-population rule is inconsistent with the "theory of the Constitution," Cong. Globe, 39th Cong., 1st Sess., 2766–2767, this Court recognized in *Wesberry* as underlying not just the method of allocating House seats to States but also the method of apportioning legislative seats within States. Pp. 64–70.

(b) This Court's past decisions reinforce the conclusion that States and localities may comply with the one-person, one-vote principle by designing districts with equal total populations. Appellants assert that language in this Court's precedent supports their view that States should equalize the voter-eligible population of districts. But for every sentence appellants quote, one could respond with a line casting the one-person, one-vote guarantee in terms of equality of representation. See, *e. g.*, *Reynolds*, 377 U. S., at 560–561. Moreover, from *Reynolds* on, the Court has consistently looked to total-population figures when evaluating whether districting maps violate the Equal Protection Clause by deviating impermissibly from perfect population equality. Pp. 71–73.

(c) Settled practice confirms what constitutional history and prior decisions strongly suggest. Adopting voter-eligible apportionment as constitutional command would upset a well-functioning approach to districting that all 50 States and countless local jurisdictions have long followed. As the Framers of the Constitution and the Fourteenth Amendment comprehended, representatives serve all residents, not just those eligible to vote. Nonvoters have an important stake in many policy debates and in receiving constituent services. By ensuring that each representative is subject to requests and suggestions from the same number of constituents, total-population apportionment promotes equitable and effective representation. Pp. 73–74.

(d) Because constitutional history, precedent, and practice reveal the infirmity of appellants' claim, this Court need not resolve whether, as Texas now argues, States may draw districts to equalize voter-eligible population rather than total population. Pp. 74–75.

Affirmed.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, *post*, p. 75. ALITO, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined except as to Part III–B, *post*, p. 92.

William S. Consovoy argued the cause for appellants. With him on the briefs were *Thomas R. McCarthy*, *J. Michael Connolly*, and *Meredith B. Parenti*.

Counsel

Scott A. Keller, Solicitor General of Texas, argued the cause for appellees. With him on the brief were *Ken Paxton*, Attorney General, *Matthew H. Frederick*, Deputy Solicitor General, *Charles E. Roy*, First Assistant Attorney General, and *Lisa Bennett*, Assistant Solicitor General.

Deputy Solicitor General Gershengorn argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Gupta*, *Ann O'Connell*, *Mark L. Gross*, and *Erin Aslan*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Rights Union by *Kaylan L. Phillips*; for the Cato Institute et al. by *Ilya Shapiro* and *Manuel S. Klausner*; for the Center for Constitutional Jurisprudence by *John C. Eastman* and *Anthony T. Caso*; for the City of Yakima, Washington, by *Francis S. Floyd* and *John A. Safarli*; for the Immigration Reform Law Institute by *Dale L. Wilcox*; for Judicial Watch, Inc., et al. by *Robert D. Popper* and *Chris Fedeli*; for Mountain States Legal Foundation by *Steven J. Lechner*; for Project 21 by *David B. Rivkin, Jr.*, and *Andrew M. Grossman*; and for Tennessee State Legislators et al. by *John J. Park, Jr.*, *Linda Carver Whitlow Knight*, *Carrie Severino*, *Jonathan Keim*, and *Erin Morrow Hawley*.

Briefs of *amici curiae* urging affirmance were filed for the State of New York et al. by *Eric T. Schneiderman*, Attorney General of New York, *Barbara D. Underwood*, Solicitor General, *Steven C. Wu*, Deputy Solicitor General, and *Judith N. Vale*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Craig W. Richards* of Alaska, *Kamala D. Harris* of California, *Matthew P. Denn* of Delaware, *Douglas S. Chin* of Hawaii, *Lisa Madigan* of Illinois, *Gregory F. Zoeller* of Indiana, *Tom Miller* of Iowa, *Janet T. Mills* of Maine, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Bill Schuette* of Michigan, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Joseph A. Foster* of New Hampshire, *Wayne Stenehjem* of North Dakota, *Ellen F. Rosenblum* of Oregon, *Peter F. Kilmartin* of Rhode Island, *William H. Sorrell* of Vermont, *Mark R. Herring* of Virginia, and *Robert W. Ferguson* of Washington; for the American Civil Liberties Union et al. by *Sean J. Young*, *Steven R. Shapiro*, *Matthew A. Coles*, and *Dale E. Ho*; for the Brennan Center for Justice at N. Y. U. School of Law by *Sidney S. Rosdeitcher*, *Robert A. Atkins*, *Wendy R. Weiser*, and *Michael C. Li*; for the Children's Defense Fund et al. by *David R. Carpenter*, *Cameron F. Kerry*, and *Robert Brandon*; for the City of Los Angeles et al. by *Gregory L. Diskant*,

JUSTICE GINSBURG delivered the opinion of the Court.

Texas, like all other States, draws its legislative districts on the basis of total population. Plaintiffs-appellants are Texas voters; they challenge this uniform method of districting on the ground that it produces unequal districts when measured by voter-eligible population. Voter-eligible population, not total population, they urge, must be used to ensure that their votes will not be devalued in relation to citizens'

Jonah M. Knobler, *Kathrina Szymborksi*, *Michael N. Feuer*, *James P. Clark*, *Valerie L. Flores*, *Harit U. Trivedi*, *Lester J. Tolnai*, *Timothy T. Coates*, *Dennis J. Herrera*, *Christine Van Aken*, *Laura Burton*, *Adam Loukx*, *Anita Alvarez*, *Daniel F. Gallagher*, *Paul A. Castiglione*, *George A. Nilson*, *William R. Phelan, Jr.*, and *Barbara A. Langhenry*; for the City of New York by *Zachary W. Carter* and *Richard Dearing*; for Common Cause by *Emmet J. Bondurant*; for the Constitutional Accountability Center by *Douglas T. Kendall*, *Elizabeth B. Wydra*, *David H. Gans*, and *Brianne J. Gorod*; for Direct Action for Rights and Equality (DARE) et al. by *Brenda Wright*; for Former Directors of the U. S. Census Bureau by *Paul M. Smith*, *Jessica Ring Amunson*, *Mark P. Gaber*, *J. Gerald Hebert*, *Trevor Potter*, and *Anita S. Earls*; for Harris County, Texas, by *C. Robert Heath* and *Vince Ryan*; for the Hawaii Reapportionment Case Plaintiffs by *Robert H. Thomas*, *Anna H. Oshiro*, and *Mark M. Murakami*; for the Hispanic National Bar Association et al. by *Robert T. Maldonado*, *Cynthia D. Mares*, *Peter Karanjia*, and *Alison Schary*; for the Lawyers' Committee for Civil Rights Under Law by *G. Eric Brunstad, Jr.*, *Linda C. Goldstein*, *Jon M. Greenbaum*, *Ezra D. Rosenberg*, and *M. Eileen O'Connor*; for the Leadership Conference on Civil and Human Rights et al. by *Matthew M. Hoffman*, *Wade J. Henderson*, *Lisa M. Bornstein*, *Penda D. Hair*, *Katherine Culliton-González*, *Eugene Chay*, *Juan Cartagena*, *Nicholas Espiritu*, and *Alvaro M. Huerta*; for the NAACP Legal Defense & Educational Fund, Inc., by *Walter Dellinger*, *Sherrilyn Ifill*, *Janai Nelson*, *Christina Swarns*, *Leah C. Aden*, *Coty Montag*, and *John Paul Schnapper-Casteras*; for the Texas Senate Hispanic Caucus et al. by *Nina Perales* and *Thomas A. Saenz*; for 11 Texas Senators by *Chad Dunn*, *K. Scott Brazil*, and *Martin J. Siegel*; for Carl E. Heastie by *C. Daniel Chill* and *Elaine M. Reich*; and for Nathaniel Persily et al. by *Mr. Persily, pro se.*

Briefs of *amici curiae* were filed for the Democratic National Committee by *Robert F. Bauer* and *Marc Erik Elias*; for the Eagle Forum Education & Legal Defense Fund, Inc., by *Lawrence J. Joseph*; and for Peter A. Morrison, Demographers et al. by *Bradley A. Benbrook* and *Stephen M. Duvernay.*

votes in other districts. We hold, based on constitutional history, this Court's decisions, and longstanding practice, that a State may draw its legislative districts based on total population.

I

A

This Court long resisted any role in overseeing the process by which States draw legislative districts. "The remedy for unfairness in districting," the Court once held, "is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress." *Colegrove* v. *Green*, 328 U. S. 549, 556 (1946). "Courts ought not to enter this political thicket," as Justice Frankfurter put it. *Ibid.*

Judicial abstention left pervasive malapportionment unchecked. In the opening half of the 20th century, there was a massive population shift away from rural areas and toward suburban and urban communities. Nevertheless, many States ran elections into the early 1960's based on maps drawn to equalize each district's population as it was composed around 1900. Other States used maps allocating a certain number of legislators to each county regardless of its population. These schemes left many rural districts significantly underpopulated in comparison with urban and suburban districts. But rural legislators who benefited from malapportionment had scant incentive to adopt new maps that might put them out of office.

The Court confronted this ingrained structural inequality in *Baker* v. *Carr*, 369 U. S. 186, 191–192 (1962). That case presented an equal protection challenge to a Tennessee state-legislative map that had not been redrawn since 1901. See also *id.*, at 192 (observing that, in the meantime, there had been "substantial growth and redistribution" of the State's population). Rather than steering clear of the political thicket yet again, the Court held for the first time that malapportionment claims are justiciable. *Id.*, at 237 ("We

conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision.").

Although the Court in *Baker* did not reach the merits of the equal protection claim, *Baker*'s justiciability ruling set the stage for what came to be known as the one-person, one-vote principle. Just two years after *Baker*, in *Wesberry* v. *Sanders*, 376 U. S. 1, 7–8 (1964), the Court invalidated Georgia's malapportioned congressional map, under which the population of one congressional district was "two to three times" larger than the population of the others. Relying on Article I, §2, of the Constitution, the Court required that congressional districts be drawn with equal populations. *Id.*, at 7, 18. Later that same Term, in *Reynolds* v. *Sims*, 377 U. S. 533, 568 (1964), the Court upheld an equal protection challenge to Alabama's malapportioned state-legislative maps. "[T]he Equal Protection Clause," the Court concluded, "requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." *Ibid.* *Wesberry* and *Reynolds* together instructed that jurisdictions must design both congressional and state-legislative districts with equal populations, and must regularly reapportion districts to prevent malapportionment.[1]

Over the ensuing decades, the Court has several times elaborated on the scope of the one-person, one-vote rule. States must draw congressional districts with populations as close to perfect equality as possible. See *Kirkpatrick* v. *Preisler*, 394 U. S. 526, 530–531 (1969). But, when drawing state and local legislative districts, jurisdictions are permitted to deviate somewhat from perfect population equality to accommodate traditional districting objectives, among them, preserving the integrity of political subdivisions, maintaining communities of interest, and creating geographic com-

[1] In *Avery* v. *Midland County*, 390 U. S. 474, 485–486 (1968), the Court applied the one-person, one-vote rule to legislative apportionment at the local level.

pactness. See *Brown* v. *Thomson*, 462 U. S. 835, 842–843 (1983). Where the maximum population deviation between the largest and smallest district is less than 10%, the Court has held, a state or local legislative map presumptively complies with the one-person, one-vote rule. *Ibid.*[2] Maximum deviations above 10% are presumptively impermissible. *Ibid.* See also *Mahan* v. *Howell*, 410 U. S. 315, 329 (1973) (approving a state-legislative map with maximum population deviation of 16% to accommodate the State's interest in "maintaining the integrity of political subdivision lines," but cautioning that this deviation "may well approach tolerable limits").

In contrast to repeated disputes over the permissibility of deviating from perfect population equality, little controversy has centered on the population base jurisdictions must equalize. On rare occasions, jurisdictions have relied on the registered-voter or voter-eligible populations of districts. See *Burns* v. *Richardson*, 384 U. S. 73, 93–94 (1966) (holding Hawaii could use a registered-voter population base because of "Hawaii's special population problems"—in particular, its substantial temporary military population). But, in the overwhelming majority of cases, jurisdictions have equalized total population, as measured by the decennial census. Today, all States use total-population numbers from the census when designing congressional and state-legislative districts, and only seven States adjust those census numbers in any meaningful way.[3]

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[2] Maximum population deviation is the sum of the percentage deviations from perfect population equality of the most- and least-populated districts. See *Chapman* v. *Meier*, 420 U. S. 1, 22 (1975). For example, if the largest district is 4.5% overpopulated, and the smallest district is 2.3% underpopulated, the map's maximum population deviation is 6.8%.

[3] The Constitutions and statutes of ten States—California, Delaware, Hawaii, Kansas, Maine, Maryland, Nebraska, New Hampshire, New York, and Washington—authorize the removal of certain groups from the total-population apportionment base. See App. to Brief for Appellees 1a–46a (listing relevant state constitutional and statutory provisions). Hawaii,

B

Appellants challenge that consensus. After the 2010 census, Texas redrew its State Senate districts using a total-population baseline. At the time, Texas was subject to the preclearance requirements of § 5 of the Voting Rights Act of 1965. 52 U. S. C. § 10304 (requiring jurisdictions to receive approval from the U. S. Department of Justice or the U. S. District Court for the District of Columbia before implementing certain voting changes). Once it became clear that the new Senate map, S148, would not receive preclearance in advance of the 2012 elections, the U. S. District Court for the Western District of Texas drew an interim Senate map, S164, which also equalized the total population of each district. See *Davis* v. *Perry*, No. SA–11–CV–788 (Nov. 23, 2011).[4] On direct appeal, this Court observed that the District Court had failed to "take guidance from the State's re-

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Kansas, and Washington exclude certain nonpermanent residents, including nonresident members of the military. Haw. Const., Art. IV, § 4; Kan. Const., Art. 10, § 1(a); Wash. Const., Art. II, § 43(5). See also N. H. Const., pt. 2, Art. 9–a (authorizing the state legislature to make "suitable adjustments to the general census . . . on account of non-residents temporarily residing in this state"). California, Delaware, Maryland, and New York exclude inmates who were domiciled out of State prior to incarceration. Cal. Elec. Code Ann. § 21003(5) (2016 West Cum. Supp.); Del. Code Ann., Tit. 29, § 804A (Supp. 2014); Md. State Govt. Code Ann. § 2–2A–01 (2014); N. Y. Legis. Law Ann. § 83–m(b) (2015 West Cum. Supp.). The Constitutions of Maine and Nebraska authorize the exclusion of noncitizen immigrants, Me. Const., Art. IV, pt. 1, § 2; Neb. Const., Art. III, § 5, but neither provision is "operational as written," Brief for United States as *Amicus Curiae* 12, n. 3.

[4] Various plaintiffs had challenged Texas' State House, State Senate, and congressional maps under, *inter alia*, § 2 of the Voting Rights Act of 1965. They sought and received an injunction barring Texas' use of the new maps until those maps received § 5 preclearance. See *Allen* v. *State Bd. of Elections*, 393 U. S. 544, 561 (1969) ("[A]n individual may bring a suit for declaratory judgment and injunctive relief, claiming that a state requirement is covered by § 5, but has not been subjected to the required federal scrutiny.").

cently enacted plan in drafting an interim plan," and therefore vacated the District Court's map. *Perry* v. *Perez*, 565 U. S. 388, 393, 396–399 (2012) (*per curiam*).

The District Court, on remand, again used census data to draw districts so that each included roughly the same size total population. Texas used this new interim map, S172, in the 2012 elections, and, in 2013, the Texas Legislature adopted S172 as the permanent Senate map. See App. to Brief for Texas Senate Hispanic Caucus et al. as *Amici Curiae* 5 (reproducing the current Senate map). The permanent map's maximum total-population deviation is 8.04%, safely within the presumptively permissible 10% range. But measured by a voter-population baseline—eligible voters or registered voters—the map's maximum population deviation exceeds 40%.

Appellants Sue Evenwel and Edward Pfenninger live in Texas Senate districts (one and four, respectively) with particularly large eligible- and registered-voter populations. Contending that basing apportionment on total population dilutes their votes in relation to voters in other Senate districts, in violation of the one-person, one-vote principle of the Equal Protection Clause,[5] appellants filed suit in the U. S. District Court for the Western District of Texas. They named as defendants the Governor and Secretary of State of Texas, and sought a permanent injunction barring use of the existing Senate map in favor of a map that would equalize the voter population in each district.

The case was referred to a three-judge District Court for hearing and decision. See 28 U. S. C. § 2284(a); *Shapiro* v. *McManus*, 577 U. S. 39, 44–46 (2015). That court dismissed the complaint for failure to state a claim on which relief could be granted. Appellants, the District Court explained, "rel[y] upon a theory never before accepted by the

[5] Apart from objecting to the baseline, appellants do not challenge the Senate map's 8.04% total-population deviation. Nor do they challenge the use of a total-population baseline in congressional districting.

Supreme Court or any circuit court: that the metric of apportionment employed by Texas (total population) results in an unconstitutional apportionment because it does not achieve equality as measured by Plaintiffs' chosen metric—voter population." App. to Juris. Statement 9a. Decisions of this Court, the District Court concluded, permit jurisdictions to use any neutral, nondiscriminatory population baseline, including total population, when drawing state and local legislative districts. *Id.*, at 13a–14a.[6]

We noted probable jurisdiction, 575 U. S. 1024 (2015), and now affirm.

II

The parties and the United States advance different positions in this case. As they did before the District Court, appellants insist that the Equal Protection Clause requires jurisdictions to draw state and local legislative districts with equal voter-eligible populations, thus protecting "voter equality," *i. e.*, "the right of eligible voters to an equal vote." Brief for Appellants 14.[7] To comply with their proposed rule, appellants suggest, jurisdictions should design districts based on citizen-voting-age-population (CVAP) data from the Census Bureau's American Community Survey (ACS), an an-

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[6] As the District Court noted, the Ninth Circuit has likewise rejected appellants' theory, *i. e.*, that voter population must be roughly equalized. See *Garza* v. *County of L. A.*, 918 F. 2d 763, 773–776 (CA9 1990). Also declining to mandate voter-eligible apportionment, the Fourth and Fifth Circuits have suggested that the choice of apportionment base may present a nonjusticiable political question. See *Chen* v. *Houston*, 206 F. 3d 502, 528 (CA5 2000) ("[T]his eminently political question has been left to the political process."); *Daly* v. *Hunt*, 93 F. 3d 1212, 1227 (CA4 1996) ("This is quintessentially a decision that should be made by the state, not the federal courts, in the inherently political and legislative process of apportionment.").

[7] In the District Court, appellants suggested that districting bodies could also comply with the one-person, one-vote rule by equalizing the registered-voter populations of districts, but appellants have not repeated that argument before this Court. See Tr. of Oral Arg. 22–23.

nual statistical sample of the U. S. population. Texas responds that jurisdictions may, consistent with the Equal Protection Clause, design districts using any population baseline—including total population and voter-eligible population—so long as the choice is rational and not invidiously discriminatory. Although its use of total-population data from the census was permissible, Texas therefore argues, it could have used ACS CVAP data instead. Sharing Texas' position that the Equal Protection Clause does not mandate use of voter-eligible population, the United States urges us not to address Texas' separate assertion that the Constitution allows States to use alternative population baselines, including voter-eligible population. Equalizing total population, the United States maintains, vindicates the principle of representational equality by "ensur[ing] that the voters in each district have the power to elect a representative who represents the same number of constituents as all other representatives." Brief for United States as *Amicus Curiae* 5.

In agreement with Texas and the United States, we reject appellants' attempt to locate a voter-equality mandate in the Equal Protection Clause. As history, precedent, and practice demonstrate, it is plainly permissible for jurisdictions to measure equalization by the total population of state and local legislative districts.

A

We begin with constitutional history. At the time of the founding, the Framers confronted a question analogous to the one at issue here: On what basis should congressional districts be allocated to States? The Framers' solution, now known as the Great Compromise, was to provide each State the same number of seats in the Senate, and to allocate House seats based on States' total populations. "Representatives and direct Taxes," they wrote, "shall be apportioned among the several States which may be included within this Union, *according to their respective Numbers*." U. S. Const., Art. I, §2, cl. 3 (emphasis added). "It is a fundamental principle of the proposed constitution," James

Madison explained in the Federalist Papers, "that as the aggregate number of representatives allotted to the several states, is to be . . . founded on the aggregate number of inhabitants; so, the right of choosing this allotted number in each state, is to be exercised by such part of the inhabitants, as the state itself may designate." The Federalist No. 54, p. 284 (G. Carey & J. McClellan eds. 2001). In other words, the basis of *representation* in the House was to include all inhabitants—although slaves were counted as only three-fifths of a person—even though States remained free to deny many of those inhabitants the right to participate in the selection of their representatives.[8] Endorsing apportionment based on total population, Alexander Hamilton declared: "There can be no truer principle than this—that every individual of the community at large has an equal right to the protection of government." 1 Records of the Federal Convention of 1787, p. 473 (M. Farrand ed. 1911).[9]

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[8] As the United States observes, the "choice of constitutional language reflects the historical fact that when the Constitution was drafted and later amended, the right to vote was not closely correlated with citizenship." Brief for United States as *Amicus Curiae* 18. Restrictions on the franchise left large groups of citizens, including women and many males who did not own land, unable to cast ballots, yet the Framers understood that these citizens were nonetheless entitled to representation in government.

[9] JUSTICE ALITO observes that Hamilton stated this principle while opposing allocation of an equal number of Senate seats to each State. *Post*, at 97–98 (opinion concurring in judgment). That context, however, does not diminish Hamilton's principled argument for allocating seats to protect the representational rights of "every individual of the community at large." 1 Records of the Federal Convention of 1787, p. 473 (M. Farrand ed. 1911). JUSTICE ALITO goes on to quote James Madison for the proposition that Hamilton was concerned, simply and only, with "the outcome of a contest over raw political power." *Post*, at 98. Notably, in the statement JUSTICE ALITO quotes, Madison was not attributing that motive to Hamilton; instead, according to Madison, Hamilton was attributing that motive to the advocates of equal representation for States. Farrand, *supra*, at 466. One need not gainsay that Hamilton's backdrop was the political controversies of his day. That reality, however, has not deterred this Court's

When debating what is now the Fourteenth Amendment, Congress reconsidered the proper basis for apportioning House seats. Concerned that Southern States would not willingly enfranchise freed slaves, and aware that "a slave's freedom could swell his state's population for purposes of representation in the House by one person, rather than only three-fifths," the Framers of the Fourteenth Amendment considered at length the possibility of allocating House seats to States on the basis of voter population. J. Sneed, Footprints on the Rocks of the Mountain: An Account of the Enactment of the Fourteenth Amendment 28 (1997). See also *id.*, at 35 ("[T]he apportionment issue consumed more time in the Fourteenth Amendment debates than did any other topic.").

In December 1865, Thaddeus Stevens, a leader of the Radical Republicans, introduced a constitutional amendment that would have allocated House seats to States "according to their respective legal voters"; in addition, the proposed amendment mandated that "[a] true census of the legal voters shall be taken at the same time with the regular census." Cong. Globe, 39th Cong., 1st Sess., 10 (1866). Supporters of apportionment based on voter population employed the same voter-equality reasoning that appellants now echo. See, *e. g.*, *id.*, at 380 (remarks of Rep. Orth) ("[T]he true principle of representation in Congress is that voters alone should form the basis, and that each voter should have equal political weight in our Government . . . ."); *id.*, at 404 (remarks of Rep. Lawrence) (use of total population "disregards the fundamental idea of all just representation, that every voter should be equal in political power all over the Union").

Voter-based apportionment proponents encountered fierce resistance from proponents of total-population apportionment. Much of the opposition was grounded in the principle of representational equality. "As an abstract proposition,"

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past reliance on his statements of principle. See, *e. g.*, *Printz* v. *United States*, 521 U. S. 898, 910–924 (1997).

argued Representative James G. Blaine, a leading critic of allocating House seats based on voter population, "no one will deny that population is the true basis of representation; for women, children, and other non-voting classes may have as vital an interest in the legislation of the country as those who actually deposit the ballot." *Id.*, at 141. See also *id.*, at 358 (remarks of Rep. Conkling) (arguing that use of a voter-population basis "would shut out four fifths of the citizens of the country—women and children, who are citizens, who are taxed, and who are, and always have been, represented"); *id.*, at 434 (remarks of Rep. Ward) ("[W]hat becomes of that large class of non-voting tax-payers that are found in every section? Are they in no matter to be represented? They certainly should be enumerated in making up the whole number of those entitled to a representative.").

The product of these debates was §2 of the Fourteenth Amendment, which retained total population as the congressional apportionment base. See U. S. Const., Amdt. 14, §2 ("Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed."). Introducing the final version of the Amendment on the Senate floor, Senator Jacob Howard explained:

> "[The] basis of representation is numbers . . . ; that is, the whole population except untaxed Indians and persons excluded by the State laws for rebellion or other crime. . . . The committee adopted numbers as the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such, I think, after all, is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution." Cong. Globe, 39th Cong., 1st Sess., at 2766–2767.

Appellants ask us to find in the Fourteenth Amendment's Equal Protection Clause a rule inconsistent with this "theory of the Constitution." But, as the Court recognized in *Wesberry*, this theory underlies not just the method of allocating House seats to States; it applies as well to the method of apportioning legislative seats within States. "The debates at the [Constitutional] Convention," the Court explained, "make at least one fact abundantly clear: that when the delegates agreed that the House should represent 'people,' they intended that in allocating Congressmen the number assigned to each state should be determined solely by the number of inhabitants." 376 U. S., at 13. "While it may not be possible to draw congressional districts with mathematical precision," the Court acknowledged, "that is no excuse for ignoring our Constitution's plain objective of making equal representation for *equal numbers of people* the fundamental goal for the House of Representatives." *Id.*, at 18 (emphasis added). It cannot be that the Fourteenth Amendment calls for the apportionment of congressional districts based on total population, but simultaneously prohibits States from apportioning their own legislative districts on the same basis.

Cordoning off the constitutional history of congressional districting, appellants stress two points.[10] First, they draw a distinction between allocating seats *to* States and apportioning seats *within* States. The Framers selected total population for the former, appellants and their *amici* argue, because of federalism concerns inapposite to intrastate dis-

[10] JUSTICE ALITO adds a third, claiming "the allocation of congressional representation sheds little light" on the meaning of the one-person, one-vote rule "because that allocation plainly violates one person, one vote." *Post*, at 94–95. For this proposition, JUSTICE ALITO notes the constitutional guarantee of two Senate seats and at least one House seat to each State, regardless of its population. But these guarantees bear no kinship to the separate question that dominated the Fourteenth Amendment's ratification debates: After each State has received its guaranteed House seat, on what basis should additional seats be allocated?

tricting. These concerns included the perceived risk that a voter-population base might encourage States to expand the franchise unwisely, and the hope that a total-population base might counter States' incentive to undercount their populations, thereby reducing their share of direct taxes. *Wesberry*, however, rejected the distinction appellants now press. See *supra*, at 68. Even without the weight of *Wesberry*, we would find appellants' distinction unconvincing. One can accept that federalism—or, as JUSTICE ALITO emphasizes, partisan and regional political advantage, see *post*, at 96–103—figured in the Framers' selection of total population as the basis for allocating congressional seats. Even so, it remains beyond doubt that the principle of representational equality figured prominently in the decision to count people, whether or not they qualify as voters.[11]

Second, appellants and JUSTICE ALITO urge, see *post*, at 96–97, the Court has typically refused to analogize to features of the federal electoral system—here, the constitutional scheme governing congressional apportionment—when considering challenges to state and local election laws. True, in *Reynolds*, the Court rejected Alabama's argument that it had permissibly modeled its State Senate apportionment scheme—one Senator for each county—on the United States Senate. "[T]he federal analogy," the Court explained, "[is] inapposite and irrelevant to state legislative districting

[11] JUSTICE ALITO asserts that we have taken the statements of the Fourteenth Amendment's Framers "out of context." *Post*, at 99. See also *post*, at 102 ("[C]laims about representational equality were invoked, if at all, only in service of the *real* goal: preventing southern States from acquiring too much power in the National Government."). Like Alexander Hamilton, see *supra*, at 65–66, n. 9, the Fourteenth Amendment's Framers doubtless made arguments rooted in practical political realities as well as in principle. That politics played a part, however, does not warrant rejecting principled argument. In any event, motivations aside, the Framers' ultimate choice of total population rather than voter population is surely relevant to whether, as appellants now argue, the Equal Protection Clause *mandates* use of voter population rather than total population.

schemes" because "[t]he system of representation in the two Houses of the Federal Congress" arose "from unique historical circumstances." 377 U. S., at 573–574. Likewise, in *Gray* v. *Sanders*, 372 U. S. 368, 371–372, 378 (1963), Georgia unsuccessfully attempted to defend, by analogy to the electoral college, its scheme of assigning a certain number of "units" to the winner of each county in statewide elections.

Reynolds and *Gray*, however, involved features of the federal electoral system that contravene the principles of both voter *and* representational equality to favor interests that have no relevance outside the federal context. Senate seats were allocated to States on an equal basis to respect state sovereignty and increase the odds that the smaller States would ratify the Constitution. See *Wesberry*, 376 U. S., at 9–13 (describing the history of the Great Compromise). See also *Reynolds*, 377 U. S., at 575 ("Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. . . . The relationship of the States to the Federal Government could hardly be less analogous."). "The [Electoral] College was created to permit the most knowledgeable members of the community to choose the executive of a nation whose continental dimensions were thought to preclude an informed choice by the citizenry at large." *Williams* v. *Rhodes*, 393 U. S. 23, 43–44 (1968) (Harlan, J., concurring in result). See also *Gray*, 372 U. S., at 378 ("The inclusion of the electoral college in the Constitution, as the result of specific historical concerns, validated the collegiate principle despite its inherent numerical inequality." (footnote omitted)). By contrast, as earlier developed, the constitutional scheme for congressional apportionment rests in part on the same representational concerns that exist regarding state and local legislative districting. The Framers' answer to the apportionment question in the congressional context therefore undermines appellants' contention that districts must be based on voter population.

B

Consistent with constitutional history, this Court's past decisions reinforce the conclusion that States and localities may comply with the one-person, one-vote principle by designing districts with equal total populations. Quoting language from those decisions that, in appellants' view, supports the principle of equal voting power—and emphasizing the phrase "one-person, one-vote"—appellants contend that the Court had in mind, and constantly meant, that States should equalize the voter-eligible population of districts. See *Reynolds*, 377 U. S., at 568 ("[A]n individual's right to vote for State legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State."); *Gray*, 372 U. S., at 379–380 ("The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications."). See also *Hadley* v. *Junior College Dist. of Metropolitan Kansas City*, 397 U. S. 50, 56 (1970) ("[W]hen members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials."). Appellants, however, extract far too much from selectively chosen language and the "one-person, one-vote" slogan.

For every sentence appellants quote from the Court's opinions, one could respond with a line casting the one-person, one-vote guarantee in terms of equality of representation, not voter equality. In *Reynolds*, for instance, the Court described "the fundamental principle of representative government in this country" as "one of equal representation for equal numbers of people." 377 U. S., at 560–561. See also *Davis* v. *Bandemer*, 478 U. S. 109, 123 (1986) ("[I]n formulating the one person, one vote formula, the Court characterized the question posed by election districts of disparate size as an issue of fair representation."); *Reynolds*, 377 U. S., at

563 (rejecting state districting schemes that "give the same number of representatives to unequal numbers of constituents"). And the Court has suggested, repeatedly, that districting based on total population serves *both* the State's interest in preventing vote dilution *and* its interest in ensuring equality of representation. See *Board of Estimate of City of New York* v. *Morris*, 489 U. S. 688, 693–694 (1989) ("If districts of widely unequal population elect an equal number of representatives, the voting power of each citizen in the larger constituencies is debased and the citizens in those districts have a smaller share of representation than do those in the smaller districts."). See also *Kirkpatrick*, 394 U. S., at 531 (recognizing in a congressional-districting case that "[e]qual representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives").[12]

Moreover, from *Reynolds* on, the Court has consistently looked to total-population figures when evaluating whether districting maps violate the Equal Protection Clause by deviating impermissibly from perfect population equality. See Brief for Appellees 29–31 (collecting cases brought under the Equal Protection Clause). See also *id.*, at 31, n. 9 (collecting congressional-districting cases). Appellants point to no instance in which the Court has determined the permissibility of deviation based on eligible- or registered-voter data. It would hardly make sense for the Court to have mandated voter equality *sub silentio* and then used a total-population baseline to evaluate compliance with that rule. More likely, we think, the Court has always assumed the permissibility of drawing districts to equalize total population.

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[12] Appellants also observe that standing in one-person, one-vote cases has rested on plaintiffs' status as voters whose votes were diluted. But the Court has not considered the standing of nonvoters to challenge a map malapportioned on a total-population basis. This issue, moreover, is unlikely ever to arise given the ease of finding voters willing to serve as plaintiffs in malapportionment cases.

"In the 1960s," appellants counter, "the distribution of the voting population generally did not deviate from the distribution of total population to the degree necessary to raise this issue." Brief for Appellants 27. To support this assertion, appellants cite only a District Court decision, which found no significant deviation in the distribution of voter and total population in "densely populated areas of New York State." *WMCA, Inc.* v. *Lomenzo*, 238 F. Supp. 916, 925 (SDNY), aff'd, 382 U. S. 4 (1965) (*per curiam*). Had this Court assumed such equivalence on a national scale, it likely would have said as much.[13] Instead, in *Gaffney* v. *Cummings*, 412 U. S. 735, 746–747 (1973), the Court acknowledged that voters may be distributed unevenly within jurisdictions. "[I]f it is the weight of a person's vote that matters," the Court observed, then "total population—even if stable and accurately taken—may not actually reflect that body of voters whose votes must be counted and weighed for the purposes of reapportionment, because 'census persons' are not voters." *Id.*, at 746. Nonetheless, the Court in *Gaffney* recognized that the one-person, one-vote rule is designed to facilitate "[f]air and effective representation," *id.*, at 748, and evaluated compliance with the rule based on total population alone, *id.*, at 750.

C

What constitutional history and our prior decisions strongly suggest, settled practice confirms. Adopting voter-eligible apportionment as constitutional command would upset a well-functioning approach to districting that all 50 States and countless local jurisdictions have followed for decades, even centuries. Appellants have shown no reason for the Court to disturb this longstanding use of total population. See *Walz* v. *Tax Comm'n of City of New York*, 397

[13] In contrast to the insubstantial evidence marshaled by appellants, the United States cites several studies documenting the uneven distribution of immigrants throughout the country during the 1960's. See Brief for United States as *Amicus Curiae* 16.

U. S. 664, 678 (1970) ("unbroken practice" followed "openly and by affirmative state action, not covertly or by state inaction, is not something to be lightly cast aside"). See also *Burson* v. *Freeman*, 504 U. S. 191, 203–206 (1992) (plurality opinion) (upholding a law limiting campaigning in areas around polling places in part because all 50 States maintain such laws, so there is a "widespread and time-tested consensus" that legislation of this order serves important state interests). As the Framers of the Constitution and the Fourteenth Amendment comprehended, representatives serve all residents, not just those eligible or registered to vote. See *supra*, at 64–68. Nonvoters have an important stake in many policy debates—children, their parents, even their grandparents, for example, have a stake in a strong public-education system—and in receiving constituent services, such as help navigating public-benefits bureaucracies. By ensuring that each representative is subject to requests and suggestions from the same number of constituents, total-population apportionment promotes equitable and effective representation. See *McCormick* v. *United States*, 500 U. S. 257, 272 (1991) ("Serving constituents and supporting legislation that will benefit the district and individuals and groups therein is the everyday business of a legislator.").[14]

In sum, the rule appellants urge has no mooring in the Equal Protection Clause. The Texas Senate map, we therefore conclude, complies with the requirements of the one-person, one-vote principle.[15] Because history, precedent,

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[14] Appellants point out that constituents have no constitutional right to equal access to their elected representatives. But a State certainly has an interest in taking reasonable, nondiscriminatory steps to facilitate access for all its residents.

[15] Insofar as appellants suggest that Texas could have roughly equalized both total population and eligible-voter population, this Court has never required jurisdictions to use multiple population baselines. In any event, appellants have never presented a map that manages to equalize both measures, perhaps because such a map does not exist, or because such a map would necessarily ignore other traditional redistricting principles,

and practice suffice to reveal the infirmity of appellants' claims, we need not and do not resolve whether, as Texas now argues, States may draw districts to equalize voter-eligible population rather than total population.

* * *

For the reasons stated, the judgment of the United States District Court for the Western District of Texas is

Affirmed.

JUSTICE THOMAS, concurring in the judgment.

This case concerns whether Texas violated the Equal Protection Clause—as interpreted by the Court's one-person, one-vote cases—by creating legislative districts that contain approximately equal total population but vary widely in the number of eligible voters in each district. I agree with the Court that our precedents do not require a State to equalize the total number of voters in each district. States may opt to equalize total population. I therefore concur in the majority's judgment that appellants' challenge fails.

I write separately because this Court has never provided a sound basis for the one-person, one-vote principle. For 50 years, the Court has struggled to define what right that principle protects. Many of our precedents suggest that it protects the right of eligible voters to cast votes that receive equal weight. Despite that frequent explanation, our precedents often conclude that the Equal Protection Clause is satisfied when all individuals within a district—voters or not—have an equal share of representation. The majority today concedes that our cases have not produced a clear answer on this point. See *ante*, at 71.

In my view, the majority has failed to provide a sound basis for the one-person, one-vote principle because no such

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including maintaining communities of interest and respecting municipal boundaries.

basis exists. The Constitution does not prescribe any one basis for apportionment within States. It instead leaves States significant leeway in apportioning their own districts to equalize total population, to equalize eligible voters, or to promote any other principle consistent with a republican form of government. The majority should recognize the futility of choosing only one of these options. The Constitution leaves the choice to the people alone—not to this Court.

I

In the 1960's, this Court decided that the Equal Protection Clause requires States to draw legislative districts based on a "one-person, one-vote" rule.* But this Court's decisions have never coalesced around a single theory about what States must equalize.

The Equal Protection Clause prohibits a State from "deny-[ing] to any person within its jurisdiction the equal protection of the laws." Amdt. 14, § 1. For nearly a century after its ratification, this Court interpreted the Clause as having no application to the politically charged issue of how States should apportion their populations in political districts. See, *e. g.*, *Colegrove* v. *Green*, 328 U. S. 549, 556 (1946) (plurality opinion). Instead, the Court left the drawing of States' political boundaries to the States, so long as a State did not deprive people of the right to vote for reasons prohibited by the Constitution. See *id.*, at 552, 556; *Gomillion* v. *Lightfoot*, 364 U. S. 339, 341, 347–348 (1960) (finding justiciable a claim that a city boundary was redrawn from a square shape

*The Court's opinions have used "one person, one vote" and "one man, one vote" interchangeably. Compare, *e. g.*, *Gray* v. *Sanders*, 372 U. S. 368, 381 (1963) ("one person, one vote"), with *Hadley* v. *Junior College Dist. of Metropolitan Kansas City*, 397 U. S. 50, 51 (1970) ("one man, one vote" (internal quotation marks omitted)). *Gray* used "one person, one vote" after noting the expansion of political equality over our history—including adoption of the Nineteenth Amendment, which guaranteed women the right to vote. 372 U. S., at 381.

to "a strangely irregular twenty-eight-sided figure" to remove nearly all black voters from the city). This meant that a State's refusal to allocate voters within districts based on population changes was a matter for States—not federal courts—to decide. And these cases were part of a larger jurisprudence holding that the question whether a state government had a "proper" republican form rested with Congress. *Pacific States Telephone & Telegraph Co.* v. *Oregon*, 223 U. S. 118, 149–150 (1912).

This Court changed course in *Baker* v. *Carr*, 369 U. S. 186 (1962), by locating in the Equal Protection Clause a right of citizens not to have a "'debasement of their votes.'" *Id.*, at 194, and n. 15, 200. Expanding on that decision, this Court later held that "the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." *Reynolds* v. *Sims*, 377 U. S. 533, 568 (1964). The Court created an analogous requirement for congressional redistricting rooted in Article I, §2's requirement that "Representatives be chosen 'by the People of the several States.'" *Wesberry* v. *Sanders*, 376 U. S. 1, 7–9 (1964). The rules established by these cases have come to be known as "one person, one vote."

Since *Baker* empowered the federal courts to resolve redistricting disputes, this Court has struggled to explain whether the one-person, one-vote principle ensures equality among eligible voters or instead protects some broader right of every citizen to equal representation. The Court's lack of clarity on this point, in turn, has left unclear whether States must equalize the number of eligible voters across districts or only total population.

In a number of cases, this Court has said that States must protect the right of *eligible voters* to have their votes receive equal weight. On this view, there is only one way for States to comply with the one-person, one-vote principle: They must draw districts that contain a substantially equal number of eligible voters per district.

The Court's seminal decision in *Baker* exemplifies this view. Decided in 1962, *Baker* involved the failure of the Tennessee Legislature to reapportion its districts for 60 years. 369 U. S., at 191. Since Tennessee's last apportionment, the State's population had grown by about 1.5 million residents, from about 2 to more than 3.5 million. And the number of voters in each district had changed significantly over time, producing widely varying voting populations in each district. *Id.*, at 192. Under these facts, the Court held that reapportionment claims were justiciable because the plaintiffs—who all claimed to be eligible voters—had alleged a "debasement of their votes." *Id.*, at 194, and n. 15, 204 (internal quotation marks omitted).

The Court similarly emphasized equal treatment of eligible voters in *Gray* v. *Sanders*, 372 U. S. 368 (1963). That case involved a challenge to Georgia's "county unit" system of voting. *Id.*, at 370. This system, used by the State's Democratic Party to nominate candidates in its primary, gave each county two votes for every representative that the county had in the lower House of its General Assembly. Voting was then done by county, with the winner in each county taking all of that county's votes. The Democratic Party nominee was the candidate who had won the most county-unit votes, not the person who had won the most individual votes. *Id.*, at 370–371. The effect of this system was to give heavier weight to rural ballots than to urban ones. The Court held that the system violated the one-person, one-vote principle. *Id.*, at 379–381, and n. 12. In so holding, the Court emphasized that the right at issue belongs to "all qualified voters" and is the right to have one's vote "counted once" and protected against dilution. *Id.*, at 380.

In applying the one-person, one-vote principle to state legislative districts, the Court has also emphasized vote dilution, which also supports the notion that the one-person, one-vote principle ensures equality among eligible voters. It

did so most notably in *Reynolds*. In that case, Alabama had failed to reapportion its state legislature for decades, resulting in population-variance ratios of up to about 41 to 1 in the State Senate and up to about 16 to 1 in the House. 377 U. S., at 545. In explaining why Alabama's failure to reapportion violated the Equal Protection Clause, this Court stated that "an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State." *Id.*, at 568.

This Court's post-*Reynolds* decisions likewise define the one-person, one-vote principle in terms of eligible voters, and thus imply that States should be allocating districts with eligible voters in mind. The Court suggested as much in *Hadley* v. *Junior College Dist. of Metropolitan Kansas City*, 397 U. S. 50 (1970). That case involved Missouri's system permitting separate school districts to establish a joint junior college district. Six trustees were to oversee the joint district, and they were apportioned on the basis of the relative numbers of school-aged children in each subsidiary district. *Id.*, at 51. The Court held that this plan violated the Equal Protection Clause because "the trustees of this junior college district [must] be apportioned in a manner that does not deprive any voter of his right to have his own vote given as much weight, as far as is practicable, as that of any other voter in the junior college district." *Id.*, at 52. In so holding, the Court emphasized that *Reynolds* had "called attention to prior cases indicating that a qualified voter has a constitutional right to vote in elections without having his vote wrongfully denied, debased, or diluted." *Hadley*, 397 U. S., at 52; see *id.*, at 52–53.

In contrast to this oft-stated aspiration of giving equal treatment to eligible voters, the Court has also expressed a different understanding of the one-person, one-vote principle. In several cases, the Court has suggested that one person, one vote protects the interests of *all* individuals in a

district, whether they are eligible voters or not. In *Reynolds*, for example, the Court said that "the fundamental principle of representative government in this country is one of equal representation for equal numbers of people." 377 U. S., at 560–561; see also *ante*, at 71–72 (collecting cases). Under this view, States cannot comply with the Equal Protection Clause by equalizing the number of eligible voters in each district. They must instead equalize the total population per district.

In line with this view, the Court has generally focused on total population, not the total number of voters, when determining a State's compliance with the one-person, one-vote requirement. In *Gaffney* v. *Cummings*, 412 U. S. 735, 750–751 (1973), for example, the Court upheld state legislative districts that had a maximum deviation of 7.83% when measured on a total-population basis. In contrast, in *Chapman* v. *Meier*, 420 U. S. 1, 21–22, 26–27 (1975), the Court struck down a court-ordered reapportionment that had a total deviation of 20.14% based on total population. This plan, in the Court's view, failed to "achieve the goal of population equality with little more than *de minimis* variation." *Id.*, at 27.

This lack of clarity in our redistricting cases has left States with little guidance about how their political institutions must be structured. Although this Court has required that state legislative districts "be apportioned on a population basis," *Reynolds*, *supra*, at 568, it has yet to tell the States whether they are limited in choosing "the relevant population that [they] must equally distribute," *Chen* v. *Houston*, 532 U. S. 1046, 1047 (2001) (THOMAS, J., dissenting from denial of certiorari) (internal quotation marks omitted). Because the Court has not provided a firm account of what States must do when districting, States are left to guess how much flexibility (if any) they have to use different methods of apportionment.

II

This inconsistency (if not opacity) is not merely a consequence of the Court's equivocal statements on one person, one vote. The problem is more fundamental. There is simply no way to make a principled choice between interpreting one person, one vote as protecting eligible voters or as protecting total inhabitants within a State. That is because, though those theories are noble, the Constitution does not make either of them the exclusive means of apportionment for state and local representatives. In guaranteeing to the States a "Republican Form of Government," Art. IV, § 4, the Constitution did not resolve whether the ultimate basis of representation is the right of citizens to cast an equal ballot or the right of all inhabitants to have equal representation. The Constitution instead reserves these matters to the people. The majority's attempt today to divine a single "'theory of the Constitution'"—apportionment based on representation, *ante*, at 67 (quoting Cong. Globe, 39th Cong., 1st Sess., 2766–2767 (1866))—rests on a flawed reading of history and wrongly picks one side of a debate that the Framers did not resolve in the Constitution.

A

The Constitution lacks a single, comprehensive theory of representation. The Framers understood the tension between majority rule and protecting fundamental rights from majorities. This understanding led to a "mixed" constitutional structure that did not embrace any single theory of representation but instead struck a compromise between those who sought an equitable system of representation and those who were concerned that the majority would abuse plenary control over public policy. As Madison wrote, "A dependence on the people is no doubt the primary controul on the government; but experience has taught mankind the necessity of auxiliary precautions." The Federalist No. 51,

p. 349 (J. Cooke ed. 1961). *This* was the theory of the Constitution. The Framers therefore made difficult compromises on the apportionment of federal representation, and they did not prescribe any one theory of how States had to divide their legislatures.

1

Because, in the view of the Framers, ultimate political power derives from citizens who were "created equal," Declaration of Independence ¶2, beliefs in equality of representation—and by extension, majority rule—influenced the constitutional structure. In the years between the Revolution and the framing, the Framers experimented with different ways of securing the political system against improper influence. Of all the "electoral safeguards for the representational system," the most critical was "equality of representation." G. Wood, The Creation of the American Republic 1776–1787, p. 170 (1998) (Wood).

The Framers' preference for apportionment by representation (and majority rule) was driven partially by the belief that all citizens were inherently equal. In a system where citizens were equal, a legislature should have "equal representation" so that "equal interests among the people should have equal interests in [the assembly]." Thoughts on Government, in 4 Works of John Adams 195 (C. Adams ed. 1851). The British Parliament fell short of this goal. In addition to having hereditary nobility, more than half of the members of the democratic House of Commons were elected from sparsely populated districts—so-called "rotten boroughs." Wood 171; *Baker*, 369 U. S., at 302–303 (Frankfurter, J., dissenting).

The Framers' preference for majority rule also was a reaction to the shortcomings of the Articles of Confederation. Under the Articles, each State could cast one vote regardless of population and Congress could act only with the assent of nine States. Articles of Confederation, Art. IX, cl. 6; *id.*, Art. X; *id.*, Art. XI. This system proved undesirable be-

cause a few small States had the ability to paralyze the National Legislature. See The Federalist No. 22, at 140–141 (A. Hamilton).

Consequently, when the topic of dividing representation came up at the Constitutional Convention, some Framers advocated proportional representation throughout the National Legislature. 1 Records of the Federal Convention of 1787, pp. 471–473 (M. Farrand ed. 1911). Alexander Hamilton voiced concerns about the unfairness of allowing a minority to rule over a majority. In explaining at the Convention why he opposed giving States an equal vote in the National Legislature, Hamilton asked rhetorically, "If . . . three states contain a majority of the inhabitants of America, ought they to be governed by a minority?" *Id.*, at 473; see also The Federalist No. 22, at 141 (Hamilton) (objecting to supermajoritarian voting requirements because they allow an entrenched minority to "controul the opinion of a majority respecting the best mode of conducting [the public business]"). James Madison, too, opined that the general Government needed a direct mandate from the people. If federal "power [were] not immediately derived from the people, in proportion to their numbers," according to Madison, the Federal Government would be as weak as Congress under the Articles of Confederation. 1 Records of the Federal Convention of 1787, at 472.

In many ways, the Constitution reflects this preference for majority rule. To pass Congress, ordinary legislation requires a simple majority of present Members to vote in favor. And some features of the apportionment for the House of Representatives reflected the idea that States should wield political power in approximate proportion to their number of inhabitants. *Ante*, at 64–67. Thus, "equal representation for equal numbers of people," *ante*, at 68 (internal quotation marks omitted and emphasis deleted), features prominently in how representatives are apportioned among the States. These features of the Constitution reflect the preference of

some members of the founding generation for equality of representation. But, as explained below, this is not the single "theory of the Constitution."

2

The Framers also understood that unchecked majorities could lead to tyranny of the majority. As a result, many viewed antidemocratic checks as indispensable to republican government. And included among the antidemocratic checks were legislatures that deviated from perfect equality of representation.

The Framers believed that a proper government promoted the common good. They conceived this good as objective and not inherently coextensive with majoritarian preferences. *S*ee, *e. g.*, The Federalist No. 1, at 4 (Hamilton) (defining the common good or "public good" as the "true interests" of the community); *id.*, No. 10, at 57 (Madison) ("the permanent and aggregate interests of the community"). For government to promote the common good, it had to do more than simply obey the will of the majority. See, *e. g.*, *ibid.* (discussing majoritarian factions). Government must also protect fundamental rights. See Declaration of Independence ¶2; 1 W. Blackstone, Commentaries *124 ("[T]he principal aim of society is to protect individuals in the enjoyment of those absolute rights, which are vested in them by the immutable laws of nature").

Of particular concern for the Framers was the majority of people violating the property rights of the minority. Madison observed that "the most common and durable source of factions, has been the various and unequal distribution of property." The Federalist No. 10, at 59. A poignant example occurred in Massachusetts. In what became known as Shays' Rebellion, armed debtors attempted to block legal actions by creditors to recover debts. Although that rebellion was ultimately put down, debtors sought relief from state legislatures "under the auspices of Constitutional forms." Letter from James Madison to Thomas Jefferson (Apr. 23,

1787), in 11 The Papers of Thomas Jefferson 307 (J. Boyd ed. 1955); see Wood 412–413. With no structural political checks on democratic lawmaking, creditors found their rights jeopardized by state laws relieving debtors of their obligation to pay and authorizing forms of payment that devalued the contracts. McConnell, Contract Rights and Property Rights: A Case Study in the Relationship Between Individual Liberties and Constitutional Structures, 76 Cal. L. Rev. 267, 280–281 (1988); see also *Fletcher* v. *Peck*, 6 Cranch 87, 137–138 (1810) (Marshall, C. J.) (explaining that the Contract Clause came from the Framers' desire to "shield themselves and their property from the effects of those sudden and strong passions to which men are exposed").

Because of the Framers' concerns about placing unchecked power in political majorities, the Constitution's majoritarian provisions were only part of a complex republican structure. The Framers also placed several antidemocratic provisions in the Constitution. The original Constitution permitted only the direct election of representatives. Art. I, § 2, cl. 1. Senators and the President were selected indirectly. See Art. I, § 3, cl. 1; Art. II, § 1, cls. 2–3. And the "Great Compromise" guaranteed large and small States voting equality in the Senate. By malapportioning the Senate, the Framers prevented large States from outvoting small States to adopt policies that would advance the large States' interests at the expense of the small States. See The Federalist No. 62, at 417 (Madison).

These countermajoritarian measures reflect the Framers' aspirations of promoting competing goals. Rejecting a hereditary class system, they thought political power resided with the people. At the same time, they sought to check majority rule to promote the common good and mitigate threats to fundamental rights.

B

As the Framers understood, designing a government to fulfill the conflicting tasks of respecting the fundamental

equality of persons while promoting the common good requires making incommensurable tradeoffs. For this reason, they did not attempt to restrict the States to one form of government.

Instead, the Constitution broadly required that the States maintain a "Republican Form of Government." Art. IV, § 4. But the Framers otherwise left it to States to make tradeoffs and reconcile the competing goals.

Republican governments promote the common good by placing power in the hands of the people, while curtailing the majority's ability to invade the minority's fundamental rights. The Framers recognized that there is no universal formula for accomplishing these goals. At the framing, many state legislatures were bicameral, often reflecting multiple theories of representation. Only "[s]ix of the original thirteen states based representation in both houses of their state legislatures on population." Hayden, The False Promise of One Person, One Vote, 102 Mich. L. Rev. 213, 218 (2003). In most States, it was common to base representation, at least in part, on the State's political subdivisions, even if those subdivisions varied heavily in their populations. Wood 171; *Baker*, 369 U. S., at 307–308 (Frankfurter, J., dissenting).

Reflecting this history, the Constitution continued to afford States significant leeway in structuring their "Republican" governments. At the framing, "republican" referred to "[p]lacing the government in the people," and a "republick" was a "state in which the power is lodged in more than one." S. Johnson, A Dictionary of the English Language (7th ed. 1785); see also The Federalist No. 39, at 251 (Madison) ("[W]e may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour"). By requiring the States to have republican governments, the Constitution

prohibited them from having monarchies and aristocracies. See *id.*, No. 43, at 291. Some would argue that the Constitution also prohibited States from adopting direct democracies. Compare Wood 222–226 ("For most constitution-makers in 1776, republicanism was not equated with democracy") with A. Amar, America's Constitution: A Biography 276–281 (2005) (arguing that the provision prohibited monarchies and aristocracies but not direct democracy); see also The Federalist No. 10, at 62 (Madison) (distinguishing a "democracy" and a "republic"); *id.*, No. 14, at 83–84 (same).

Beyond that, however, the Constitution left matters open for the people of the States to decide. The Constitution says nothing about what type of republican government the States must follow. When the Framers wanted to deny powers to state governments, they did so explicitly. See, *e. g.*, Art. I, § 10, cl. 1 ("No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts").

None of the Reconstruction Amendments changed the original understanding of republican government. Those Amendments brought blacks within the existing American political community. The Fourteenth Amendment pressured States to adopt universal male suffrage by reducing a noncomplying State's representation in Congress. Amdt. 14, § 2. And the Fifteenth Amendment prohibited restricting the right of suffrage based on race. Amdt. 15, § 1. That is as far as those Amendments went. As Justice Harlan explained in *Reynolds*, neither Amendment provides a theory of how much "weight" a vote must receive, nor do they require a State to apportion both Houses of their legislature solely on a population basis. See 377 U. S., at 595–608 (dissenting opinion). And JUSTICE ALITO quite convincingly demonstrates why the majority errs by reading a theory of equal representation into the apportionment provision in § 2 of the Fourteenth Amendment. See *post*, at 98–103 (opinion concurring in judgment).

C

The Court's attempt to impose its political theory upon the States has produced a morass of problems. These problems are antithetical to the values that the Framers embraced in the Constitution. These problems confirm that the Court has been wrong to entangle itself with the political process.

First, in embracing one person, one vote, the Court has arrogated to the Judiciary important value judgments that the Constitution reserves to the people. In *Reynolds*, for example, the Court proclaimed that "[l]egislators represent people, not trees or acres"; that "[l]egislators are elected by voters, not farms or cities or economic interests"; and that, accordingly, electoral districts must have roughly equal population. 377 U. S., at 562–563. As I have explained, the Constitution permits, but does not impose, this view. Beyond that, *Reynolds*' assertions are driven by the belief that there is a single, correct answer to the question of how much voting strength an individual citizen should have. These assertions overlook that, to control factions that would legislate against the common good, individual voting strength must sometimes yield to countermajoritarian checks. And this principle has no less force within States than it has for the federal system. See The Federalist No. 10, at 63–65 (Madison) (recognizing that smaller republics, such as the individual States, are more prone to capture by special interests). Instead of large States versus small States, those interests may pit urban areas versus rural, manufacturing versus agriculture, or those with property versus those without. Cf. *Reynolds*, *supra*, at 622–623 (Harlan, J., dissenting). There is no single method of reconciling these competing interests. And it is not the role of this Court to calibrate democracy in the vain search for an optimum solution.

The Government argues that apportioning legislators by any metric other than total population "risks rendering residents of this country who are ineligible, unwilling, or unable

to vote as invisible or irrelevant to our system of representative democracy." Brief for United States as *Amicus Curiae* 27. But that argument rests on the faulty premise that "our system of representative democracy" requires specific groups to have representation in a specific manner. As I have explained, the Constitution does not impose that requirement. See Parts II–A, II–B, *supra*. And as the Court recently reminded us, States are free to serve as "'laboratories'" of democracy. *Arizona State Legislature* v. *Arizona Independent Redistricting Comm'n*, 576 U. S. 787, 817 (2015). That "laboratory" extends to experimenting about the nature of democracy itself.

Second, the Court's efforts to monitor the political process have failed to provide any consistent guidance for the States. Even if it were justifiable for this Court to enforce some principle of majority rule, it has been unable to do so in a principled manner. Our precedents do not address the myriad other ways that minorities (or fleeting majorities) entrench themselves in the political system. States can place policy choices in their constitutions or have supermajoritarian voting rules in a legislative assembly. See, *e. g.*, N. Y. Const., Art. V, § 7 (constitutionalizing public employee pensions); Ill. Const., Art. VII, § 6(g) (requiring a three-fifths vote of the General Assembly to pre-empt certain local ordinances). In theory, of course, it does not seem to make a difference if a state legislature is unresponsive to the majority of residents because the state assembly requires a 60% vote to pass a bill or because 40% of the population elects 51% of the representatives.

So far as the Constitution is concerned, there is no single "correct" way to design a republican government. Any republic will have to reconcile giving power to the people with diminishing the influence of special interests. The wisdom of the Framers was that they recognized this dilemma and left it to the people to resolve. In trying to impose its own theory of democracy, the Court is hopelessly adrift amid po-

litical theory and interest-group politics with no guiding legal principles.

III

This case illustrates the confusion that our cases have wrought. The parties and the Government offer three positions on what this Court's one-person, one-vote cases require States to equalize. Under appellants' view, the Fourteenth Amendment protects the right to an equal vote. Brief for Appellants 26. Appellees, in contrast, argue that the Fourteenth Amendment protects against invidious discrimination; in their view, no such discrimination occurs when States have a rational basis for the population base that they select, even if that base leaves eligible voters malapportioned. Brief for Appellees 16–17. And, the Solicitor General suggests that reapportionment by total population is the only permissible standard because *Reynolds* recognized a right of "equal representation for equal numbers of people." Brief for United States as *Amicus Curiae* 17.

Although the majority does not choose among these theories, it necessarily denies that the Equal Protection Clause protects the right to cast an equally weighted ballot. To prevail, appellants do not have to deny the importance of equal representation. Because States can equalize both total population and total voting power within the districts, they have to show only that the right to cast an equally weighted vote is part of the one-person, one-vote right that we have recognized. But the majority declines to find such a right in the Equal Protection Clause. *Ante*, at 73–75. Rather, the majority acknowledges that "[f]or every sentence appellants quote from the Court's opinions [establishing a right to an equal vote], one could respond with a line casting the one-person, one-vote guarantee in terms of equality of representation, not voter equality." *Ante*, at 71. Because our precedents are not consistent with appellants' position—that the only constitutionally available choice for

States is to allocate districts to equalize eligible voters—the majority concludes that appellants' challenge fails. *Ante*, at 71–75.

I agree with the majority's ultimate disposition of this case. As far as the original understanding of the Constitution is concerned, a State has wide latitude in selecting its population base for apportionment. See Part II–B, *supra*. It can use total population, eligible voters, or any other nondiscriminatory voter base. *Ibid.* And States with a bicameral legislature can have some mixture of these theories, such as one population base for its lower house and another for its upper chamber. *Ibid.*

Our precedents do not compel a contrary conclusion. Appellants are correct that this Court's precedents have primarily based its one-person, one-vote jurisprudence on the theory that eligible voters have a right against vote dilution. *E. g.*, *Hadley*, 397 U. S., at 52–53; *Reynolds*, 377 U. S., at 568. But this Court's jurisprudence has vacillated too much for me to conclude that the Court's precedents preclude States from allocating districts based on total population instead. See *Burns* v. *Richardson*, 384 U. S. 73, 92 (1966) (recognizing that States may choose other nondiscriminatory population bases). Under these circumstances, the choice is best left for the people of the States to decide for themselves how they should apportion their legislature.

* * *

There is no single "correct" method of apportioning state legislatures. And the Constitution did not make this Court "a centralized politburo appointed for life to dictate to the provinces the 'correct' theories of democratic representation, [or] the 'best' electoral systems for securing truly 'representative' government." *Holder* v. *Hall*, 512 U. S. 874, 913 (1994) (THOMAS, J., concurring in judgment). Because the majority continues that misguided search, I concur only in the judgment.

JUSTICE ALITO, with whom JUSTICE THOMAS joins except as to Part III–B, concurring in the judgment.

The question that the Court must decide in this case is whether Texas violated the "one-person, one-vote" principle established in *Reynolds* v. *Sims*, 377 U. S. 533 (1964), by adopting a legislative redistricting plan that provides for districts that are roughly equal in total population. Appellants contend that Texas was required to create districts that are equal in the number of eligible voters, but I agree with the Court that Texas' use of total population did not violate the one-person, one-vote rule.

I

Both practical considerations and precedent support the conclusion that the use of total population is consistent with the one-person, one-vote rule. The decennial census required by the Constitution tallies total population. Art. I, § 2, cl. 3; Amdt. 14, § 2. These statistics are more reliable and less subject to manipulation and dispute than statistics concerning eligible voters. Since *Reynolds*, States have almost uniformly used total population in attempting to create legislative districts that are equal in size. And with one notable exception, *Burns* v. *Richardson*, 384 U. S. 73 (1966), this Court's post-*Reynolds* cases have likewise looked to total population. Moreover, much of the time, creating districts that are equal in total population also results in the creation of districts that are at least roughly equal in eligible voters. I therefore agree that States are permitted to use total population in redistricting plans.

II

Although this conclusion is sufficient to decide the case before us, Texas asks us to go further and to hold that States, while generally free to use total population statistics, are not barred from using eligible voter statistics. Texas points to *Burns*, in which this Court held that Hawaii did not violate the one-person, one-vote principle by adopting a plan that

sought to equalize the number of registered voters in each district.

Disagreeing with Texas, the Solicitor General dismisses *Burns* as an anomaly and argues that the use of total population is constitutionally required. The Solicitor General contends that the one-person, one-vote rule means that all persons, whether or not they are eligible to vote, are entitled to equal representation in the legislature. Accordingly, he argues, legislative districts must be equal in total population even if that results in districts that are grossly unequal in the number of eligible voters, a situation that is most likely to arise where aliens are disproportionately concentrated in some parts of a State.

This argument, like that advanced by appellants, implicates very difficult theoretical and empirical questions about the nature of representation. For centuries, political theorists have debated the proper role of representatives,[1] and political scientists have studied the conduct of legislators and

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[1] See, *e. g.*, H. Pitkin, The Concept of Representation 4 (1967) ("[D]iscussions of representation are marked by long-standing, persistent controversies which seem to defy solution"); *ibid.* ("Another vexing and seemingly endless controversy concerns the proper relation between representative and constituents"); Political Representation i (I. Shapiro, S. Stokes, E. Wood, & A. Kirshner eds. 2009) ("[R]elations between the democratic ideal and the everyday practice of political representation have never been well defined and remain the subject of vigorous debate among historians, political theorists, lawyers, and citizens"); *id.*, at 12 ("[W]e need a better understanding of these complex relations in their multifarious parts before aspiring to develop any general theory of representation"); S. Dovi, Political Representation, The Stanford Encyclopedia of Philosophy (E. Zalta ed. Spring 2014) ("[O]ur common understanding of political representation is one that contains different, and conflicting, conceptions of how political representatives should represent and so holds representatives to standards that are mutually incompatible"), online at http://plato.stanford.edu/archives/spr2014/entries/political-representation (all Internet materials as last visited Mar. 31, 2016); *ibid.* ("[W]hat exactly representatives *do* has been a hotly contested issue").

the interests that they actually advance.[2] We have no need to wade into these waters in this case, and I would not do so. Whether a State is permitted to use some measure other than total population is an important and sensitive question that we can consider if and when we have before us a state districting plan that, unlike the current Texas plan, uses something other than total population as the basis for equalizing the size of districts.

III

A

The Court does not purport to decide whether a State may base a districting plan on something other than total population, but the Court, picking up a key component of the Solicitor General's argument, suggests that the use of total population is supported by the Constitution's formula for allocating seats in the House of Representatives among the States. Because House seats are allocated based on total population, the Solicitor General argues, the one-person, one-vote principle requires districts that are equal in total population. I write separately primarily because I cannot endorse this meretricious argument.

First, the allocation of congressional representation sheds little light on the question presented by the Solicitor Gener-

[2] See, *e. g.*, Andeweg, Roles in Legislatures, in The Oxford Handbook of Legislative Studies 268 (S. Martin, T. Saalfeld, & K. Strøm eds. 2014) (explaining that the social sciences have not "succeeded in distilling [an] unambiguous concept[ion]" of the "role" of a legislator); Introduction, *id.*, at 11 ("Like political science in general, scholars of legislatures approach the topic from different and, at least partially, competing theoretical perspectives"); Diermeier, Formal Models of Legislatures, *id.*, at 50 ("While the formal study of legislative politics has come a long way, much remains to be done"); Best & Vogel, The Sociology of Legislators and Legislatures, *id.*, at 75–76 ("Stable representative democracies are . . . institutional frameworks and informal arrangements which achieve an equilibrium between the competing demands [of constituents and political opponents]. How this situation affects the daily interactions of legislators is largely unknown").

al's argument because that allocation plainly violates one person, one vote.[3] This is obviously true with respect to the Senate: Although all States have equal representation in the Senate, the most populous State (California) has 66 times as many people as the least populous (Wyoming). See United States Census 2010, Resident Population Data, http://www.census.gov/2010census/data/apportionment-pop-text.php. And even the allocation of House seats does not comport with one person, one vote. Every State is entitled to at least one seat in the House, even if the State's population is lower than the average population of House districts nationwide. U. S. Const., Art. I, § 2, cl. 3. Today, North Dakota, Vermont, and Wyoming all fall into that category. See United States Census 2010, Apportionment Data, http://www.census.gov/2010census/data/apportionment-data-text.php. If one person, one vote applied to allocation of House seats among States, I very much doubt the Court would uphold a plan where one Representative represents fewer than 570,000 people in Wyoming but nearly a million people next door in Montana.[4]

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[3] As JUSTICE THOMAS notes, *ante*, at 82–84 (opinion concurring in judgment), the plan for the House of Representatives was based in large part on the view that there should be "equality of representation," but that does not answer the question whether it is eligible voters (as appellants urge), all citizens, or all residents who should be equally represented. The Constitution allocates House seats based on total inhabitants, but as I explain, the dominant, if not exclusive, reason for that choice was the allocation of political power among the States.

[4] The Court brushes off the original Constitution's allocation of congressional representation by narrowing in on the Fourteenth Amendment's ratification debates. *Ante*, at 68, n. 10. But those debates were held in the shadow of that original allocation. And what Congress decided to do after those debates was to retain the original apportionment formula—minus the infamous three-fifths clause—and attach a penalty to the disfranchisement of eligible voters. In short, the Fourteenth Amendment made no structural changes to apportionment that bear on the one-person, one-vote rule.

Second, *Reynolds* v. *Sims* squarely rejected the argument that the Constitution's allocation of congressional representation establishes the test for the constitutionality of a state legislative districting plan. Under one Alabama districting plan before the Court in that case, seats in the State Senate were allocated by county, much as seats in the United States Senate are allocated by State. (At that time, the upper Houses in most state legislatures were similar in this respect.) The *Reynolds* Court noted that "[t]he system of representation in the two Houses of the Federal Congress" was "conceived out of compromise and concession indispensable to the establishment of our federal republic." 377 U. S., at 574. Rejecting Alabama's argument that this system supported the constitutionality of the State's apportionment of senate seats, the Court concluded that "the Founding Fathers clearly had no intention of establishing a pattern or model for the apportionment of seats in state legislatures when the system of representation in the Federal Congress was adopted." *Id.*, at 573; see also *Gray* v. *Sanders*, 372 U. S. 368, 378 (1963).

Third, as the *Reynolds* Court recognized, reliance on the Constitution's allocation of congressional representation is profoundly ahistorical. When the formula for allocating House seats was first devised in 1787 and reconsidered at the time of the adoption of the Fourteenth Amendment in 1868, the overwhelming concern was far removed from any abstract theory about the nature of representation. Instead, the dominant consideration was the distribution of political power among the States.

The original Constitution's allocation of House seats involved what the *Reynolds* Court rather delicately termed "compromise and concession." 377 U. S., at 574. Seats were apportioned among the States "according to their respective Numbers," and these "Numbers" were "determined by adding to the whole Number of free Persons . . . three fifths of all other Persons." Art. I, § 2, cl. 3. The phrase "all other Persons" was a euphemism for slaves. Delegates

to the Constitutional Convention from the slave States insisted on this infamous clause as a condition of their support for the Constitution, and the clause gave the slave States more power in the House and in the electoral college than they would have enjoyed if only free persons had been counted.[5] These slave-state delegates did not demand slave representation based on some philosophical notion that "representatives serve all residents, not just those eligible or registered to vote." *Ante*, at 74.[6]

B

The Court's account of the original Constitution's allocation also plucks out of context Alexander Hamilton's statement on apportionment. The Court characterizes Hamilton's words (more precisely, Robert Yates's summary of his fellow New Yorker's words) as endorsing apportionment by *total* population, and positions those words as if Hamilton were talking about apportionment in the House. *Ante*, at 65. Neither is entirely accurate. The "quote" comes from the

[5] See A. Amar, America's Constitution: A Biography 87–98 (2005) (Amar); *id.*, at 94 ("The best justification for the three-fifths clause sounded in neither republican principle nor Revolutionary ideology, but raw politics"); see also *id.*, at 88–89 (explaining that the "protective coloring" camouflaging the slave States' power grab "would have been wasted had the Constitution pegged apportionment to the number of voters, with a glaringly inconsistent add-on for nonvoting slaves"); cf. G. Van Cleve, A Slaveholders' Union 126 (2010) ("[T]he slave states saw slave representation as a direct political protection for wealth consisting of slave property against possible Northern attacks on slavery, and told the Convention unequivocally that they needed such protection in order to obtain ratification of the Constitution"); *id.*, at 133–134 ("The compromise on representation awarded disproportionate shares of representative influence to certain vested political-economy interests, one of which was the slave labor economies").

[6] See Amar 92 ("But masters did not as a rule claim to virtually represent the best interests of their slaves. Masters, after all, claimed the right to maim and sell slaves at will, and to doom their yet unborn posterity to perpetual bondage. If this could count as virtual representation, anything could").

controversy over Senate apportionment, where the debate turned on whether to apportion by population *at all*. See generally 1 Records of the Federal Convention of 1787, pp. 470–474 (M. Farrand ed. 1911). Hamilton argued in favor of allocating Senate seats by population:

> "The question, after all is, is it our interest in modifying this general government to sacrifice individual rights to the preservation of the rights of an *artificial* being, called states? There can be no truer principle than this—that every individual of the community at large has an equal right to the protection of government. If therefore three states contain a majority of the inhabitants of America, ought they to be governed by a minority? Would the inhabitants of the great states ever submit to this? If the smaller states maintain this principle, through a love of power, will not the larger, from the same motives, be equally tenacious to preserve their power?" *Id.*, at 473.

As is clear from the passage just quoted, Hamilton (according to Yates) thought the fight over apportionment was about naked *power*, not some lofty ideal about the nature of representation. That interpretation is confirmed by James Madison's summary of the same statement by Hamilton: "The truth is it [meaning the debate over apportionment] is a contest for power, not for liberty. . . . The State of Delaware having 40,000 souls will *lose power*, if she has only $^1/_{10}$ of the votes allowed to Pa. having 400,000." *Id.*, at 466. Far from "[e]ndorsing apportionment based on total population," *ante*, at 65, Hamilton was merely acknowledging the obvious: that apportionment in the new National Government would be the outcome of a contest over raw political power, not abstract political theory.

C

After the Civil War, when the Fourteenth Amendment was being drafted, the question of the apportionment for-

mula arose again. Thaddeus Stevens, a leader of the so-called radical Republicans, unsuccessfully proposed that apportionment be based on eligible voters, rather than total population. The opinion of the Court suggests that the rejection of Stevens' proposal signified the adoption of the theory that representatives are properly understood to represent all of the residents of their districts, whether or not they are eligible to vote. *Ante*, at 66–67. As was the case in 1787, however, it was power politics, not democratic theory, that carried the day.

In making his proposal, Stevens candidly explained that the proposal's primary aim was to perpetuate the dominance of the Republican Party and the Northern States. Cong. Globe, 39th Cong., 1st Sess., 74 (1865); Van Alstyne, The Fourteenth Amendment, The "Right" To Vote, and the Understanding of the Thirty-Ninth Congress, 1965 S. Ct. Rev. 33, 45–47 (Van Alstyne). As Stevens spelled out, if House seats were based on total population, the power of the former slave States would be magnified. Prior to the Civil War, a slave had counted for only three-fifths of a person for purposes of the apportionment of House seats. As a result of the Emancipation Proclamation and the Thirteenth Amendment, the former slaves would now be fully counted even if they were not permitted to vote. By Stevens' calculation, this would give the South 13 additional votes in both the House and the electoral college. Cong. Globe, 39th Cong., 1st Sess., 74 (1865); Van Alstyne 46.

Stevens' proposal met with opposition in the Joint Committee on Reconstruction, including from, as the majority notes, James Blaine. *Ante*, at 66–67. Yet, as it does with Hamilton's, the majority plucks Blaine's words out of context:

> "[W]e have had several propositions to amend the Federal Constitution with respect to the basis of representation in Congress. These propositions . . . give to the States in future a representation proportioned to their voters instead of their inhabitants.

> "The effect contemplated and intended by this change is perfectly well understood, and on all hands frankly avowed. It is to deprive the lately rebellious States of the unfair advantage of a large representation in this House, based on their colored population, so long as that population shall be denied political rights by the legislation of those States. . . .
>
> "The direct object thus aimed at, as it respects the rebellious States, has been so generally approved that little thought seems to have been given to the incidental evils which the proposed constitutional amendment would inflict on a large portion of the loyal States—evils, in my judgment, so serious and alarming as to lead me to oppose the amendment in any form in which it has yet been presented. As an abstract proposition no one will deny that population is the true basis of representation; for women, children, and other non-voting classes may have as vital an interest in the legislation of the country as those who actually deposit the ballot. . . .
>
> "If voters instead of population shall be made the basis of representation certain results will follow, not fully appreciated perhaps by some who are now urgent for the change." Cong. Globe, 39th Cong., 1st Sess., at 141.

The "not fully appreciated" and "incidental evi[l]" was, in Blaine's view, the disruption to *loyal* States' representation in Congress. Blaine described how the varying suffrage requirements in loyal States could lead to, for instance, California's being entitled to eight seats in the House and Vermont's being entitled only to three, despite their having similar populations. *Ibid.*; see also 2 B. Ackerman, We the People: Transformations 164, 455, n. 5 (1998); Van Alstyne 47, 70. This mattered to Blaine because *both States were loyal* and so neither deserved to suffer a loss of relative political power. Blaine therefore proposed to apportion representatives by the "whole number of persons except those to whom civil or

political rights or privileges are denied or abridged by the constitution or laws of any State on account of race or color." Cong. Globe, 39th Cong., 1st Sess., at 142.

> "This is a very simple and very direct way, it seems to me, of reaching the result aimed at without embarrassment to any other question or interest. It leaves population as heretofore the basis of representation, does not disturb in any manner the harmonious relations of the loyal States, and it conclusively deprives the southern States of all representation in Congress on account of the colored population so long as those States may choose to abridge or deny to that population the political rights and privileges accorded to others." *Ibid.*

As should be obvious from these lengthy passages, Blaine recognized that the "generally approved" "result aimed at" was to deprive Southern States of political power; far from quibbling with that aim, he sought to *achieve it* while limiting the collateral damage to the loyal Northern States. See Van Alstyne 47.

Roscoe Conkling, whom the majority also quotes, *ante*, at 67, seemed to be as concerned with voter-based apportionment's "narrow[ing] the basis of taxation, and in some States seriously," as he was with abstract notions of representational equality. Cong. Globe, 39th Cong., 1st Sess., at 358; *id.*, at 359 ("representation should go with taxation"); *ibid.* (apportionment by citizenship "would narrow the basis of taxation and cause considerable inequalities in this respect, because the number of aliens in some States is very large, and growing larger now, when emigrants reach our shores at the rate of more than a State a year"). And Hamilton Ward, also quoted by the majority, *ante*, at 67, was primarily disturbed by "[t]he fact that one South Carolinian, whose hands are red with the blood of fallen patriots, and whose skirts are reeking with the odors of Columbia and Andersonville, will have a voice as potential in these Halls as two and a

half Vermont soldiers who have come back from the grandest battle-fields in history maimed and scarred in the contest with South Carolina traitors in their efforts to destroy this Government"—and only secondarily worried about the prospect of "taxation without representation." Cong. Globe, 39th Cong., 1st Sess., at 434.

Even Jacob Howard, he of the "'theory of the Constitution'" language, *ante*, at 67, bemoaned the fact that basing representation on total population would allow Southern States "to obtain an advantage which they did not possess before the rebellion and emancipation." Cong. Globe, 39th Cong., 1st Sess., at 2766. "I object to this. I think they cannot very consistently call upon us to grant them an additional number of Representatives simply because in consequence of their own misconduct they have lost the property [meaning slaves, whom slaveholders considered to be property] which they once possessed, and which served as a basis in great part of their representation." *Ibid.* The list could go on. The bottom line is that in the leadup to the Fourteenth Amendment, claims about representational equality were invoked, if at all, only in service of the *real* goal: preventing Southern States from acquiring too much power in the National Government.

After much debate, Congress eventually settled on the compromise that now appears in §2 of the Fourteenth Amendment. Under that provision, House seats are apportioned based on total population, but if a State wrongfully denies the right to vote to a certain percentage of its population, its representation is supposed to be reduced proportionally.[7] Enforcement of this remedy, however, is dependent

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[7] Section 2 provides:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judi-

on action by Congress, and—regrettably—the remedy was never used during the long period when voting rights were widely abridged. Amar 399.

In light of the history of Article I, §2, of the original Constitution and §2 of the Fourteenth Amendment, it is clear that the apportionment of seats in the House of Representatives was based in substantial part on the distribution of political power among the States and not merely on some theory regarding the proper nature of representation. It is impossible to draw any clear constitutional command from this complex history.

* * *

For these reasons, I would hold only that Texas permissibly used total population in drawing the challenged legislative districts. I therefore concur in the judgment of the Court.

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cial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

Needless to say, the reference in this provision to "male inhabitants . . . being twenty-one years of age" has been superseded by the Nineteenth and Twenty-sixth Amendments. But notably the reduction in representation is pegged to the proportion of (then) *eligible voters* denied suffrage. Section 2's representation-reduction provision makes no appearance in the Court's structural analysis.

Syllabus

NICHOLS *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 15–5238. Argued March 1, 2016—Decided April 4, 2016

The Sex Offender Registration and Notification Act (SORNA) makes it a federal crime for certain sex offenders to "knowingly fai[l] to register or update a registration," 18 U. S. C. § 2250(a)(3), and requires that offenders who move to a different State "shall, not later than 3 business days after each change of name, residence, employment, or student status," inform in person "at least 1 jurisdiction involved pursuant to [42 U. S. C. § 16913(a)] . . . of all changes" to required information, § 16913(c). A § 16913(a) jurisdiction is "each jurisdiction where the offender resides, . . . is an employee, and . . . is a student."

Petitioner Nichols, a registered sex offender who moved from Kansas to the Philippines without updating his registration, was arrested, escorted to the United States, and charged with violating SORNA. After conditionally pleading guilty, Nichols argued on appeal that SORNA did not require him to update his registration in Kansas. The Tenth Circuit affirmed his conviction, holding that though Nichols left Kansas, the State remained a "jurisdiction involved" for SORNA purposes.

Held: SORNA did not require Nichols to update his registration in Kansas once he departed the State. Pp. 108–112.

(a) SORNA's plain text dictates this holding. Critical here is § 16913(a)'s use of the present tense. Nichols once *resided* in Kansas, but after moving, he "resides" in the Philippines. It follows that once Nichols moved, he was no longer required to appear in Kansas because it was no longer a "jurisdiction involved." Nor was he required to appear in the Philippines, which is not a SORNA "jurisdiction." § 16911(10). Section 16913(c)'s requirements point to the same conclusion: Nichols could not have appeared in person in Kansas "after" leaving the State. SORNA's drafters could have required sex offenders to deregister in their departure jurisdiction before leaving the country had that been their intent. Pp. 108–110.

(b) The Government resists this straightforward reading. It argues that a jurisdiction where an offender registers remains "involved" even after the offender leaves, but that would require adding the extra clause "where the offender appears on a registry" to § 16913(a). Also unconvincing is the claim that § 16914(a)(3)'s requiring the offender to provide each address where he "*will* reside" shows that SORNA contemplates

the possibility of an offender's updating his registration before he actually moves. That provision merely lists the pieces of information to be updated; it says nothing about an obligation to update in the first place. Finally, the Government's argument that Nichols actually experienced two "changes" of residence—first, when he turned in his apartment keys in Kansas, and second, when he checked into his Manila hotel—is inconsistent with ordinary English usage. Pp. 110–111.

(c) Although "the most formidable argument concerning the statute's purposes [cannot] overcome the clarity [found] in the statute's text," *Kloeckner* v. *Solis*, 568 U. S. 41, 56, n. 4, the Court is mindful of those purposes and notes that its interpretation is not likely to create deficiencies in SORNA's scheme. Recent legislation by Congress, as well as existing state-law registration requirements, offers reassurance that sex offenders will not be able to escape punishment for leaving the United States without notifying their departure jurisdictions. Pp. 111–112.

775 F. 3d 1225, reversed.

ALITO, J., delivered the opinion for a unanimous Court.

Daniel T. Hansmeier argued the cause for petitioner. With him on the briefs were *Melody Brannon*, *Timothy J. Henry*, and *Paige A. Nichols*.

Curtis E. Gannon argued the cause for the United States. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Caldwell*, *Deputy Solicitor General Dreeben*, and *James I. Pearce*.

JUSTICE ALITO delivered the opinion of the Court.

Lester Ray Nichols, a registered sex offender living in the Kansas City area, moved to the Philippines without notifying Kansas authorities of his change in residence. For that omission Nichols was convicted of failing to update his sex-offender registration, in violation of 18 U. S. C. § 2250(a). We must decide whether federal law required Nichols to update his registration in Kansas to reflect his departure from the State.

I

A

Following the high-profile and horrific rape and murder of 7-year-old Megan Kanka by her neighbor, States in the early

1990's began enacting registry and community-notification laws to monitor the whereabouts of individuals previously convicted of sex crimes. See *Smith* v. *Doe*, 538 U. S. 84, 89 (2003); Filler, Making the Case for Megan's Law, 76 Ind. L. J. 315, 315–317 (2001). Congress followed suit in 1994 with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 108 Stat. 2038, 42 U. S. C. § 14071 *et seq.* (1994 ed.). Named after an 11-year-old who was kidnapped at gunpoint in 1989 (and who remains missing today), the Wetterling Act conditioned federal funds on States' enacting sex-offender registry laws meeting certain minimum standards. *Smith*, 538 U. S., at 89–90. "By 1996, every State, the District of Columbia, and the Federal Government had enacted some variation of" a sex-offender registry. *Id.*, at 90.

In 2006, Congress replaced the Wetterling Act with the Sex Offender Registration and Notification Act (SORNA), 120 Stat. 590, 42 U. S. C. § 16901 *et seq.* Two changes are pertinent here. First, Congress made it a federal crime for a sex offender who meets certain requirements to "knowingly fai[l] to register or update a registration as required by [SORNA]." 18 U. S. C. § 2250(a)(3); see *Carr* v. *United States*, 560 U. S. 438, 441–442 (2010). Second, Congress amended the provisions governing the registration requirements when an offender moves to a different State. The original Wetterling Act had directed States to require a sex offender to "register the new address with a designated law enforcement agency in another State *to which the person moves* not later than 10 days after such person establishes residence in the new State, if the new State has a registration requirement." 42 U. S. C. § 14071(b)(5) (1994 ed.) (emphasis added). Congress later amended this provision to direct States to require a sex offender to "report the change of address to the responsible agency *in the State the person is leaving*, and [to] comply with any registration requirement

in the new State of residence." 42 U. S. C. § 14071(b)(5) (2000 ed.) (emphasis added).

SORNA repealed this provision of the Wetterling Act. 120 Stat. 600. In its place, federal law now provides:

> "A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in *at least 1 jurisdiction involved pursuant to subsection (a)* and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry." 42 U. S. C. § 16913(c) (emphasis added).

Subsection (a), in turn, provides: "A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student." § 16913(a). A sex offender is required to notify only one "jurisdiction involved"; that jurisdiction must then notify a list of interested parties, including the other jurisdictions. §§ 16921(b)(1)–(7). The question presented in this case is whether the State a sex offender leaves—that is, the State where he formerly resided—qualifies as an "involved" jurisdiction under § 16913.

B

In 2003, Nichols was convicted of traveling with intent to engage in illicit sexual conduct with a minor, in violation of 18 U. S. C. § 2423(b). Although his offense predated SORNA's enactment, Nichols was nevertheless required upon his eventual release in December 2011 to register as a sex offender in Kansas, where he chose to settle. 28 CFR §72.3 (2015). Nichols complied with SORNA's registration requirements—until November 9, 2012, when he abruptly disconnected all of his telephone lines, deposited his apartment keys in his landlord's dropbox, and boarded a flight to Manila. When Nichols was a no-show at mandatory sex-offender treatment, a warrant was issued revoking his super-

vised release. With the assistance of American security forces, local police in Manila arrested Nichols in December 2012, and federal marshals then escorted him back to the United States, where he was charged with one count of "knowingly fail[ing] to register or update a registration as required by [SORNA]," 18 U. S. C. § 2250(a)(3). After unsuccessfully moving to dismiss the indictment on the ground that SORNA did not require him to update his registration in Kansas, Nichols conditionally pleaded guilty, reserving his right to appeal the denial of his motion.

The Tenth Circuit affirmed. 775 F. 3d 1225 (2014). Following its own precedent in *United States* v. *Murphy*, 664 F. 3d 798 (2011), the panel held that when a sex offender "'leaves a residence in a state, and then leaves the state entirely, that state remains a jurisdiction involved'" under § 16913. 775 F. 3d, at 1229. Over four dissenting votes, the court denied Nichols's petition for rehearing en banc. 784 F. 3d 666 (2015). In adhering to *Murphy*, the Tenth Circuit reentrenched a split created by the Eighth Circuit's decision in *United States* v. *Lunsford*, 725 F. 3d 859 (2013). Remarkably, *Lunsford* also involved a sex offender who moved from the Kansas City area—on the Missouri side—to the Philippines. Contra the Tenth Circuit's decision below, *Lunsford* held that that defendant had no obligation to update his registration in Missouri because a sex offender is required "to 'keep the registration current' in the jurisdiction where he 'resides,' not a jurisdiction where he 'resided.'" *Id.*, at 861 (citation omitted). We granted certiorari to resolve the split. 577 U. S. 972 (2015).

II

As noted, Nichols was required to "appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of" his change of residence. 42 U. S. C. § 16913(c). Subsection (a) mentions three possible jurisdictions: "where the offender resides, where the of-

fender is an employee, and where the offender is a student." § 16913(a). The Philippines is not a "jurisdiction" under SORNA; no foreign country is. See § 16911(10). Putting these provisions together, SORNA therefore requires a sex offender who changes his residence to appear, within three business days of the change, in person in at least one jurisdiction (but not a foreign country) where he resides, works, or studies, and to inform that jurisdiction of the address change. Critically, § 16913(a) uses only the present tense: "resides," "is an employee," "is a student." A person who moves from Leavenworth to Manila no longer "resides" (present tense) in Kansas; although he once *resided* in Kansas, after his move he "resides" in the Philippines. It follows that once Nichols moved to Manila, he was no longer required to appear in person in Kansas to update his registration, for Kansas was no longer a "jurisdiction involved pursuant to subsection (a)" of § 16913.

The requirement in § 16913(c) to appear in person and register "not later than 3 business days *after* each change of . . . residence" points to the same conclusion. Nichols could not have appeared in person in Kansas "after" leaving the State. To be sure, one may argue that the day before his departure was "not later than 3 business days after" his departure, but no one in ordinary speech uses language in such a strained and hypertechnical way.

If the drafters of SORNA had thought about the problem of sex offenders who leave the country and had sought to require them to (de)register in the departure jurisdiction, they could easily have said so; indeed, that is exactly what the amended Wetterling Act had required. 42 U. S. C. § 14071(b)(5) (2000 ed.) ("report the change of address to the responsible agency in the State the person is leaving"). It is also what Kansas *state* law requires: Nichols had a duty to notify, among other entities, "the registering law enforcement agency or agencies *where last registered*." Kan. Stat. Ann. § 22–4905(g) (2014 Cum. Supp.) (emphasis added).

Congress could have chosen to retain the language in the amended Wetterling Act, or to adopt locution similar to that of the Kansas statute (and echoed in the statutes of many other States, cf. Brief for Petitioner 6, n. 1). It did neither. SORNA's plain text—in particular, § 16913(a)'s consistent use of the present tense—therefore did not require Nichols to update his registration in Kansas once he no longer resided there.

III

The Government resists this straightforward reading of the statutory text, arguing instead that once an offender registers in a jurisdiction, "that jurisdiction necessarily *remains* 'involved pursuant to subsection (a),' because the offender continues to appear on its registry as a current resident." Brief for United States 24. But § 16913(a) lists only three possibilities for an "involved" jurisdiction: "where the offender resides, where the offender is an employee, and where the offender is a student." Notably absent is "where the offender appears on a registry." We decline the Government's invitation to add an extra clause to the text of § 16913(a). As we long ago remarked in another context, "[w]hat 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." *Iselin* v. *United States*, 270 U. S. 245, 251 (1926). Just so here.

Relatedly, the Government points out that among the pieces of information a sex offender must provide as part of his registration is "[t]he address of each residence at which the sex offender resides *or will reside*." § 16914(a)(3) (emphasis added). The use of the future tense, says the Government, shows that SORNA contemplates the possibility of an offender's updating his registration before actually moving. But § 16914(a) merely lists the pieces of information that a sex offender must provide if and when he updates his regis-

tration; it says nothing about whether the offender has an obligation to update his registration in the first place.

Finally, the Government argues that Nichols actually experienced not one but two "changes" of residence—the first when he "abandoned" his apartment in Leavenworth by turning in his keys, and the second when he checked into his hotel in Manila. On the Government's view, a sex offender's "residence information will change when he leaves the place where he has been residing, and it will change again when he arrives at his new residence. He must report both of those changes in a timely fashion." Brief for United States 21. We think this argument too clever by half; when someone moves from, say, Kansas City, Kansas, to Kansas City, Missouri, we ordinarily would not say he moved twice: once from Kansas City, Kansas, to a state of homelessness, and then again from homelessness to Kansas City, Missouri. Nor, were he to drive an RV between the cities, would we say that he changed his residence *four* times (from the house on the Kansas side of the Missouri River to a state of homelessness when he locks the door behind him; then to the RV when he climbs into the vehicle; then back to homelessness when he alights in the new house's driveway; and then, finally, to the new house in Missouri). And what if he were to move from Kansas to California and spend several nights in hotels along the way? Such ponderings cannot be the basis for imposing criminal punishment. "We interpret criminal statutes, like other statutes, in a manner consistent with ordinary English usage." *Abramski* v. *United States*, 573 U. S. 169, 196 (2014) (Scalia, J., dissenting); *Flores-Figueroa* v. *United States*, 556 U. S. 646, 652 (2009). In ordinary English, Nichols changed his residence just once: from Kansas to the Philippines.

We are mindful that SORNA's purpose was to "make more uniform what had remained 'a patchwork of federal and 50 individual state registration systems,' with 'loopholes and deficiencies' that had resulted in an estimated 100,000 sex

offenders becoming 'missing' or 'lost.'" *United States* v. *Kebodeaux*, 570 U. S. 387, 399 (2013) (citation omitted). Yet "even the most formidable argument concerning the statute's purposes could not overcome the clarity we find in the statute's text." *Kloeckner* v. *Solis*, 568 U. S. 41, 56, n. 4 (2012).

Our interpretation of the SORNA provisions at issue in this case in no way means that sex offenders will be able to escape punishment for leaving the United States without notifying the jurisdictions in which they lived while in this country. Congress has recently criminalized the "knowin[g] fail[ure] to provide information required by [SORNA] relating to intended travel in foreign commerce." International Megan's Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders, Pub. L. 114–119, § 6(b)(2), 130 Stat. 23, to be codified at 18 U. S. C. § 2250(b). Such information includes "anticipated dates and places of departure, arrival, or return[;] carrier and flight numbers for air travel[;] destination country and address or other contact information therein," et cetera. § 6(a)(1)(B), 130 Stat. 22, to be codified at 42 U. S. C. § 16914(a)(7). Both parties agree that the new law captures Nichols's conduct. Supp. Brief for United States 3; Reply Brief 10; Tr. of Oral Arg. 18, 35. And, of course, Nichols's failure to update his registration in Kansas violated state law. Kan. Stat. Ann. § 22–4905(g). We are thus reassured that our holding today is not likely to create "loopholes and deficiencies" in SORNA's nationwide sex-offender registration scheme.

* * *

The judgment of the Court of Appeals for the Tenth Circuit is reversed.

It is so ordered.

Syllabus

WOODS, WARDEN *v.* ETHERTON

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 15–723. Decided April 4, 2016

An anonymous tip that two white males traveling on I–96 between Detroit and Grand Rapids in a white Audi were possibly carrying cocaine led Michigan law enforcement officers to pull over a speeding vehicle driven by respondent Timothy Etherton. After discovering cocaine in a driver side door compartment, the officers arrested Etherton and his passenger, Ryan Pollie. Pursuant to a plea agreement, Pollie testified for the prosecution at Etherton's trial that he was not with Etherton when the cocaine was purchased and had nothing to do with it. Three officers testified as to the anonymous tip's content, and the prosecution also described the tip at closing. The court left unresolved an objection by Etherton's counsel that the recounting of the tip by one of the officers was hearsay, but it did instruct the jury that the tip was only admitted to show why the police acted as they did. The jury convicted Etherton of possession with intent to deliver cocaine, and his conviction was upheld on direct appeal. Etherton sought state postconviction relief, arguing, among other things, that the admission of the anonymous tip violated his rights under the Confrontation Clause of the Sixth Amendment, that his trial counsel was ineffective for failing to object to the tip on that ground, and that his appellate counsel was ineffective for failing to raise the Confrontation Clause and ineffective-assistance-of-trial-counsel claims. The state habeas court held that Etherton failed to show that appellate counsel's representation had been ineffective since counsel may have reasonably forgone any Confrontation Clause claim after concluding that trial counsel's failure to object was the product not of ineffectiveness but of strategy. And, the court concluded, Etherton had not been prejudiced by counsel's choice because there was ample evidence of his guilt absent the complained of errors. Etherton subsequently sought federal habeas relief, which the District Court denied. The Sixth Circuit reversed in relevant part, finding that Etherton's appellate counsel had been ineffective and that no fairminded jurist could conclude otherwise. First, the court concluded, the tip's contents had been admitted for their truth, which violated Etherton's right to confrontation. Next, the court found that Etherton had been prejudiced by the violation. Because the evidence of Etherton's guilt was not enough to convict him absent Pollie's testimony and because much

of Pollie's testimony was reflected in the tip's content, the court concluded, the jury could have improperly concluded that Pollie was testifying truthfully.

Held: In reaching its conclusions, the Sixth Circuit did not apply the appropriate standard of review under the Antiterrorism and Effective Death Penalty Act of 1996, which, under the circumstances here, required the federal court to afford "both the state court and the defense attorney the benefit of the doubt," *Burt* v. *Titlow*, 571 U. S. 12, 15. A fairminded jurist could conclude that the tip's repetition did not establish that the uncontested facts it conveyed were submitted for their truth. A jurist could place weight on the fact that the truth of the facts was not disputed or conclude that Etherton was not prejudiced when the tip and Pollie's testimony corresponded on uncontested facts, since Pollie himself was privy to the information contained in the tip. Nor would it be objectively unreasonable for a fairminded judge to conclude—especially in light of the deference afforded counsel—that trial counsel's failure to raise the confrontation claim was not due to incompetence but was because the facts in the tip were uncontested and consistent with Etherton's defense or to conclude that appellate counsel was not incompetent in drawing the same conclusion. Finally, a fairminded jurist—applying the deference due the state court—could conclude that the court was not objectively unreasonable in deciding that appellate counsel was not incompetent when she determined that trial counsel was not incompetent.

Certiorari granted; 800 F. 3d 737, reversed.

PER CURIAM.

In the fall of 2006, Michigan law enforcement received an anonymous tip that two white males were traveling on I–96 between Detroit and Grand Rapids in a white Audi, possibly carrying cocaine. Officers spotted a vehicle matching that description and pulled it over for speeding. Respondent Timothy Etherton was driving; Ryan Pollie was in the passenger seat. A search of the car uncovered 125.2 grams of cocaine in a compartment at the bottom of the driver side door. Both Etherton and Pollie were arrested.

Etherton was tried in state court on a single count of possession with intent to deliver cocaine. At trial the facts reflected in the tip were not contested. The central point of contention was instead whether the cocaine belonged to

Etherton or Pollie. Pollie testified for the prosecution pursuant to a plea agreement. He claimed that he had accompanied Etherton from Grand Rapids to Detroit, not knowing that Etherton intended to obtain cocaine there. According to Pollie, once the pair arrived in Detroit, Etherton left him alone at a restaurant and drove off, returning some 45 minutes later. It was only after they were headed back to Grand Rapids that Etherton revealed he had obtained the drugs.

The prosecution also called several police officers to testify. Three of the officers described the content of the anonymous tip leading to Etherton's arrest. On the third recounting of the tip, Etherton's counsel objected on hearsay grounds, but the objection was not resolved when the prosecutor agreed to move on. At closing, the prosecutor also described the tip. The court instructed the jury that "the tip was not evidence," but was admitted "only to show why the police did what they did." App. to Pet. for Cert. 88a. The jury convicted Etherton, and his conviction was affirmed on direct appeal. The Michigan Supreme Court denied leave to appeal. *People* v. *Etherton*, 483 Mich. 896, 760 N. W. 2d 472 (2009).

Etherton sought postconviction relief in state court on six grounds. Three are relevant here: First, he claimed that the admission of the anonymous tip violated his rights under the Confrontation Clause of the Sixth Amendment. Second, that his trial counsel was ineffective for failing to object to the tip on that ground. And third, that his counsel on direct appeal was ineffective for failing to raise the Confrontation Clause and the ineffective-assistance-of-trial-counsel claims.

The state habeas court rejected the first two claims on procedural grounds and the third on the merits. To prevail on a claim for ineffective assistance of appellate counsel, the state court explained, Etherton had to demonstrate that "appellate counsel's decision not to pursue an issue on appeal fell below an objective standard of reasonableness and that

the representation so prejudiced [him] as to deprive him of a fair trial." App. to Pet. for Cert. 87a–88a. The state court concluded that Etherton failed on both counts.

First, the court reasoned, appellate counsel may have reasonably forgone any Confrontation Clause claim after concluding that trial counsel's failure to object was the product not of ineffectiveness but of strategy. While Etherton's current counsel argues that trial counsel should have objected because the tip's reference to "two men" suggested involvement by Etherton from the outset, Brief in Opposition 20–21, the reference also suggested *Pollie's* prior involvement, contrary to his testimony that he was not with Etherton when he picked up the cocaine and had nothing to do with it. As the state court explained, not objecting would have been consistent with trial counsel's "strategy to show defendant's non-involvement and possible responsibility of the passenger (who was also charged)." App. to Pet. for Cert. 88a.

Second, the court determined, Etherton had not been prejudiced by counsel's choice: There was "ample evidence" of his guilt, and "the complained of errors, even if true, would not have changed the outcome" of the case. *Id.*, at 89a. Etherton's allegations, the court concluded, ultimately failed to overcome the presumption that his appellate counsel functioned reasonably in not pursuing the Confrontation Clause or ineffectiveness claims. *Ibid.* Both the Michigan Court of Appeals and the Michigan Supreme Court denied leave to appeal.

Etherton next sought federal habeas relief. Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), federal habeas relief was available to him only if the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254(d)(1). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the

state court's decision." *Harrington* v. *Richter*, 562 U. S. 86, 101 (2011) (quoting *Yarborough* v. *Alvarado*, 541 U. S. 652, 664 (2004)). The state-court decision must be "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *White* v. *Woodall*, 572 U. S. 415, 420 (2014) (internal quotation marks omitted).

When the claim at issue is one for ineffective assistance of counsel, moreover, AEDPA review is "doubly deferential," *Cullen* v. *Pinholster*, 563 U. S. 170, 190 (2011), because counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," *Burt* v. *Titlow*, 571 U. S. 12, 22 (2013) (quoting *Strickland* v. *Washington*, 466 U. S. 668, 690 (1984); internal quotation marks omitted). In such circumstances, federal courts are to afford "both the state court and the defense attorney the benefit of the doubt." *Burt*, *supra*, at 15.

The District Court denied relief, but the Court of Appeals for the Sixth Circuit reversed in relevant part, over the dissent of Judge Kethledge. The majority concluded that Etherton's appellate counsel had been constitutionally ineffective, and that no fairminded jurist could conclude otherwise. *Etherton* v. *Rivard*, 800 F. 3d 737 (2015). Without ruling on the merits of the court's holding that counsel had been ineffective, we disagree with the determination that no fairminded jurist could reach a contrary conclusion, and accordingly reverse.

In finding counsel ineffective, the majority first concluded that Etherton's right to confrontation had been violated. The Confrontation Clause prohibits an out-of-court statement only if it is admitted for its truth. *Crawford* v. *Washington*, 541 U. S. 36, 60, n. 9 (2004). The Sixth Circuit determined that the contents of the tip were admitted for their truth because the tip was referenced by three different witnesses and mentioned in closing argument. These "re-

peated references both to the existence and the details of the content of the tip went far beyond what was necessary for background," the majority below concluded, "indicating the content of the tip was admitted for its truth." 800 F. 3d, at 751.

The majority next found that Etherton had been prejudiced by the violation, a showing Etherton's state-court counsel would have had to make on appeal to obtain relief either on the forfeited Confrontation Clause objection, see *People* v. *Carines*, 460 Mich. 750, 763–764, 597 N. W. 2d 130, 138–139 (1999) (showing of prejudice required to overcome forfeiture), or the ineffectiveness claim, *Strickland*, *supra*, at 687 (showing of prejudice required to demonstrate ineffective assistance of counsel). In finding prejudice, the majority acknowledged the evidence of Etherton's guilt: The cocaine was found in a driver side compartment inches from Etherton; he owned the car; and he was driving at the time of arrest. But, according to the majority, that evidence was not enough to convict Etherton absent Pollie's testimony. And that is where the tip came in. "Because much of Pollie's testimony was reflected in the content of the tip that was put before the jury," the Sixth Circuit stated, "the jury could have improperly concluded that Pollie was thereby testifying truthfully—that it was unlikely for it to be a coincidence for his testimony to line up so well with the anonymous accusation." 800 F. 3d, at 753.

In reaching these conclusions, the Sixth Circuit did not apply the appropriate standard of review under AEDPA. A "fairminded jurist" could conclude that repetition of the tip did not establish that the uncontested facts it conveyed were submitted for their truth. Such a jurist might reach that conclusion by placing weight on the fact that the truth of the facts was not disputed. No precedent of this Court clearly forecloses that view. It is also not beyond the realm of possibility that a fairminded jurist could conclude that Etherton

was not prejudiced when the tip and Pollie's testimony corresponded on uncontested facts. After all, Pollie himself was privy to all the information contained in the tip. A reasonable judge might accordingly regard the fact that the tip and Pollie's testimony corresponded to be unremarkable and not pertinent to Pollie's credibility. (In fact, the only point of Pollie's testimony actually reflected in the tip was that he and Etherton were traveling between Detroit and Grand Rapids.)

Etherton's underlying complaint is that his appellate lawyer's ineffectiveness meant he had "no prior opportunity to cross-examine the anonymous tipster." Brief in Opposition 11. But it would not be objectively unreasonable for a fairminded judge to conclude—especially in light of the deference afforded *trial* counsel under *Strickland*—that the failure to raise such a claim was not due to incompetence but because the facts in the tip were uncontested and in any event consistent with Etherton's defense. See *Harrington*, 562 U. S., at 105 ("Even under *de novo* review, the standard for judging counsel's representation is a most deferential one"). A fairminded jurist could similarly conclude, again deferring under *Strickland*, that *appellate* counsel was not incompetent in drawing the same conclusion. And to reach the final point at issue before the Sixth Circuit, a fairminded jurist—applying the deference due the *state court* under AEDPA—could certainly conclude that the court was not objectively unreasonable in deciding that appellate counsel was not incompetent under *Strickland* when she determined that trial counsel was not incompetent under *Strickland*.

Given AEDPA, both Etherton's appellate counsel and the state habeas court were to be afforded the benefit of the doubt. *Burt*, 571 U. S., at 15. Because the Sixth Circuit failed on both counts, we grant the petition for certiorari and reverse the judgment of the Court of Appeals.

It is so ordered.

Syllabus

WELCH *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 15–6418. Argued March 30, 2016—Decided April 18, 2016

Federal law makes the possession of a firearm by a felon a crime punishable by a prison term of up to 10 years, 18 U. S. C. §§ 922(g), 924(a)(2), but the Armed Career Criminal Act increases that sentence to a mandatory 15 years to life if the offender has three or more prior convictions for a "serious drug offense" or a "violent felony," § 924(e)(1). The definition of "violent felony" includes the so-called residual clause, covering any felony that "otherwise involves conduct that presents a serious potential risk of physical injury to another." § 924(e)(2)(B)(ii). In *Johnson* v. *United States*, 576 U. S. 591, this Court held that clause unconstitutional under the void-for-vagueness doctrine.

Petitioner Welch was sentenced under the Armed Career Criminal Act before *Johnson* was decided. On direct review, the Eleventh Circuit affirmed his sentence, holding that Welch's prior Florida conviction for robbery qualified as a "violent felony" under the residual clause. After his conviction became final, Welch sought collateral relief under 28 U. S. C. § 2255, which the District Court denied. The Eleventh Circuit then denied Welch a certificate of appealability. Three weeks later, this Court decided *Johnson*. Welch now seeks the retroactive application of *Johnson* to his case.

Held: *Johnson* announced a new substantive rule that has retroactive effect in cases on collateral review. Pp. 127–135.

(a) An applicant seeking a certificate of appealability in a § 2255 proceeding must make "a substantial showing of the denial of a constitutional right." § 2253(c)(2). That standard is met when "reasonable jurists could debate whether . . . the petition should have been resolved in a different manner." *Slack* v. *McDaniel*, 529 U. S. 473, 484. The question whether Welch met that standard implicates a broader legal issue: whether *Johnson* is a substantive decision with retroactive effect in cases on collateral review. If so, then on the present record reasonable jurists could at least debate whether Welch should obtain relief in his collateral challenge to his sentence. Pp. 127–128.

(b) New constitutional rules of criminal procedure generally do not apply retroactively to cases on collateral review, but new substantive rules do apply retroactively. *Teague* v. *Lane*, 489 U. S. 288, 310; *Schriro* v. *Summerlin*, 542 U. S. 348, 351. Substantive rules alter "the range

of conduct or the class of persons that the law punishes," *id.*, at 353. Procedural rules, by contrast, "regulate only the *manner of determining* the defendant's culpability." *Ibid.* Under this framework, *Johnson* is substantive. Before *Johnson*, the residual clause could cause an offender to face a prison sentence of at least 15 years instead of at most 10. Since *Johnson* made the clause invalid, it can no longer mandate or authorize any sentence. By the same logic, *Johnson* is not procedural, since it had nothing to do with the range of permissible methods a court might use to determine whether a defendant should be sentenced under the Act, see *Schriro*, *supra*, at 353. Pp. 128–130.

(c) The counterarguments made by Court-appointed *amicus* are unpersuasive. She contends that *Johnson* is a procedural decision because the void-for-vagueness doctrine is based on procedural due process. But the *Teague* framework turns on whether the function of the rule is substantive or procedural, not on the rule's underlying constitutional source. *Amicus*' approach would lead to results that cannot be squared with prior precedent. Precedent also does not support *amicus*' claim that a rule must limit Congress' power to be substantive, see, *e. g.*, *Bousley* v. *United States*, 523 U. S. 614, or her claim that statutory construction cases are an ad hoc exception to that principle and are substantive only because they implement the intent of Congress. The separation-of-powers argument raised by *amicus* is also misplaced, for regardless of whether a decision involves statutory interpretation or statutory invalidation, a court lacks the power to exact a penalty that has not been authorized by any valid criminal statute. Pp. 130–135.

Vacated and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 136.

Amir H. Ali argued the cause for petitioner. With him on the briefs were *Lindsay C. Harrison*, *Matthew E. Price*, and *R. Trent McCotter*.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Caldwell*, and *Ann O'Connell*.

Helgi C. Walker, by invitation of the Court, 577 U. S. 1098, argued the cause and filed a brief as *amicus curiae* in sup-

port of the judgment below. With her on the brief were *Jesenka Mrdjenovic* and *Russell B. Balikian.**

JUSTICE KENNEDY delivered the opinion of the Court.

Last Term, this Court decided *Johnson* v. *United States*, 576 U. S. 591 (2015). *Johnson* considered the residual clause of the Armed Career Criminal Act, 18 U. S. C. § 924(e)(2)(B)(ii). The Court held that provision void for vagueness. The present case asks whether *Johnson* is a substantive decision that is retroactive in cases on collateral review.

I

Federal law prohibits any felon—meaning a person who has been convicted of a crime punishable by more than a year in prison—from possessing a firearm. 18 U. S. C. § 922(g). A person who violates that restriction can be sentenced to prison for up to 10 years. § 924(a)(2). For some felons, however, the Armed Career Criminal Act imposes a much more severe penalty. Under the Act, a person who possesses a firearm after three or more convictions for a "serious drug offense" or a "violent felony" is subject to a minimum sentence of 15 years and a maximum sentence of life in prison. § 924(e)(1). Because the ordinary maximum sen-

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*Briefs of *amici curiae* urging reversal were filed for the Federal Public and Community Defenders et al. by *Amy Baron-Evans*, *Joanna M. Perales*, *Veronica S. Rossman*, *Sarah Gannett*, *Donna Coltharp*, *Daniel Kaplan*, and *Brett Sweitzer*; and for Scholars of Federal Courts and Sentencing by *Eugene M. Gelernter*.

A brief of *amici curiae* urging affirmance was filed for the State of Indiana et al. by *Gregory F. Zoeller*, Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, and *Lara Langeneckert* and *Jonathan Sichtermann*, Deputy Attorneys General, by *Bruce R. Beemer*, First Deputy Attorney General of Pennsylvania, and by the Attorneys General for their respective States as follows: *Leslie Rutledge* of Arkansas, *Janet T. Mills* of Maine, *Bill Schuette* of Michigan, *Timothy C. Fox* of Montana, *Alan Wilson* of South Carolina, *Herbert H. Slatery III* of Tennessee, *Sean Reyes* of Utah, and *Brad D. Schimel* of Wisconsin.

tence for a felon in possession of a firearm is 10 years, while the minimum sentence under the Armed Career Criminal Act is 15 years, a person sentenced under the Act will receive a prison term at least five years longer than the law otherwise would allow.

The Act defines "violent felony" as

> "any crime punishable by imprisonment for a term exceeding one year . . . that—
>
> "(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> "(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." § 924(e)(2)(B).

Subsection (i) of this definition is known as the elements clause. The end of subsection (ii)—"or otherwise involves conduct that presents a serious potential risk of physical injury to another"—is known as the residual clause. See *Johnson*, *supra*, at 594. It is the residual clause that *Johnson* held to be vague and invalid.

The text of the residual clause provides little guidance on how to determine whether a given offense "involves conduct that presents a serious potential risk of physical injury." This Court sought for a number of years to develop the boundaries of the residual clause in a more precise fashion by applying the statute to particular cases. See *James* v. *United States*, 550 U. S. 192 (2007) (residual clause covers Florida offense of attempted burglary); *Begay* v. *United States*, 553 U. S. 137 (2008) (residual clause does not cover New Mexico offense of driving under the influence of alcohol); *Chambers* v. *United States*, 555 U. S. 122 (2009) (residual clause does not cover Illinois offense of failure to report to a penal institution); *Sykes* v. *United States*, 564 U. S. 1 (2011) (residual clause covers Indiana offense of vehicular

flight from a law enforcement officer). In *Johnson*, a majority of this Court concluded that those decisions did not bring sufficient clarity to the scope of the residual clause, noting that the federal courts remained mired in "pervasive disagreement" over how the clause should be interpreted. 576 U. S., at 601.

The *Johnson* Court held the residual clause unconstitutional under the void-for-vagueness doctrine, a doctrine that is mandated by the Due Process Clauses of the Fifth Amendment (with respect to the Federal Government) and the Fourteenth Amendment (with respect to the States). The void-for-vagueness doctrine prohibits the government from imposing sanctions "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." *Id.*, at 595. *Johnson* determined that the residual clause could not be reconciled with that prohibition.

The vagueness of the residual clause rests in large part on its operation under the categorical approach. The categorical approach is the framework the Court has applied in deciding whether an offense qualifies as a violent felony under the Armed Career Criminal Act. See *id.*, at 596. Under the categorical approach, "a court assesses whether a crime qualifies as a violent felony 'in terms of how the law defines the offense and not in terms of how an individual offender might have committed it on a particular occasion.'" *Ibid.* (quoting *Begay*, *supra*, at 141). For purposes of the residual clause, then, courts were to determine whether a crime involved a "serious potential risk of physical injury" by considering not the defendant's actual conduct but an "idealized ordinary case of the crime." 576 U. S., at 604.

The Court's analysis in *Johnson* thus cast no doubt on the many laws that "require gauging the riskiness of conduct in which an individual defendant engages *on a particular occasion*." *Id.*, at 603. The residual clause failed not because it adopted a "serious potential risk" standard but be-

cause applying that standard under the categorical approach required courts to assess the hypothetical risk posed by an abstract generic version of the offense. In the *Johnson* Court's view, the "indeterminacy of the wide-ranging inquiry" made the residual clause more unpredictable and arbitrary in its application than the Constitution allows. *Id.*, at 597. "Invoking so shapeless a provision to condemn someone to prison for 15 years to life," the Court held, "does not comport with the Constitution's guarantee of due process." *Id.*, at 602.

II

Petitioner Gregory Welch is one of the many offenders sentenced under the Armed Career Criminal Act before *Johnson* was decided. Welch pleaded guilty in 2010 to one count of being a felon in possession of a firearm. The Probation Office prepared a presentence report finding that Welch had three prior violent felony convictions, including a Florida conviction for a February 1996 "strong-arm robbery." The relevant Florida statute prohibits taking property from the person or custody of another with "the use of force, violence, assault, or putting in fear." Fla. Stat. § 812.13(1) (1994). The charging document from the 1996 Florida case tracked that statutory language. App. 187a. The 2010 federal presentence report provides more detail. It states that, according to the robbery victim, Welch punched the victim in the mouth and grabbed a gold bracelet from his wrist while another attacker grabbed a gold chain from his neck.

Welch objected to the presentence report, arguing (as relevant here) that this conviction was not a violent felony conviction under the Armed Career Criminal Act. The District Court overruled the objection. It concluded that the Florida offense of strong-arm robbery qualified as a violent felony both under the elements clause, 18 U. S. C. § 924(e)(2)(B)(i), and the residual clause, § 924(e)(2)(B)(ii). The District Court proceeded to sentence Welch to the Act's mandatory minimum sentence of 15 years in prison.

The Court of Appeals for the Eleventh Circuit affirmed. That court did not decide whether the conviction at issue could qualify as a violent felony under the elements clause. Instead, it held only that the conviction qualified under the residual clause. This Court denied certiorari, see *Welch* v. *United States*, 568 U. S. 1112 (2013), and Welch's conviction became final.

In December 2013, Welch appeared *pro se* before the District Court and filed a collateral challenge to his conviction and sentence through a motion under 28 U. S. C. § 2255. He argued, among other points, that his strong-arm robbery conviction itself was "vague" and that his counsel was ineffective for allowing him to be sentenced as an armed career criminal. The District Court denied the motion and denied a certificate of appealability.

Still proceeding *pro se*, Welch applied to the Court of Appeals for a certificate of appealability. His application noted that *Johnson* was pending before this Court. Welch argued, in part, that his "armed career offender status is unconstitutional and violate[s] [his] Fifth Amendment right to notice of the state priors." App. 20a. Two months later, Welch filed a motion asking the Court of Appeals to hold his case in abeyance until *Johnson* could be decided, "based on the fact he was sentenced under the [residual clause]." App. 15a.

In June 2015, the Court of Appeals entered a brief single-judge order denying the motion for a certificate of appealability. Less than three weeks later, this Court issued its decision in *Johnson* holding, as already noted, that the residual clause is void for vagueness. Welch filed a motion asking the Court of Appeals for additional time to seek reconsideration of its decision in light of *Johnson*, but the court returned that motion unfiled because Welch's time to seek reconsideration already had expired.

Welch then filed a *pro se* petition for certiorari. His petition presented two questions: whether the District Court erred in denying his § 2255 motion because his Florida rob-

bery conviction does not qualify as a violent felony conviction under the Armed Career Criminal Act; and whether *Johnson* announced a substantive rule that has retroactive effect in cases on collateral review. Pet. for Cert. i. This Court granted the petition. 577 U. S. 1056 (2016). Because the United States, as respondent, agrees with Welch that *Johnson* is retroactive, the Court appointed Helgi C. Walker as *amicus curiae* in support of the judgment of the Court of Appeals. She has ably discharged her responsibilities.

III

A

This case comes to the Court in a somewhat unusual procedural posture. Under the Antiterrorism and Effective Death Penalty Act of 1996, there can be no appeal from a final order in a §2255 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U. S. C. §2253(c)(1). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." §2253(c)(2). That standard is met when "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner." *Slack* v. *McDaniel*, 529 U. S. 473, 484 (2000). Obtaining a certificate of appealability "does not require a showing that the appeal will succeed," and "a court of appeals should not decline the application . . . merely because it believes the applicant will not demonstrate an entitlement to relief." *Miller-El* v. *Cockrell*, 537 U. S. 322, 337 (2003).

The decision under review here is the single-judge order in which the Court of Appeals denied Welch a certificate of appealability. Under the standard described above, that order determined not only that Welch had failed to show any entitlement to relief but also that reasonable jurists would consider that conclusion to be beyond all debate. See *Slack*, *supra*, at 484. The narrow question here is whether the

Court of Appeals erred in making that determination. That narrow question, however, implicates a broader legal issue: whether *Johnson* is a substantive decision with retroactive effect in cases (like Welch's) on collateral review. If so, then on the present record reasonable jurists could at least debate whether Welch should obtain relief in his collateral challenge to his sentence. On these premises, the Court now proceeds to decide whether *Johnson* is retroactive.

B

The normal framework for determining whether a new rule applies to cases on collateral review stems from the plurality opinion in *Teague* v. *Lane*, 489 U. S. 288 (1989). That opinion in turn drew on the approach outlined by the second Justice Harlan in his separate opinions in *Mackey* v. *United States*, 401 U. S. 667 (1971), and *Desist* v. *United States*, 394 U. S. 244 (1969). The parties here assume that the *Teague* framework applies in a federal collateral challenge to a federal conviction as it does in a federal collateral challenge to a state conviction, and we proceed on that assumption. See *Chaidez* v. *United States*, 568 U. S. 342, 358, n. 16 (2013); *Danforth* v. *Minnesota*, 552 U. S. 264, 269, n. 4 (2008).

Under *Teague*, as a general matter, "new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced." 489 U. S., at 310. *Teague* and its progeny recognize two categories of decisions that fall outside this general bar on retroactivity for procedural rules. First, "[n]ew *substantive* rules generally apply retroactively." *Schriro* v. *Summerlin*, 542 U. S. 348, 351 (2004); see *Montgomery* v. *Louisiana*, 577 U. S. 190, 198 (2016); *Teague*, *supra*, at 307, 311. Second, new "'watershed rules of criminal procedure,'" which are procedural rules "implicating the fundamental fairness and accuracy of the criminal proceeding," will also have retroactive effect. *Saffle* v. *Parks*, 494 U. S. 484, 495 (1990); see *Teague*, *supra*, at 311–313.

It is undisputed that *Johnson* announced a new rule. See *Teague*, *supra*, at 301 ("[A] case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant's conviction became final"). The question here is whether that new rule falls within one of the two categories that have retroactive effect under *Teague*. The parties agree that *Johnson* does not fall into the limited second category for watershed procedural rules. Welch and the United States contend instead that *Johnson* falls into the first category because it announced a substantive rule.

"A rule is substantive rather than procedural if it alters the range of conduct or the class of persons that the law punishes." *Schriro*, 542 U. S., at 353. "This includes decisions that narrow the scope of a criminal statute by interpreting its terms, as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the State's power to punish." *Id.*, at 351–352 (citation omitted); see *Montgomery*, *supra*, at 198. Procedural rules, by contrast, "regulate only the *manner of determining* the defendant's culpability." *Schriro*, 542 U. S., at 353. Such rules alter "the range of permissible methods for determining whether a defendant's conduct is punishable." *Ibid.* "They do not produce a class of persons convicted of conduct the law does not make criminal, but merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise." *Id.*, at 352.

Under this framework, the rule announced in *Johnson* is substantive. By striking down the residual clause as void for vagueness, *Johnson* changed the substantive reach of the Armed Career Criminal Act, altering "the range of conduct or the class of persons that the [Act] punishes." *Schriro*, *supra*, at 353. Before *Johnson*, the Act applied to any person who possessed a firearm after three violent felony convictions, even if one or more of those convictions fell under only the residual clause. An offender in that situation faced

15 years to life in prison. After *Johnson*, the same person engaging in the same conduct is no longer subject to the Act and faces at most 10 years in prison. The residual clause is invalid under *Johnson*, so it can no longer mandate or authorize any sentence. *Johnson* establishes, in other words, that "even the use of impeccable factfinding procedures could not legitimate" a sentence based on that clause. *United States* v. *United States Coin & Currency*, 401 U. S. 715, 724 (1971). It follows that *Johnson* is a substantive decision.

By the same logic, *Johnson* is not a procedural decision. *Johnson* had nothing to do with the range of permissible methods a court might use to determine whether a defendant should be sentenced under the Armed Career Criminal Act. See *Schriro*, 542 U. S., at 353. It did not, for example, "allocate decisionmaking authority" between judge and jury, *ibid.*, or regulate the evidence that the court could consider in making its decision, see *Whorton* v. *Bockting*, 549 U. S. 406, 413–414, 417 (2007); *Mackey*, *supra*, at 700–701 (Harlan, J., concurring in judgments in part and dissenting in part). Unlike those cases, *Johnson* affected the reach of the underlying statute rather than the judicial procedures by which the statute is applied. *Johnson* is thus a substantive decision and so has retroactive effect under *Teague* in cases on collateral review.

C

Amicus urges the Court to adopt a different understanding of the *Teague* framework. She contends courts should apply that framework by asking whether the constitutional right underlying the new rule is substantive or procedural. Under that approach, *amicus* concludes that *Johnson* is a procedural decision because the void-for-vagueness doctrine that *Johnson* applied is based, she asserts, on procedural due process.

Neither *Teague* nor its progeny support that approach. As described above, this Court has determined whether a new rule is substantive or procedural by considering the

function of the rule, not its underlying constitutional source. See, *e. g.*, *Schriro*, *supra*, at 351–353. That is for good reason. The *Teague* framework creates a balance between, first, the need for finality in criminal cases, and second, the countervailing imperative to ensure that criminal punishment is imposed only when authorized by law. That balance turns on the function of the rule at issue, not the constitutional guarantee from which the rule derives. If a new rule regulates only the procedures for determining culpability, the *Teague* balance generally tips in favor of finality. The chance of a more accurate outcome under the new procedure normally does not justify the cost of vacating a conviction whose only flaw is that its procedures "conformed to then-existing constitutional standards." 489 U. S., at 310. On the other hand, if a new rule changes the scope of the underlying criminal proscription, the balance is different. A change of that character will "necessarily carry a significant risk that a defendant stands convicted of 'an act that the law does not make criminal.'" *Bousley* v. *United States*, 523 U. S. 614, 620 (1998) (quoting *Davis* v. *United States*, 417 U. S. 333, 346 (1974)). By extension, where the conviction or sentence in fact is not authorized by substantive law, then finality interests are at their weakest. As Justice Harlan wrote, "[t]here is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose." *Mackey*, 401 U. S., at 693 (opinion of Harlan, J.).

The *Teague* balance thus does not depend on whether the underlying constitutional guarantee is characterized as procedural or substantive. It depends instead on whether the new rule itself has a procedural function or a substantive function—that is, whether it alters only the procedures used to obtain the conviction, or alters instead the range of conduct or class of persons that the law punishes. See *Schriro*, *supra*, at 353; *Montgomery*, 577 U. S., at 206. The emphasis by *amicus* on the constitutional guarantee behind the new

rule, then, would untether the *Teague* framework from its basic purpose.

The approach *amicus* suggests also would lead to results that cannot be squared with prior precedent. Decisions from this Court show that a rule that is procedural for *Teague* purposes still can be grounded in a substantive constitutional guarantee. For instance, the Court has adopted certain rules that regulate capital sentencing procedures in order to enforce the substantive guarantees of the Eighth Amendment. The consistent position has been that those rules are procedural, even though their ultimate source is substantive. See, *e. g.*, *Beard* v. *Banks*, 542 U. S. 406, 408, 416–417 (2004); *Sawyer* v. *Smith*, 497 U. S. 227, 233, 241–242 (1990). From the converse perspective, there also can be substantive rules based on constitutional protections that, on the theory *amicus* advances, likely would be described as procedural. For instance, a decision that invalidates as void for vagueness a statute prohibiting "conduct annoying to persons passing by," cf. *Coates* v. *Cincinnati*, 402 U. S. 611, 612, 614 (1971), would doubtless alter the range of conduct that the law prohibits. That would make it a substantive decision under our precedent, see *Schriro*, 542 U. S., at 353, even if the reasons for holding that statute invalid could be characterized as procedural.

Amicus next relies on language from this Court's cases describing substantive decisions as those that "place particular conduct or persons . . . beyond the State's power to punish," *id.*, at 352, or that "prohibi[t] a certain category of punishment for a class of defendants because of their status or offense," *Saffle*, 494 U. S., at 494 (internal quotation marks omitted). Cases such as these, in which the Constitution deprives the Government of the power to impose the challenged punishment, "represen[t] the clearest instance" of substantive rules for which retroactive application is appropriate. *Mackey*, *supra*, at 693 (opinion of Harlan, J.). Drawing on those decisions, *amicus* argues that *Johnson* is not substantive because it does not limit Congress' power:

Congress is free to enact a new version of the residual clause that imposes the same punishment on the same persons for the same conduct, provided the new statute is precise enough to satisfy due process.

Although this Court has put great emphasis on substantive decisions that place certain conduct, classes of persons, or punishments beyond the legislative power of Congress, the Court has also recognized that some substantive decisions do not impose such restrictions. The clearest example comes from *Bousley*, *supra*. In *Bousley*, the Court was asked to determine what retroactive effect should be given to its decision in *Bailey* v. *United States*, 516 U. S. 137 (1995). *Bailey* considered the "use" prong of 18 U. S. C. § 924(c)(1), which imposes increased penalties on the use of a firearm in relation to certain crimes. The Court held as a matter of statutory interpretation that the "use" prong punishes only "active employment of the firearm" and not mere possession. 516 U. S., at 144. The Court in *Bousley* had no difficulty concluding that *Bailey* was substantive, as it was a decision "holding that a substantive federal criminal statute does not reach certain conduct." *Bousley*, *supra*, at 620; see *Schriro*, *supra*, at 354 ("A decision that modifies the elements of an offense is normally substantive rather than procedural"). The Court reached that conclusion even though Congress could (and later did) reverse *Bailey* by amending the statute to cover possession as well as use. See *United States* v. *O'Brien*, 560 U. S. 218, 232–233 (2010) (discussing statutory amendment known as the "*Bailey* fix"). *Bousley* thus contradicts the contention that the *Teague* inquiry turns only on whether the decision at issue holds that Congress lacks some substantive power.

Amicus recognizes that *Bousley* does not fit the theory that, in her view, should control this case. She instead proposes an ad hoc exception, contending that *Bousley* "recognized a separate subcategory of substantive rules" for decisions that interpret statutes (but not those, like *Johnson*, that invalidate statutes). Brief for Court-Appointed *Ami-*

cus Curiae in Support of Judgment Below 40. For support, *amicus* looks to the separation-of-powers doctrine. Her argument is that statutory construction cases are substantive because they define what Congress always intended the law to mean—unlike *Johnson*, which struck down the residual clause regardless of Congress' intent.

That argument is not persuasive. Neither *Bousley* nor any other case from this Court treats statutory interpretation cases as a special class of decisions that are substantive because they implement the intent of Congress. Instead, decisions that interpret a statute are substantive if and when they meet the normal criteria for a substantive rule: when they "alte[r] the range of conduct or the class of persons that the law punishes." *Schriro*, *supra*, at 353.

The separation-of-powers argument that *amicus* raises is also misplaced. *Bousley* noted that the separation of powers prohibits a court from imposing criminal punishment beyond what Congress meant to enact. 523 U. S., at 620–621 ("[I]t is only Congress, and not the courts, which can make conduct criminal"). But a court likewise is prohibited from imposing criminal punishment beyond what Congress in fact has enacted by a valid law. In either case a court lacks the power to exact a penalty that has not been authorized by any valid criminal statute.

Treating decisions as substantive if they involve statutory interpretation, but not if they involve statutory invalidation, would produce unusual outcomes. "It has long been our practice, . . . before striking a federal statute as impermissibly vague, to consider whether the prescription is amenable to a limiting construction." *Skilling* v. *United States*, 561 U. S. 358, 405–406 (2010). *Amicus* acknowledges that a decision that saves a vague statute by adopting a limiting construction is substantive, so anyone who falls outside the limiting construction can use that decision to seek relief on collateral review. But *amicus* also contends that, if a court takes the further step of striking down the whole statute as

vague, that decision is procedural, so no one can use it to seek relief on collateral review. That arbitrary distinction has no place in the *Teague* framework.

It should be noted, of course, that not every decision striking down a statute is *ipso facto* a substantive decision. A decision that strikes down a procedural statute—for example, a statute regulating the types of evidence that can be presented at trial—would itself be a procedural decision. It would affect only the "manner of determining the defendant's culpability," not the conduct or persons to be punished. *Schriro*, 542 U. S., at 353 (emphasis deleted). A decision of this kind would have no retroactive effect under *Teague* unless it could be considered a "watershed" procedural rule. See *Teague*, 489 U. S., at 311–313. *Johnson*, however, struck down part of a criminal statute that regulates conduct and prescribes punishment. It thereby altered "the range of conduct or the class of persons that the law punishes." *Schriro*, *supra*, at 353. It follows that *Johnson* announced a substantive rule that has retroactive effect in cases on collateral review.

* * *

It may well be that the Court of Appeals on remand will determine on other grounds that the District Court was correct to deny Welch's motion to amend his sentence. For instance, the parties continue to dispute whether Welch's strong-arm robbery conviction qualifies as a violent felony under the elements clause of the Act, which would make Welch eligible for a 15-year sentence regardless of *Johnson*. On the present record, however, and in light of today's holding that *Johnson* is retroactive in cases on collateral review, reasonable jurists at least could debate whether Welch is entitled to relief. For these reasons, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, dissenting.

Last Term the Court held in *Johnson* v. *United States*, 576 U. S. 591 (2015), that because the residual clause of the Armed Career Criminal Act (ACCA), 18 U. S. C. § 924(e)(2)(B)(ii), "combin[es] indeterminacy about how to measure the risk posed by a crime with indeterminacy about how much risk it takes for the crime to qualify as a violent felony," it is unconstitutionally vague. 576 U. S., at 598. Federal prisoners then sought to invoke *Johnson* as a basis for vacating their sentences in federal collateral review proceedings. See 28 U. S. C. § 2255(a).

Today the Court holds that *Johnson* applies retroactively to already final sentences of federal prisoners. That holding comes at a steep price. The majority ignores an insuperable procedural obstacle: When, as here, a court fails to rule on a claim not presented in a prisoner's § 2255 motion, there is no error for us to reverse. The majority also misconstrues the retroactivity framework developed in *Teague* v. *Lane*, 489 U. S. 288 (1989), and its progeny, thereby undermining any principled limitation on the finality of federal convictions. I respectfully dissent.

I

As the majority observes with considerable understatement, "[t]his case comes to the Court in a somewhat unusual procedural posture." *Ante*, at 127. This case arises from petitioner Gregory Welch's challenge to the Eleventh Circuit's denial of a certificate of appealability. § 2253(c)(1). In other words, Welch asks the Court to review the Eleventh Circuit's refusal to allow him to appeal the claims he raised in a motion to vacate his sentence and lost in the District Court. But Welch never claimed that the residual clause was unconstitutionally vague in his § 2255 motion, let alone that *Johnson* applies retroactively. Accordingly, courts below addressed neither issue. Indeed, *Johnson* was not even decided when the courts below issued their rulings.

Those deficiencies should preclude us from deciding in this case whether *Johnson* is retroactive.

Our role in reviewing the denial of a certificate of appealability is far more circumscribed than normal appellate review. The text of 28 U. S. C. § 2253 confirms this. Defendants can appeal their convictions and sentences as a matter of right on direct review, but § 2253 deprives courts of appeals of jurisdiction to review the denial of a petitioner's motion for federal postconviction relief unless he obtains a "certificate of appealability." § 2253(c)(1). And he can obtain that certificate only if he makes "a substantial showing of the denial of a constitutional right." § 2253(c)(2); see *Miller-El* v. *Cockrell*, 537 U. S. 322, 335–336 (2003).

Accordingly, this Court has instructed that review of the denial of a certificate of appealability is a retrospective inquiry into whether the movant's claims, as litigated in the district court, warrant further proceedings—not whether there is any conceivable basis upon which the movant could prevail. Courts must ask whether "reasonable jurists would find *the district court's assessment* of the constitutional claims debatable or wrong." *Slack* v. *McDaniel*, 529 U. S. 473, 484 (2000) (emphasis added). They are to "look to the *District Court's* application of [the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)] to petitioner's constitutional claims and ask whether *that* resolution was debatable." *Miller-El*, *supra*, at 336 (emphasis added).

Until today, we did not require courts of appeals to consider all possible constitutional issues that might warrant relief as part of this inquiry. Those courts instead looked to how the movant framed his case in his motion to vacate. Even if, for example, a district court denies habeas relief based on procedural default and never reached the merits, the movant must establish not only that the procedural ruling is "debatable" but *also* that his motion "state[d] a valid claim of the denial of a constitutional right." *Slack*, *supra*, at 484.

Requiring a court of appeals to consider arguments not raised in a § 2255 motion is also at odds with how the Court has described the certificate-of-appealability inquiry. The Court has called the decision whether to grant a certificate of appealability a "threshold" inquiry that "forbids" reviewing courts to engage in "full consideration of the factual or legal bases adduced in support of the claims." *Miller-El*, *supra*, at 336. That is because, in the Court's view, the point of "[t]he [certificate of appealability] process [is to] scree[n] out issues unworthy of judicial time and attention and ensur[e] that frivolous claims are not assigned to merits panels." *Gonzalez* v. *Thaler*, 565 U. S. 134, 145 (2012). There would be no surer way to transform this determination into a full-blown merits appeal than to require courts of appeals to consider all conceivable bases for relief that the movant failed to raise.

Welch's failure to raise any *Johnson*-related claim in the District Court should, therefore, bar the Eleventh Circuit and this Court from addressing whether *Johnson* applies retroactively. Welch's § 2255 motion omitted any claim that his sentence was invalid because the ACCA's residual clause is unconstitutionally vague.* Unsurprisingly, the District Court did not address a vagueness claim that Welch had not raised. Nor did (or could) the District Court assess whether *Johnson* applies retroactively, for we decided *Johnson* after the District Court ruling. In sum, when Welch raised the vagueness of the residual clause for the first time in his Eleventh Circuit application for a certificate of appealability, it was too late.

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*Welch's § 2255 motion did assert that his "robbery under Florida [statutes] is ambiguous, vague, and was without any violence and or physical force," App. 96a, and that Florida robbery "has multimeanings," *id.*, at 97a. But challenging the vagueness of Florida law is quite different from the argument Welch needed to assert a *Johnson* claim: that the residual clause is itself unconstitutionally vague.

The Government responds to this issue by attempting, in its reply brief in this Court, to "expressly waiv[e] any procedural default defense against petitioner on his *Johnson* claim." Reply Brief for United States 22. But this case has not been framed as one involving a "procedural default," which ordinarily refers to the affirmative defense that a petitioner defaulted his claim in some earlier proceeding. See *McCleskey* v. *Zant*, 499 U. S. 467, 490 (1991) (describing, in the context of a federal habeas petition brought by a state prisoner, "procedural default" as the "presumption against [federal] habeas adjudication . . . of claims defaulted in state court"); see also, *e. g.*, *Jenkins* v. *Anderson*, 447 U. S. 231, 234, n. 1 (1980) (noting that procedural default is an affirmative defense that must be raised); 28 U. S. C. § 2254 Rule 5 (requiring the Government to "state whether any claim in the petition is barred by a . . . procedural bar" in the answer to the motion).

Welch instead failed to raise that claim in *this* proceeding by failing to present it in his motion to vacate his sentence. And the Court of Appeals, when deciding whether to grant a certificate of appealability, cannot be expected to look beyond the claims presented in that motion in conducting its threshold inquiry about whether "reasonable jurists would find *the district court's assessment* of the constitutional claims debatable or wrong." *Slack*, *supra*, at 484 (emphasis added). Although the Government purports to waive any forfeiture defense now, it cannot alter what was before the Court of Appeals. After Welch failed to raise a *Johnson* claim in his § 2255 motion and the Eleventh Circuit denied a certificate of appealability, the Government could not inject the claim into the case.

Rather than grappling with these issues, the majority distorts the standard for reviewing certificates of appealability by asking whether reasonable jurists would debate the "conclusion" that Welch "failed to show any entitlement to relief."

Ante, at 127. The majority thereby transforms what should be a quick "overview of the *claims in the habeas petition*," *Miller-El,* 537 U. S., at 336 (emphasis added), to a searching review of the "*conclusion*" that a prisoner is not entitled "*any*" collateral relief. *Ante,* at 127 (emphasis added). That is preposterous. The Eleventh Circuit, according to the majority, erred by denying Welch the opportunity to "appeal" a claim that he failed to raise, in part because a decision that did not yet exist when the Eleventh Circuit ruled may entitle him to relief. The majority's view of AEDPA demands judicial clairvoyance; courts of appeals can avoid reversal only by inventing arguments on the movant's behalf.

II

After bypassing what should have been an insurmountable procedural hurdle, the majority then gets the merits wrong. The retroactivity rules the Court adopted in *Teague* v. *Lane*, 489 U. S. 288, generally foreclose prisoners from collaterally challenging their convictions based on new decisions that postdate their convictions and sentences. The only exceptions to that bar are for decisions that announce a new substantive rule or a new "watershed" procedural rule. See *ante,* at 128. All agree that *Johnson* announced a new rule and that it is not a "watershed" procedural rule. See *ante,* at 129. But the rule in *Johnson* also does not satisfy our criteria for substantive rules. The majority concludes otherwise, *ante*, at 129–130, but its approach fails under *Teague*'s own terms and erodes any meaningful limits on what a "substantive" rule is.

A

The Court has identified two types of substantive rules, and *Johnson*'s rule of decision fits neither description. It is not a new substantive constitutional rule, nor does it narrow the scope of a criminal statute through statutory construction.

1

Time and again, the Court has articulated the test for defining a substantive constitutional rule as follows: The rule must "place particular conduct or persons covered by the statute beyond the State's power to punish." *Schriro* v. *Summerlin*, 542 U. S. 348, 352 (2004); see also *Beard* v. *Banks*, 542 U. S. 406, 416 (2004) (similar); *Penry* v. *Lynaugh*, 492 U. S. 302, 330 (1989) (rule is substantive if "the Constitution itself deprives the State of the power to impose a certain penalty"). This is also the test the Court has purported to apply in case after case. See, *e. g.*, *Sawyer* v. *Smith*, 497 U. S. 227, 233, 241 (1990) (prohibiting prosecutors from misleading the jury to believe that it was not responsible for a death sentence was a nonsubstantive rule that did not "place an entire category of primary conduct beyond the reach of the criminal law" or "prohibit imposition of a certain type of punishment for a class of defendants because of their status or offense"). Our precedents thus make clear the distinction between substantive and nonsubstantive constitutional rules. A rule that "*because* [a State] has made a certain fact essential to the death penalty, that fact must be found by a jury," is not substantive; it had no effect on the "range of conduct a State may criminalize." *Schriro*, 542 U. S., at 353–354. But a rule in which this Court "ma[de] a certain fact essential to the death penalty . . . would be substantive"; it would change the range of conduct warranting a death sentence. *Id.*, at 354.

Under these principles, *Johnson* announced a new constitutional rule, but it is not substantive. *Johnson*'s new constitutional rule is that a law is unconstitutionally vague if it "requires a court to picture the kind of conduct that the crime involves in 'the ordinary case,' and to judge whether that abstraction presents a serious potential risk" of some result. 576 U. S., at 596. Such laws are vague because they simultaneously create "indeterminacy about how to measure

the risk posed by a crime with indeterminacy about how much risk it takes for the crime to qualify" as the described offense. *Id.*, at 598. Together, those two indeterminacies "produc[e] more unpredictability and arbitrariness than the Due Process Clause tolerates." *Ibid.*

But that rule is not substantive under our precedents. It does not preclude the Government from prohibiting particular conduct or deem any conduct constitutionally protected. The Government remains as free to enhance sentences for federal crimes based on the commission of previous violent felonies after *Johnson* as it was before. Cf. *Butler* v. *McKellar*, 494 U. S. 407, 415 (1990) (deciding that a new rule was not substantive because "[t]he proscribed conduct" was "capital murder, the prosecution of which is, to put it mildly, not prohibited by the rule"). Nor does *Johnson*'s vagueness rule place any class of persons or punishment off limits. There is no category of offender that Congress cannot subject to an enhanced sentence after *Johnson.* See *James* v. *United States*, 550 U. S. 192, 230 (2007) (Scalia, J., dissenting) (Congress "very easily" could "subjec[t] all repeat offenders to a 15-year mandatory minimum prison term" in differently worded statute (emphasis deleted)). The only constraint *Johnson* imposes is on the *manner* in which the Government can punish offenders. To avoid "fail[ing] to give ordinary people fair notice" or "invit[ing] arbitrary enforcement," 576 U. S., at 595, Congress must be clearer in describing what conduct "otherwise . . . presents a serious potential risk of physical injury to another," 18 U. S. C. § 924(e)(2)(B)(ii).

2

Johnson also does not fit within the second type of substantive rule this Court has recognized, which consists of "decisions that narrow the scope of a criminal statute by interpreting its terms." *Schriro*, 542 U. S., at 351; see *id.*, at 351–352 (contrasting these rules with "constitutional determinations" that rule out punishing conduct or persons).

The Court has invoked this subset of new rules just once, in *Bousley* v. *United States*, 523 U. S. 614 (1998). *Bousley* held that *Bailey* v. *United States*, 516 U. S. 137 (1995), which interpreted a federal firearms sentencing enhancement to require proof of "'active employment of the firearm'" as an element, applied retroactively. 523 U. S., at 616–617. The Court explained that *Teague*'s bar on retroactively applying "procedural rules" is "inapplicable to the situation in which this Court decides the meaning of a criminal statute enacted by Congress." 523 U. S., at 620. Moreover, the Court reasoned, "decisions of this Court holding that a substantive federal criminal statute does not reach certain conduct" share a key commonality with "decisions placing conduct beyond the power of the criminal law-making authority to proscribe": both "necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal." *Ibid.* (internal quotation marks omitted). The Court thus classified decisions "holding that a substantive federal criminal statute does not reach certain conduct" as substantive. *Ibid.*

I would not so readily assume that *Bousley* applies here. Until today, *Bousley* applied only to new rules reinterpreting the text of federal criminal statutes in a way that narrows their reach. *Johnson* announced no such rule. It announced only that there is no way in which to narrow the reach of the residual clause without running afoul of the Due Process Clause. 576 U. S., at 602–604.

The majority protests that applying different retroactivity principles to constitutional and statutory rules produces "unusual outcomes" because a decision interpreting a statute's text to narrow its scope may be retroactive, while a decision declaring the provision unconstitutional might not be. *Ante,* at 134. But such outcomes are an inevitable byproduct of the Court's retroactivity jurisprudence, not a unique consequence of this case. Take a statute allowing the Federal Government to prosecute defendants for "serious crimes

involving interstate commerce" of which they were acquitted in state court. See *Bartkus* v. *Illinois*, 359 U. S. 121 (1959) (no double jeopardy bar to such prosecutions). Suppose the Court, concerned that there might be a double jeopardy problem after all, narrowed the meaning of "serious crimes involving interstate commerce" to encompass only felonies that would be subject to a statutory maximum sentence of life imprisonment. Anyone acquitted of a minor felony by the State but convicted by the Federal Government before this Court's narrowing construction could, in the majority's view, seek relief on collateral review under *Bousley*. See *ante*, at 134–135. But if the Court ruled that the Double Jeopardy Clause bars *all* federal reprosecutions, I doubt that rule would be retroactive. That rule dictates *when* a defendant may be tried and convicted of certain conduct—not the substance of the crime for which the defendant is tried, or the punishment imposed.

The Court's historical justifications for retroactivity underscore the reasons for treating statutory and constitutional rules differently. The Court in the 1950's "extend[ed] the scope of habeas to all alleged constitutional errors" to "forc[e] trial and appellate courts in both the federal and state system to toe the constitutional mark" in the face of perceived systemic violations. *Mackey* v. *United States*, 401 U. S. 667, 687 (1971) (Harlan, J., concurring in judgments in part and dissenting in part). That development led to the *Teague* framework allowing retroactivity for certain types of constitutional rules. See *Montgomery* v. *Louisiana*, 577 U. S. 190, 214–216 (2016) (Scalia, J., dissenting) (recounting history). But this Court has never suggested that lower courts had similar difficulties in interpreting the reach of criminal statutes, such that the retroactivity rules should be the same. Rather, the history suggests that the failure to apply a narrowing construction of a criminal statute is a qualitatively different type of error.

B

The majority instead determines whether a rule is substantive by looking to the "function of the rule," *ante*, at 131, and asking "whether the new rule itself has a procedural function or a substantive function," *ibid.* This apparently means that courts should divine the *effect* of a new rule and decide whether that effect alters the substantive elements of a crime or sentence. All that matters, the majority says, is that the vagueness rule announced in *Johnson* had the *effect* of invalidating the residual clause and, as a result of its invalidation, the residual clause "can no longer mandate or authorize any sentence." *Ante*, at 129–130 ("striking down the residual clause" is what "changed the substantive reach of [the ACCA]").

That approach is untenable. It brushes aside the rule of decision, which is where all of our prior precedents begin and end for purposes of applying *Teague*. When deciding whether rules are substantive, our cases have homed in on the rule that would apply not just to the specific statute at hand, but in similar, future circumstances. Thus, just this Term, the Court defined the rule announced in *Miller* v. *Alabama*, 567 U. S. 460 (2012), as: The Eighth Amendment "prohibit[s] . . . mandatory life without parole for juvenile offenders"—not that Alabama's juvenile-sentencing statute flouts the Eighth Amendment. *Montgomery*, *supra*, at 206. Likewise, the rule announced in *Ring* v. *Arizona*, 536 U. S. 584 (2002), was that "a sentencing judge, sitting without a jury, [may not] find an aggravating circumstance necessary for imposition of the death penalty"—not that provisions of Arizona's death penalty statute violate the Sixth Amendment. *Schriro*, 542 U. S., at 353 (internal quotation marks omitted; alteration in original). By jettisoning that approach and focusing solely on *Johnson*'s effect (the invalidation of the residual clause), the majority departs from our precedents.

The majority's focus on the *effect* of a decision breaks down all meaningful distinctions between "new" and "old" rules, or "substantive" and "procedural" ones. The first step of the *Teague* inquiry assesses whether the rule is "new" by looking to whether prior precedents dictated the rule of decision—not its effects. See, *e. g.*, *Chaidez* v. *United States*, 568 U. S. 342, 347 (2013) (internal quotation marks omitted). But if, as the majority contends, the "function of the rule," *ante*, at 131, is the relevant baseline, then *every* case invalidating a statute or a sentence establishes a "new" rule. The law's invalidation would be a departure from any prior decision that interpreted the law as if it were operative. Likewise, if any decision has the effect of invalidating substantive provisions of a criminal statute, it is a substantive rule under the majority's approach no matter what the reason for the statute's invalidation.

The majority denies that "every decision striking down a statute is *ipso facto* a substantive decision," saying that only when a decision invalidates a provision that "regulates conduct and prescribes punishment" is it retroactive. *Ante*, at 135. But that still transforms innumerable procedural rules into substantive ones. Take a state law that defines the crime of robbery and specifies that only 10 of the 12 jurors need to vote to convict someone of that crime. If this Court were to reverse *Apodaca* v. *Oregon*, 406 U. S. 404 (1972), and hold that the Sixth Amendment requires unanimous jury verdicts, the portion of the statute allowing nonunanimity would be invalid. But assume that the state statute was nonseverable: The Court's jury unanimity rule, undoubtedly "procedural," would have the effect of invalidating not only the portion of the state statute regarding unanimity but also the provision defining the crime of robbery, a provision that "regulates conduct." *Ante*, at 135. To the majority, these effects would make the rule substantive. That approach is mistaken, and would also produce arbitrary results. Suppose most States had similar statutes, but that some had robust sev-

erability provisions and others did not. In some States, the decision would be procedural; elsewhere, it would be substantive, producing a patchwork of statute-specific outcomes.

Finally, the majority flips *Teague* on its head with its alternative contention that *Johnson* must have announced a substantive rule because it is "not a procedural decision." *Ante*, at 130. *Teague* is a general rule against retroactivity, see *ante*, at 128, and all new rules are barred unless they fit within the exceptions for substantive or "watershed" procedural rules, 489 U. S., at 310–311 (plurality opinion). To say that a rule is "not . . . procedural" is not enough. And even if it were, the rule in *Johnson* fits better within the Court's descriptions of procedural rules than substantive ones. "Procedural rules . . . are designed to enhance the accuracy of a conviction or sentence by regulating '*the manner of determining* the defendant's culpability.'" *Montgomery*, *supra*, at 201 (quoting *Schriro*, *supra*, at 353). And the rule in *Johnson* regulates only the manner in which Congress defined a sentencing enhancement, not the conduct that triggers the punishment. *E. g.*, *Smith* v. *Goguen*, 415 U. S. 566, 572–573 (1994) (vagueness doctrine "requires legislatures to set reasonably clear guidelines" to give "fair notice or warning" and "prevent arbitrary and discriminatory enforcement" (internal quotation marks omitted)).

III

Today's opinion underscores a larger problem with our retroactivity doctrine: The Court's retroactivity rules have become unmoored from the limiting principles that the Court invoked to justify the doctrine's existence. Under *Teague* itself, the question whether *Johnson* applies retroactively would be a straightforward "No." If this question is close now, that is only because the Court keeps moving the goalposts.

As the majority observes, the foundations of our approach to retroactivity in collateral review come from Justice Har-

lan's separate opinions in *Desist* v. *United States*, 394 U. S. 244 (1969), and *Mackey* v. *United States*, 401 U. S. 667. *Ante*, at 128. There, Justice Harlan confronted a now-familiar problem: how to address the consequences of an ever-evolving Constitution. He responded with an approach to retroactivity that placed at the forefront the need for finality in the criminal process. See, *e. g.*, 401 U. S., at 682–683. In his view, very few rules that emerged after a prisoner's conviction—including constitutional rules—warranted disturbing that conviction. See *id.*, at 686–692. Justice Harlan saw only "two exceptions": "bedrock procedural" rules, *id.*, at 692–693, and "[n]ew 'substantive due process' rules" removing "certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe," *id.*, at 692. As examples of the latter category, he cited such rules as that the First Amendment forbids criminalizing flag burning, that the right to privacy precludes the Government from prosecuting distributors of contraception, and that the "freedom to marry" and equal protection principles immunize couples from being punished for entering into interracial marriages. *Id.*, at 692, n. 7. These "'substantive due process' rules," Justice Harlan explained, were "on a different footing" because "the writ has historically been available for attacking convictions on such grounds." *Id.*, at 692–693. Moreover, society has an "obvious interest in freeing individuals for punishment for conduct that is constitutionally protected." *Id.*, at 693. And granting relief for such claims would not require retrials. *Ibid.*

When *Teague* adopted Justice Harlan's approach, see 489 U. S., at 310 (plurality opinion), it agreed that to preserve "the principle of finality which is essential to the operation of our criminal justice system," *id.*, at 309, "new rules generally should not be applied retroactively to cases on collateral review," *id.*, at 305. *Teague* thus adopted Justice Harlan's two exceptions for "watershed rules of criminal procedure" and

rules that "accord constitutional protection to . . . primary activity." *Id.*, at 311; see *id.*, at 310.

The Court then swiftly discarded the limitations that *Teague* adopted. *Penry* proclaimed the retroactivity of rules barring certain *punishments*, even though the Court's constant revision of the Eighth Amendment produces an "ever-moving target of impermissible punishments." *Montgomery*, 577 U. S., at 223 (Scalia, J., dissenting) (emphasis deleted); see *id.*, at 222–223. *Bousley* extended retroactive relief for federal prisoners raising statutory claims, not just constitutional ones. See 523 U. S., at 616–617, 620–621. *Montgomery* extended *Teague* to state postconviction proceedings, enshrined *Teague* as a constitutional command, and redefined substantive rules to include rules that require sentencers to follow certain procedures in punishing juveniles. Now the majority collapses *Teague*'s substantive-procedural distinction further, allowing any rule that has the incidental effect of invalidating substantive provisions of a criminal statute to become a substantive rule.

Today's decision, like those that preceded it, professes to venerate Justice Harlan's theory of retroactivity. See *ante*, at 128; *Montgomery*, *supra*, at 200–202. This rings hollow; these decisions spell its ruin. The Court adopted Justice Harlan's approach to retroactivity because it shared his conviction that "there [must] be a visible end to the litigable aspect of the criminal process." *Mackey*, *supra*, at 690; see *Teague*, *supra*, at 310 (plurality opinion) (similar). With the Court's unprincipled expansion of *Teague*, every end is instead a new beginning.

* * *

For these reasons, I respectfully dissent.

Syllabus

HUGHES, CHAIRMAN, MARYLAND PUBLIC SERVICE COMMISSION, ET AL. *v.* TALEN ENERGY MARKETING, LLC, FKA PPL ENERGYPLUS, LLC, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 14–614. Argued February 24, 2016—Decided April 19, 2016*

The Federal Power Act (FPA) vests in the Federal Energy Regulatory Commission (FERC) exclusive jurisdiction over wholesale sales of electricity in the interstate market, but "leaves to the States alone, the regulation of [retail electricity sales]." *FERC* v. *Electric Power Supply Assn.*, 577 U. S. 260, 265. In Maryland and other States that have deregulated their energy markets, "load serving entities" (LSEs) purchase electricity at wholesale from independent power generators for delivery to retail consumers. Interstate wholesale transactions in deregulated markets typically occur through (1) bilateral contracting, where LSEs agree to purchase a certain amount of electricity from generators at a certain rate over a certain period of time; and (2) competitive wholesale auctions administered by Regional Transmission Organizations (RTOs) and Independent System Operators, nonprofit entities that manage certain segments of the electricity grid.

PJM Interconnection (PJM), an RTO overseeing a multistate grid, operates a capacity auction. The capacity auction is designed to identify need for new generation and to accommodate long-term bilateral contracts for capacity. PJM predicts demand three years into the future and assigns a share of that demand to each participating LSE. Owners of capacity to produce electricity in three years' time then bid that capacity into the auction for sale to PJM at rates the sellers set in their bids. PJM accepts bids until it has purchased enough capacity to satisfy anticipated demand. All accepted capacity sellers receive the highest accepted rate, called the "clearing price." LSEs then must purchase, from PJM, enough capacity to satisfy their assigned share of overall projected demand. FERC extensively regulates the structure of the capacity auction to ensure that it efficiently balances supply and demand, producing a just and reasonable clearing price.

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*Together with No. 14–623, *CPV Maryland, LLC* v. *Talen Energy Marketing, LLC, fka PPL EnergyPlus, LLC, et al.*, also on certiorari to the same court.

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Concerned that the PJM capacity auction was failing to encourage development of sufficient new in-state generation, Maryland enacted its own regulatory program. Maryland selected, through a proposal process, petitioner CPV Maryland, LLC (CPV), to construct a new powerplant and required LSEs to enter into a 20-year pricing contract (called a contract for differences) with CPV at a rate CPV specified in its proposal. Under the terms of the contract, CPV sells its capacity to PJM through the auction, but—through mandated payments from or to LSEs—receives the contract price rather than the clearing price for these sales to PJM. In a suit filed by incumbent generators (respondents here) against members of the Maryland Public Service Commission—CPV intervened as a defendant—the District Court issued a declaratory judgment holding that Maryland's program improperly sets the rate CPV receives for interstate wholesale capacity sales to PJM. The Fourth Circuit affirmed.

Held: Maryland's program is preempted because it disregards the interstate wholesale rate FERC requires. A state law is preempted where "Congress has legislated comprehensively to occupy an entire field of regulation," *Northwest Central Pipeline Corp.* v. *State Corporation Comm'n of Kan.*, 489 U. S. 493, 509, as well as "'where, under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,'" *Crosby* v. *National Foreign Trade Council*, 530 U. S. 363, 373. Exercising its exclusive authority over interstate wholesale sales, see 16 U. S. C. §824(b)(1), FERC has approved PJM's capacity auction as the sole ratesetting mechanism for capacity sales to PJM, and has deemed the clearing price *per se* just and reasonable. However, Maryland—through the contract for differences—guarantees CPV a rate distinct from the clearing price for its interstate capacity sales to PJM. By adjusting an interstate wholesale rate, Maryland's program contravenes the FPA's division of authority between state and federal regulators.

That Maryland was attempting to encourage construction of new in-state generation does not save its program. States may regulate within their assigned domain even when their laws incidentally affect areas within FERC's domain. But they may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC's authority over interstate wholesale rates, as Maryland has done here. See *Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U. S. 354, 373; *Nantahala Power & Light Co.* v. *Thornburg*, 476 U. S. 953, 966. Maryland and CPV analogize the contract for differences to traditional bilateral contracts for capacity. Unlike traditional bilateral

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contracts, however, the contract for differences does not transfer ownership of capacity from one party to another outside the auction. Instead, Maryland's program operates within the auction, mandating LSEs and CPV to exchange money based on the cost of CPV's capacity sales to PJM.

Maryland's program is rejected only because it disregards an interstate wholesale rate required by FERC. Neither Maryland nor other States are foreclosed from encouraging production of new or clean generation through measures that do not condition payment of funds on capacity clearing the auction. Pp. 162–166.

753 F. 3d 467, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. SOTOMAYOR, J., filed a concurring opinion, *post*, p. 167. THOMAS, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 168.

Scott H. Strauss argued the cause for petitioners in No. 14–614. With him on the briefs were *Peter J. Hopkins*, *Jeffrey A. Schwarz*, and *James A. Feldman*. *Clifton S. Elgarten* argued the cause for petitioner in No. 14–623. With him on the briefs were *Larry F. Eisenstat*, *Richard Lehfeldt*, and *Jennifer N. Waters*.

Paul D. Clement argued the cause for respondents in both cases. With him on the brief were *Erin E. Murphy*, *Edmund G. LaCour, Jr.*, *Tamara Linde*, *Shannen W. Coffin*, *David Musselman*, *Jesse A. Dillon*, and *David L. Meyer*.

Ann O'Connell argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Solicitor General Verrilli*, *Deputy Solicitor General Kneedler*, *Robert H. Solomon*, *Carol J. Banta*, and *Lisa B. Luftig*.†

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†Briefs of *amici curiae* urging reversal were filed in both cases for the State of Connecticut et al. by *George Jepson*, Attorney General of Connecticut, and *Clare E. Kindall* and *Seth A. Hollander*, Assistant Attorneys General, by *John J. Hoffman*, Acting Attorney General of New Jersey, *Bruce R. Beemer*, First Deputy Attorney General of Pennsylvania, *Arocles Aguilar*, *Paula M. Carmody*, and *Stefanie A. Brand*, and by the Attorneys General for their respective States as follows: *Tom Miller* of

JUSTICE GINSBURG delivered the opinion of the Court.

The Federal Power Act (FPA), 41 Stat. 1063, as amended, 16 U. S. C. § 791a *et seq.*, vests in the Federal Energy Regulatory Commission (FERC) exclusive jurisdiction over wholesale sales of electricity in the interstate market. FERC's regulatory scheme includes an auction-based market mechanism to ensure wholesale rates that are just and reasonable. FERC's scheme, in Maryland's view, provided insufficient incentive for new electricity generation in the State. Maryland therefore enacted its own regulatory program. Maryland's program provides subsidies, through state-mandated contracts, to a new generator, but conditions receipt of those subsidies on the new generator selling capacity into a FERC-regulated wholesale auction. In a suit initiated by competitors of Maryland's new electricity generator, the Court of Appeals for the Fourth Circuit held that Maryland's scheme impermissibly intrudes upon the wholesale electricity mar-

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Iowa, *Janet T. Mills* of Maine, *Jim Hood* of Mississippi, *Joseph A. Foster* of New Hampshire, *Hector H. Balderas* of New Mexico, *Peter F. Kilmartin* of Rhode Island, and *William H. Sorrell* of Vermont; for the American Public Power Association et al. by *John P. Coyle*, *Randolph Lee Elliott*, and *Pamela M. Silberstein*; for the American Wind Energy Association by *Gene Grace*; for NRG Energy, Inc., by *Jeffrey A. Lamken* and *Abraham Silverman*; for the National Association of Regulatory Utility Commissioners by *James Bradford Ramsay* and *Jennifer M. Murphy*; for the National Governors Association et al. by *William R. Stein*, *Scott H. Christensen*, *Eric S. Parnes*, *Elizabeth C. Solander*, and *Lisa Soronen*; for Public Citizen, Inc., by *Scott L. Nelson* and *Allison M. Zieve*; for the Public Service Commission of the State of New York et al. by *Jonathan D. Feinberg* and *Noah C. Shaw*; and for the Public Utility Law Project of New York, Inc., by *Gerald Norlander* and *Richard Berkley*.

Briefs of *amici curiae* urging affirmance were filed in both cases for Allco Renewable Energy Limited by *Thomas Melone*; for American Electric Power Co. by *Jessica L. Ellsworth*; and for the Electric Power Supply Association et al. by *Ashley C. Parrish*, *David G. Tewksbury*, *Stephanie S. Lim*, *Edward H. Comer*, and *Henri D. Bartholomot*.

John C. O'Quinn filed a brief in both cases for Leading Economists as *amici curiae*.

ket, a domain Congress reserved to FERC alone. We affirm the Fourth Circuit's judgment.

I

A

Under the FPA, FERC has exclusive authority to regulate "the sale of electric energy at wholesale in interstate commerce." § 824(b)(1). A wholesale sale is defined as a "sale of electric energy to any person for resale." § 824(d). The FPA assigns to FERC responsibility for ensuring that "[a]ll rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission . . . shall be just and reasonable." § 824d(a). See also § 824e(a) (if a rate or charge is found to be unjust or unreasonable, "the Commission shall determine the just and reasonable rate"). "But the law places beyond FERC's power, and leaves to the States alone, the regulation of 'any other sale'—most notably, any retail sale—of electricity." *FERC* v. *Electric Power Supply Assn.*, 577 U. S. 260, 265 (2016) (*EPSA*) (quoting § 824(b)). The States' reserved authority includes control over in-state "facilities used for the generation of electric energy." § 824(b)(1); see *Pacific Gas & Elec. Co.* v. *State Energy Resources Conservation and Development Comm'n*, 461 U. S. 190, 205 (1983) ("Need for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States.").

"Since the FPA's passage, electricity has increasingly become a competitive interstate business, and FERC's role has evolved accordingly." *EPSA*, 577 U. S., at 267. Until relatively recently, most state energy markets were vertically integrated monopolies—*i. e.*, one entity, often a state utility, controlled electricity generation, transmission, and sale to retail consumers. Over the past few decades, many States, including Maryland, have deregulated their energy markets.

In deregulated markets, the organizations that deliver electricity to retail consumers—often called "load serving entities" (LSEs)—purchase that electricity at wholesale from independent power generators. To ensure reliable transmission of electricity from independent generators to LSEs, FERC has charged nonprofit entities, called Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs), with managing certain segments of the electricity grid.

Interstate wholesale transactions in deregulated markets typically occur through two mechanisms. The first is bilateral contracting: LSEs sign agreements with generators to purchase a certain amount of electricity at a certain rate over a certain period of time. After the parties have agreed to contract terms, FERC may review the rate for reasonableness. See *Morgan Stanley Capital Group Inc.* v. *Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U. S. 527, 546–548 (2008) (Because rates set through good-faith arm's-length negotiation are presumed reasonable, "FERC may abrogate a valid contract only if it harms the public interest."). Second, RTOs and ISOs administer a number of competitive wholesale auctions: for example, a "same-day auction" for immediate delivery of electricity to LSEs facing a sudden spike in demand; a "next-day auction" to satisfy LSEs' anticipated near-term demand; and a "capacity auction" to ensure the availability of an adequate supply of power at some point far in the future.

These cases involve the capacity auction administered by PJM Interconnection (PJM), an RTO that oversees the electricity grid in all or parts of 13 mid-Atlantic and Midwestern States and the District of Columbia. The PJM capacity auction functions as follows. PJM predicts electricity demand three years ahead of time, and assigns a share of that demand to each participating LSE. Owners of capacity to produce electricity in three years' time bid to sell that capacity to PJM at proposed rates. PJM accepts bids, beginning

with the lowest proposed rate, until it has purchased enough capacity to satisfy projected demand. No matter what rate they listed in their original bids, all accepted capacity sellers receive the highest accepted rate, which is called the "clearing price."[1] LSEs then must purchase from PJM, at the clearing price, enough capacity to satisfy their PJM-assigned share of overall projected demand. The capacity auction serves to identify need for new generation: A high clearing price in the capacity auction encourages new generators to enter the market, increasing supply and thereby lowering the clearing price in same-day and next-day auctions three years' hence; a low clearing price discourages new entry and encourages retirement of existing high-cost generators.[2]

The auction is designed to accommodate long-term bilateral contracts for capacity. If an LSE has acquired a certain amount of capacity through a long-term bilateral contract with a generator, the LSE—not the generator—is considered the owner of that capacity for purposes of the auction. The LSE sells that capacity into the auction, where it counts toward the LSE's assigned share of PJM-projected demand, thereby reducing the net costs of the LSE's required capacity purchases from PJM.[3] LSEs generally bid their capacity

[1] For example, if four powerplants bid to sell capacity at, respectively, $10/unit, $20/unit, $30/unit, and $40/unit, and the first three plants provide enough capacity to satisfy projected demand, PJM will purchase capacity only from those three plants, each of which will receive $30/unit, the clearing price.

[2] Because PJM operates the electricity grid in a very large region of the country, PJM divides its overall grid into geographic subregions and makes adjustments to the clearing price to reflect operating conditions in those subregions. For instance, PJM may pay a higher rate in or near areas where transmission-line congestion limits the amount of electricity that can be imported from other areas. The elevated clearing price might encourage a company to site a new powerplant in a subregion where the need for local generation is great rather than elsewhere in PJM's grid.

[3] To take a simplified example, assume an LSE has signed a long-term bilateral contract with a generator to purchase 50 units of capacity annually at a price of $40/unit (total annual cost: $2,000). In a given year when

into the auction at a price of $0, thus guaranteeing that the capacity will clear at any price. Such bidders are called "price takers." Because the fixed costs of building generating facilities often vastly exceed the variable costs of producing electricity, many generators also function as price takers.

FERC extensively regulates the structure of the PJM capacity auction to ensure that it efficiently balances supply and demand, producing a just and reasonable clearing price. See *EPSA*, 577 U. S., at 268 (the clearing price is "the price an efficient market would produce"). Two FERC rules are particularly relevant to these cases. First, the Minimum Offer Price Rule (MOPR) requires new generators to bid capacity into the auction at or above a price specified by PJM, unless those generators can prove that their actual costs fall below the MOPR price. Once a new generator clears the auction at the MOPR price, PJM deems that generator an efficient entrant and exempts it from the MOPR going forward, allowing it to bid its capacity into the auction at any price it elects, including $0. Second, the New Entry Price Adjustment (NEPA) guarantees new generators, under certain circumstances, a stable capacity price for their first three years in the market. The NEPA's guarantee eliminates, for three years, the risk that the new generator's

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the auction clearing price is $50/unit, assume PJM requires the LSE to purchase 100 units of capacity to satisfy its share of projected demand. The LSE bids the 50 units of capacity it already owns into the PJM auction, and PJM pays the LSE $2,500 for those 50 units. Although the LSE then must pay PJM $5,000 for the 100 units it must purchase to satisfy projected demand, the net cost to the LSE of auction participation is only $2,500. Note that the effective price the LSE pays for 50 of the 100 units it must purchase from PJM—the amount purchased through the long-term contract—is the contract price, not the clearing price. That is, the LSE pays the utility $2,000 for 50 units of capacity, receives $2,500 from PJM after selling that capacity into the auction, and then pays $2,500 to PJM to purchase 50 units of capacity, resulting in a net cost of $2,000—the contract price—for those 50 units. The LSE, of course, must pay the full clearing price—$50/unit—for the other 50 units it is obliged to purchase to satisfy its full share of projected demand.

entry into the auction might so decrease the clearing price as to prevent that generator from recovering its costs.

B

Around 2009, Maryland electricity regulators became concerned that the PJM capacity auction was failing to encourage development of sufficient new in-state generation. Because Maryland sits in a particularly congested part of the PJM grid, importing electricity from other parts of the grid into the State is often difficult. To address this perceived supply shortfall, Maryland regulators proposed that FERC extend the duration of the NEPA from three years to ten. FERC rejected the proposal. *PJM*, 126 FERC ¶62,563 (2009). "[G]iving new suppliers longer payments and assurances unavailable to existing suppliers," FERC reasoned, would improperly favor new generation over existing generation, throwing the auction's market-based price-setting mechanism out of balance. *Ibid.* See also *PJM*, 128 FERC ¶61,789 (2009) (order on petition for rehearing) ("Both new entry and retention of existing efficient capacity are necessary to ensure reliability and both should receive the same price so that the price signals are not skewed in favor of new entry.").

Shortly after FERC rejected Maryland's NEPA proposal, the Maryland Public Service Commission promulgated the Generation Order at issue here. Under the order, Maryland solicited proposals from various companies for construction of a new gas-fired powerplant at a particular location, and accepted the proposal of petitioner CPV Maryland, LLC (CPV). Maryland then required LSEs to enter into a 20-year pricing contract (the parties refer to this contract as a "contract for differences") with CPV at a rate CPV specified in its accepted proposal.[4] Unlike a traditional bilateral con-

[4] New Jersey implemented a similar program around the same time. The duration of the price guarantee for the New Jersey program is 15 years rather than Maryland's 20.

tract for capacity, the contract for differences does not transfer ownership of capacity from CPV to the LSEs. Instead, CPV sells its capacity on the PJM market, but Maryland's program guarantees CPV the contract price rather than the auction clearing price.

If CPV's capacity clears the PJM capacity auction and the clearing price falls below the price guaranteed in the contract for differences, Maryland LSEs pay CPV the difference between the contract price and the clearing price. The LSEs then pass the costs of these required payments along to Maryland consumers in the form of higher retail prices. If CPV's capacity clears the auction and the clearing price exceeds the price guaranteed in the contract for differences, CPV pays the LSEs the difference between the contract price and the clearing price, and the LSEs then pass the savings along to consumers in the form of lower retail prices. Because CPV sells its capacity exclusively in the PJM auction market, CPV receives no payment from Maryland LSEs or PJM if its capacity fails to clear the auction. But CPV is guaranteed a certain rate if its capacity does clear, so the contract's terms encourage CPV to bid its capacity into the auction at the lowest possible price.[5]

[5] Two simplified examples illustrate how Maryland's program interacts with the PJM capacity auction. First, consider a hypothetical situation where the clearing price falls below the price guaranteed in the contract for differences. Assume that CPV's plant supplies 10,000 units of capacity a year, and that the 20-year price guaranteed under the contract is $30/unit. Assume further that, in a given year during the duration of the price guarantee, the clearing price is $20/unit, and CPV's capacity clears the auction. CPV receives payments from Maryland LSEs of $10/unit, or $100,000, and payments from PJM of $20/unit, or $200,000. The rate CPV receives from the capacity auction is therefore $30/unit—the contract price—not $20/unit—the clearing price. Under PJM auction rules, Maryland LSEs then must purchase from PJM, at the clearing price of $20/unit, enough capacity to satisfy their assigned shares of anticipated demand. Assume that PJM requires Maryland LSEs to purchase 40,000 units of capacity. Total capacity-auction expenses for Maryland LSEs would therefore include both the payment to CPV ($100,000) and the full cost of

Prior to enactment of the Maryland program, PJM had exempted new state-supported generation from the MOPR, allowing such generation to bid capacity into the auction at $0 without first clearing at the MOPR price. Responding to a complaint filed by incumbent generators in the Maryland region who objected to Maryland's program (and the similar New Jersey program), FERC eliminated this exemption. *PJM*, 135 FERC ¶61,106 (2011). See also 137 FERC ¶61,145 (2011) (order on petition for rehearing) ("Our intent is not to pass judgment on state and local policies and objectives with regard to the development of new capacity resources, or unreasonably interfere with those objectives. We are forced to act, however, when subsidized entry supported by one state's or locality's policies has the effect of disrupting the competitive price signals that PJM's [capacity auction] is designed to produce, and that PJM as a whole, including other states, rely on to attract sufficient capacity."); *New Jersey Bd. of Pub. Util.* v. *FERC*, 744 F. 3d 74, 79–80 (CA3 2014) (upholding FERC's elimination of the state-supported generation exemption). In the first year CPV bid

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purchasing capacity from PJM ($800,000), or $900,000. Absent Maryland's program, the LSEs' capacity-auction expenses would have included only the total cost of capacity purchases from PJM, or $800,000.

Now assume instead that the clearing price in a given year is $40/unit, which exceeds the $30/unit contract price, and that CPV's capacity clears the auction. CPV receives payments from PJM of $40/unit, or $400,000. CPV then must pay Maryland LSEs the difference between the contract price and the clearing price—in this case, $10/unit, or $100,000. The rate CPV receives from the capacity auction is therefore the contract price—$30/unit—the same price CPV received in the above example. Maryland LSEs then must purchase from PJM, at the clearing price of $40/unit, enough capacity to satisfy their share of anticipated demand. Assume that PJM again requires Maryland LSEs to purchase 40,000 units of capacity. Total capacity-auction expenses for Maryland LSEs would therefore include the full cost of capacity purchases from PJM ($1,600,000), minus the payment from CPV ($100,000), or $1,500,000. Absent Maryland's program, the LSEs would have had to pay $1,600,000 to PJM without receiving any offsetting payments from CPV.

capacity from its new plant into the PJM capacity auction, that capacity cleared the auction at the MOPR rate, so CPV was thereafter eligible to function as a price taker.

In addition to seeking the elimination of the state-supported generation exemption, incumbent generators—respondents here—brought suit in the District of Maryland against members of the Maryland Public Service Commission in their official capacities. The incumbent generators sought a declaratory judgment that Maryland's program violates the Supremacy Clause by setting a wholesale rate for electricity and by interfering with FERC's capacity-auction policies.[6] CPV intervened as a defendant. After a six-day bench trial, the District Court issued a declaratory judgment holding that Maryland's program improperly sets the rate CPV receives for interstate wholesale capacity sales to PJM. *PPL Energyplus, LLC* v. *Nazarian*, 974 F. Supp. 2d 790, 840 (Md. 2013). "While Maryland may retain traditional state authority to regulate the development, location, and type of power plants within its borders," the District Court explained, "the scope of Maryland's power is necessarily limited by FERC's exclusive authority to set wholesale energy and capacity prices." *Id.*, at 829.[7]

The Fourth Circuit affirmed. Relying on this Court's decision in *Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U. S. 354, 370 (1988), the Fourth Circuit observed that state laws are preempted when they "den[y] full effect

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[6] Because neither CPV nor Maryland has challenged whether plaintiffs may seek declaratory relief under the Supremacy Clause, the Court assumes without deciding that they may. See Brief for Public Utility Law Project of New York, Inc., as *Amicus Curiae* 21 (arguing that the incumbent generators should have been required to exhaust administrative remedies before filing suit).

[7] Respondents also raised arguments under the Dormant Commerce Clause and 42 U. S. C. § 1983. The District Court rejected those arguments, *PPL Energyplus, LLC* v. *Nazarian*, 974 F. Supp. 2d 790, 841–855 (Md. 2013), the Fourth Circuit did not address them, and they are irrelevant at this stage.

to the rates set by FERC, even though [they do] not seek to tamper with the actual terms of an interstate transaction." *PPL EnergyPlus, LLC* v. *Nazarian*, 753 F. 3d 467, 476 (2014). Maryland's program, the Fourth Circuit reasoned, "functionally sets the rate that CPV receives for its sales in the PJM auction," "a FERC-approved market mechanism." *Id.*, at 476–477. "[B]y adopting terms and prices set by Maryland, not those sanctioned by FERC," the Fourth Circuit concluded, Maryland's program "strikes at the heart of the agency's statutory power." *Id.*, at 478.[8] The Fourth Circuit cautioned that it "need not express an opinion on other state efforts to encourage new generation, such as direct subsidies or tax rebates, that may or may not differ in important ways from the Maryland initiative." *Ibid.*

The Fourth Circuit then held that Maryland's program impermissibly conflicts with FERC policies. Maryland's program, the Fourth Circuit determined, "has the potential to seriously distort the PJM auction's price signals," undermining the incentive structure FERC has approved for construction of new generation. *Ibid.* Moreover, the Fourth Circuit explained, Maryland's program "conflicts with NEPA" by providing a 20-year price guarantee to a new entrant—even though FERC refused Maryland's request to extend the duration of the NEPA past three years. *Id.*, at 479.

We granted certiorari, 577 U. S. 938 (2015), and now affirm.

II

The Supremacy Clause makes the laws of the United States "the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U. S. Const., Art. VI, cl. 2. Put simply, federal law preempts contrary state law. "Our inquiry into the scope of a [federal] statute's pre-emptive effect is guided by

[8] For the same reason, the Third Circuit found New Jersey's similar program preempted. *PPL Energyplus, LLC* v. *Solomon*, 766 F. 3d 241, 246 (2014).

the rule that the purpose of Congress is the ultimate touchstone in every pre-emption case." *Altria Group, Inc.* v. *Good*, 555 U. S. 70, 76 (2008) (internal quotation marks omitted). A state law is preempted where "Congress has legislated comprehensively to occupy an entire field of regulation, leaving no room for the States to supplement federal law," *Northwest Central Pipeline Corp.* v. *State Corporation Comm'n of Kan.*, 489 U. S. 493, 509 (1989), as well as "where, under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Crosby* v. *National Foreign Trade Council*, 530 U. S. 363, 373 (2000) (brackets and internal quotation marks omitted).

We agree with the Fourth Circuit's judgment that Maryland's program sets an interstate wholesale rate, contravening the FPA's division of authority between state and federal regulators. As earlier recounted, see *supra*, at 154, the FPA allocates to FERC exclusive jurisdiction over "rates and charges . . . received . . . for or in connection with" interstate wholesale sales. § 824d(a). Exercising this authority, FERC has approved the PJM capacity auction as the sole ratesetting mechanism for sales of capacity to PJM, and has deemed the clearing price *per se* just and reasonable. Doubting FERC's judgment, Maryland—through the contract for differences—requires CPV to participate in the PJM capacity auction, but guarantees CPV a rate distinct from the clearing price for its interstate sales of capacity to PJM. By adjusting an interstate wholesale rate, Maryland's program invades FERC's regulatory turf. See *EPSA*, 577 U. S., at 288 ("The FPA leaves no room either for direct state regulation of the prices of interstate wholesales or for regulation that would indirectly achieve the same result." (internal quotation marks omitted)).[9]

[9] According to Maryland and CPV, the payments guaranteed under Maryland's program are consideration for CPV's compliance with various state-imposed conditions, *i. e.*, the requirements that CPV build a certain

That Maryland was attempting to encourage construction of new in-state generation does not save its program. States, of course, may regulate within the domain Congress assigned to them even when their laws incidentally affect areas within FERC's domain. See *Oneok, Inc.* v. *Learjet, Inc.*, 575 U. S. 373, 385 (2015) (whether the Natural Gas Act (NGA) preempts a particular state law turns on "the *target* at which the state law *aims*").[10] But States may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC's authority over interstate wholesale rates, as Maryland has done here. See *ibid.* (distinguishing between "measures *aimed directly* at interstate purchasers and wholesalers for resale, and those aimed at subjects left to the States to regulate" (internal quotation marks omitted)).[11]

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type of generator, at a particular location, that would produce a certain amount of electricity over a particular period of time. The payments, Maryland and CPV continue, are therefore separate from the rate CPV receives for its wholesale sales of capacity to PJM. But because the payments are conditioned on CPV's capacity clearing the auction—and, accordingly, on CPV selling that capacity to PJM—the payments are certainly "received . . . in connection with" interstate wholesale sales to PJM. 16 U. S. C. § 824d(a).

[10] Although *Oneok, Inc.* v. *Learjet, Inc.*, 575 U. S. 373 (2015), involved the NGA rather than the FPA, the relevant provisions of the two statutes are analogous. This Court has routinely relied on NGA cases in determining the scope of the FPA, and vice versa. See, *e. g.*, *id.*, at 388–389 (discussing FPA cases while determining the preemptive scope of the NGA).

[11] Maryland's program, Maryland and CPV assert, is consistent with federal law because FERC has accommodated the program by eliminating the MOPR's state-supported generation exception. Even assuming that this change has prevented Maryland's program from distorting the auction's price signals, however—a point the parties dispute—Maryland cannot regulate in a domain Congress assigned to FERC and then require FERC to accommodate Maryland's intrusion. See *Northwest Central Pipeline Corp.* v. *State Corporation Comm'n of Kan.*, 489 U. S. 493, 518 (1989) ("The NGA does not require FERC to regulate around a state rule the only purpose of which is to influence purchasing decisions of interstate pipelines, however that rule is labeled.").

The problem we have identified with Maryland's program mirrors the problems we identified in *Mississippi Power & Light* and *Nantahala Power & Light Co.* v. *Thornburg*, 476 U. S. 953 (1986). In each of those cases, a State determined that FERC had failed to ensure the reasonableness of a wholesale rate, and the State therefore prevented a utility from recovering—through retail rates—the full cost of wholesale purchases. See *Mississippi Power & Light*, 487 U. S., at 360–364; *Nantahala*, 476 U. S., at 956–962. This Court invalidated the States' attempts to second-guess the reasonableness of interstate wholesale rates. "'Once FERC sets such a rate,'" we observed in *Mississippi Power & Light*, "'a State may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable. A State must rather give effect to Congress' desire to give FERC plenary authority over interstate wholesale rates, and to ensure that the States do not interfere with this authority.'" 487 U. S., at 373 (quoting *Nantahala*, 476 U. S., at 966). True, Maryland's program does not prevent a utility from recovering through retail sales a cost FERC mandated it incur—Maryland instead guarantees CPV a certain rate for capacity sales to PJM regardless of the clearing price. But *Mississippi Power & Light* and *Nantahala* make clear that States interfere with FERC's authority by disregarding interstate wholesale rates FERC has deemed just and reasonable, even when States exercise their traditional authority over retail rates or, as here, in-state generation.

The contract for differences, Maryland and CPV respond, is indistinguishable from traditional bilateral contracts for capacity, which FERC has long accommodated in the auction. See *supra*, at 156–157, and n. 3. But the contract at issue here differs from traditional bilateral contracts in this significant respect: The contract for differences does not transfer ownership of capacity from one party to another outside the auction. Instead, the contract for differences operates within the auction; it mandates that LSEs and CPV exchange money based on the cost of CPV's capacity sales to PJM. Notably, because

the contract for differences does not contemplate the sale of capacity outside the auction, Maryland and CPV took the position, until the Fourth Circuit issued its decision, that the rate in the contract for differences is not subject to FERC's reasonableness review. See § 824(b)(1) (FERC has jurisdiction over contracts for "*the sale of electric energy* at wholesale in interstate commerce." (emphasis added)).[12]

Our holding is limited: We reject Maryland's program only because it disregards an interstate wholesale rate required by FERC. We therefore need not and do not address the permissibility of various other measures States might employ to encourage development of new or clean generation, including tax incentives, land grants, direct subsidies, construction of state-owned generation facilities, or re-regulation of the energy sector. Nothing in this opinion should be read to foreclose Maryland and other States from encouraging production of new or clean generation through measures "untethered to a generator's wholesale market participation." Brief for Respondents 40. So long as a State does not condition payment of funds on capacity clearing the auction, the State's program would not suffer from the fatal defect that renders Maryland's program unacceptable.[13]

* * *

For the reasons stated, the judgment of the Court of Appeals for the Fourth Circuit is

Affirmed.

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[12] Our opinion does not call into question whether generators and LSEs may enter into long-term financial hedging contracts based on the auction clearing price. Such contracts, also frequently termed contracts for differences, do not involve state action to the same degree as Maryland's program, which compels private actors (LSEs) to enter into contracts for differences—like it or not—with a generator that must sell its capacity to PJM through the auction.

[13] Because the reasons we have set out suffice to invalidate Maryland's program, we do not resolve whether, as the incumbent generators also assert, Maryland's program is preempted because it counteracts FERC's refusal to extend the NEPA's duration, or because it interferes with the capacity auction's price signals.

JUSTICE SOTOMAYOR, concurring.

I write separately to clarify my understanding of the pre-emption principles that should guide this Court's analysis of the Federal Power Act and that underpin its conclusion in these cases.

The process through which consumers obtain energy stretches across state and federal regulatory domains. The Federal Power Act authorizes the States to regulate energy production. 16 U. S. C. § 824(b). It then instructs the Federal Government to step in and regulate wholesale purchases and energy transportation. § 824(a). Finally, it allows the States to assume control over the ultimate sale of energy to consumers. § 824(b). In short, the Federal Power Act, like all collaborative federalism statutes, envisions a federal-state relationship marked by interdependence.

Pre-emption inquiries related to such collaborative programs are particularly delicate. This Court has said that where "coordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes, the case for federal pre-emption becomes a less persuasive one." *New York State Dept. of Social Servs.* v. *Dublino*, 413 U. S. 405, 421 (1973). That is not to say that pre-emption has no role in such programs, but courts must be careful not to confuse the "congressionally designed interplay between state and federal regulation," *Northwest Central Pipeline Corp.* v. *State Corporation Comm'n of Kan.*, 489 U. S. 493, 518 (1989), for impermissible tension that requires pre-emption under the Supremacy Clause.

In this context, therefore, our general exhortation not to rely on a talismanic pre-emption vocabulary applies with special force. See *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941) ("This Court . . . has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference. But none of these expres-

sions provides an infallible constitutional test or an exclusive constitutional yardstick" (footnote omitted)).

I understand today's opinion to reflect these principles. Using the purpose of the Federal Power Act as the "ultimate touchstone" of its pre-emption inquiry, *Altria Group, Inc.* v. *Good*, 555 U. S. 70, 76 (2008), rather than resting on generic pre-emption frameworks unrelated to the Federal Power Act, the Court holds that Maryland has impermissibly impeded the performance of one of the Federal Energy Regulatory Commission's (FERC's) core regulatory duties. Ensuring "just and reasonable" wholesale rates is a central purpose of the Act. See 16 U. S. C. § 824d(a). Pursuant to its mandate to set such rates, FERC has approved the PJM Interconnection capacity auction as the proper mechanism to determine the "just and reasonable" rate for the sale of petitioner CPV Maryland, LLC's energy at wholesale. *Ante*, at 163. Maryland, however, has acted to guarantee CPV a rate different from FERC's "just and reasonable" rate and has thus contravened the goals of the Federal Power Act. *Ibid.* Such actions must be pre-empted. *Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U. S. 354, 374 (1988) ("States may not regulate in areas where FERC has properly exercised its jurisdiction to determine just and reasonable wholesale rates"). The Court, however, also rightly recognizes the importance of protecting the States' ability to contribute, within their regulatory domain, to the Federal Power Act's goal of ensuring a sustainable supply of efficient and price-effective energy. *Ante*, at 166.

Endorsing those conclusions, I join the Court's opinion in full.

JUSTICE THOMAS, concurring in part and concurring in the judgment.

The Court concludes that Maryland's regulatory program invades the Federal Energy Regulatory Commission's

(FERC) exclusive jurisdiction over interstate wholesale sales of electric energy. *Ante*, at 163. I agree that the statutory text and framework compel that conclusion, and that Maryland's program therefore cannot stand. Because the statute provides a sufficient basis for resolving these cases, I would not also rest today's holding on principles of implied pre-emption. See, *e. g.*, *ibid.* For that reason, I join the Court's opinion only to the extent that it rests on the text and structure of the Federal Power Act (FPA), 41 Stat. 1063, as amended, 16 U. S. C. § 791a *et seq.*

The FPA divides federal and state jurisdiction over the regulation of electricity sales. As relevant here, the FPA grants FERC the authority to regulate "the sale of electric energy at wholesale in interstate commerce." § 824(b)(1). That federal authority over interstate wholesale sales is exclusive. See, *e. g.*, *Nantahala Power & Light Co.* v. *Thornburg*, 476 U. S. 953, 966 (1986) (recognizing that Congress "vested" in FERC "exclusive jurisdiction" and "plenary authority over interstate wholesale rates"); *Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U. S. 354, 377 (1988) (Scalia, J., concurring in judgment) ("It is common ground that if FERC has jurisdiction over a subject, the States cannot have jurisdiction over the same subject").

To resolve these cases, it is enough to conclude that Maryland's program invades FERC's exclusive jurisdiction. Maryland has partially displaced the FERC-endorsed market mechanism for determining wholesale capacity rates. Under Maryland's program, CPV Maryland, LLC, is entitled to receive, for its wholesale sales into the capacity auction, something other than what FERC has decided that generators should receive. That is a regulation of wholesale sales: By "fiddling with the effective . . . price" that CPV receives for its wholesale sales, Maryland has "regulate[d]" wholesale sales "no less than does direct ratesetting." *FERC* v. *Electric Power Supply Assn.*, 577 U. S. 260, 301 (2016) (Scalia, J., dissenting) (emphasis deleted) (addressing analogous situa-

tion involving retail sales). Maryland's program therefore intrudes on the exclusive federal jurisdiction over wholesale electricity rates.

Although the Court applies the FPA's framework in reaching that conclusion, see *ante*, at 163, it also relies on principles of implied pre-emption, see, *e. g.*, *ibid.* Because we can resolve these cases based on the statute alone, I would affirm based solely on the FPA. Accordingly, I concur in the judgment and I join the Court's opinion to the extent that it holds that Maryland's program invades FERC's exclusive jurisdiction.

Syllabus

FRANCHISE TAX BOARD OF CALIFORNIA *v.* HYATT

CERTIORARI TO THE SUPREME COURT OF NEVADA

No. 14–1175. Argued December 7, 2015—Decided April 19, 2016

Respondent Hyatt claims that he moved from California to Nevada in 1991, but petitioner Franchise Tax Board of California, a state agency, claims that he actually moved in 1992 and thus owes California millions in taxes, penalties, and interest. Hyatt filed suit in Nevada state court, which had jurisdiction over California under *Nevada* v. *Hall*, 440 U. S. 410, seeking damages for California's alleged abusive audit and investigation practices. After this Court affirmed the Nevada Supreme Court's ruling that Nevada courts, as a matter of comity, would immunize California to the same extent that Nevada law would immunize its own agencies and officials, see *Franchise Tax Bd. of Cal.* v. *Hyatt*, 538 U. S. 488, 499, the case went to trial, where Hyatt was awarded almost $500 million in damages and fees. On appeal, California argued that the Constitution's Full Faith and Credit Clause, Art. IV, § 1, required Nevada to limit damages to $50,000, the maximum that Nevada law would permit in a similar suit against its own officials. The Nevada Supreme Court, however, affirmed $1 million of the award and ordered a retrial on another damages issue, stating that the $50,000 maximum would not apply on remand.

Held:

1. The Court is equally divided on the question whether *Nevada* v. *Hall* should be overruled and thus affirms the Nevada courts' exercise of jurisdiction over California's state agency. P. 173.

2. The Constitution does not permit Nevada to apply a rule of Nevada law that awards damages against California that are greater than it could award against Nevada in similar circumstances. This conclusion is consistent with this Court's precedents. A statute is a "public Act" within the meaning of the Full Faith and Credit Clause. While a State is not required "to substitute for its own statute . . . the statute of another State reflecting a conflicting and opposed policy," *Carroll* v. *Lanza*, 349 U. S. 408, 412, a State's decision to decline to apply another State's statute on this ground must not embody a "policy of hostility to the public Acts" of that other State, *id.*, at 413. Using this approach, the Court found no violation of the Clause in *Carroll* v. *Lanza* or in *Franchise Tax Bd.* the first time this litigation was considered. By contrast, the rule of unlimited damages applied here is not only "opposed" to California's law of complete immunity; it is also inconsistent

Syllabus

with the general principles of Nevada immunity law, which limit damages awards to $50,000. Nevada explained its departure from those general principles by describing California's own system of controlling its agencies as an inadequate remedy for Nevada's citizens. A State that disregards its own ordinary legal principles on this ground employs a constitutionally impermissible "'policy of hostility to the public Acts' of a sister State." 538 U. S., at 499. The Nevada Supreme Court's decision thereby lacks the "healthy regard for California's sovereign status" that was the hallmark of its earlier decision. *Ibid.* This holding does not indicate a return to a complex "balancing-of-interests approach to conflicts of law under the Full Faith and Credit Clause." *Id.*, at 496. Rather, Nevada's hostility toward California is clearly evident in its decision to devise a special, discriminatory damages rule that applies only to a sister State. Pp. 176–180.

130 Nev. 662, 335 P. 3d 125, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., concurred in the judgment. ROBERTS, C. J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 180.

Paul D. Clement argued the cause for petitioner. With him on the briefs were *George W. Hicks, Jr.*, *Stephen V. Potenza*, *Scott W. DePeel*, *Pat Lundvall*, and *Debbie Leonard.*

H. Bartow Farr argued the cause for respondent. With him on the brief were *Donald J. Kula*, *Mark A. Hutchison*, *Aaron M. Panner*, and *Peter C. Bernhard.**

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*Briefs of *amici curiae* urging reversal were filed for the State of West Virginia et al. by *Patrick Morrisey*, Attorney General of West Virginia, *Elbert Lin*, Solicitor General, *Misha Tseytlin*, General Counsel, and *Gilbert Dickey* and *J. Zak Ritchie*, Assistant Attorneys General, by *John J. Hoffman*, Acting Attorney General of New Jersey, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Mark Brnovich* of Arizona, *Leslie Rutledge* of Arkansas, *Cynthia Coffman* of Colorado, *George Jepsen* of Connecticut, *Matthew Denn* of Delaware, *Pamela Jo Bondi* of Florida, *Sam Olens* of Georgia, *Douglas S. Chin* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Gregory F. Zoeller* of Indiana, *Tom Miller* of Iowa, *Derek Schmidt* of Kansas, *Jack Conway* of Kentucky, *James D. "Buddy" Caldwell* of Louisiana, *Janet T. Mills* of Maine, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Bill Schuette* of Michigan, *Lori Swanson* of Minnesota,

JUSTICE BREYER delivered the opinion of the Court.

In *Nevada* v. *Hall*, 440 U. S. 410 (1979), this Court held that one State (here, Nevada) can open the doors of its courts to a private citizen's lawsuit against another State (here, California) without the other State's consent. In this case, a private citizen, a resident of Nevada, has brought a suit in Nevada's courts against the Franchise Tax Board of California, an agency of the State of California. The board has asked us to overrule *Hall* and hold that the Nevada courts lack jurisdiction to hear this lawsuit. The Court is equally divided on this question, and we consequently affirm the Nevada courts' exercise of jurisdiction over California. See, *e. g.*, *Exxon Shipping Co.* v. *Baker*, 554 U. S. 471, 484 (2008) (citing *Durant* v. *Essex Co.*, 7 Wall. 107, 112 (1869)).

California also asks us to reverse the Nevada court's decision insofar as it awards the private citizen greater damages than Nevada law would permit a private citizen to obtain in a similar suit against Nevada's own agencies. We agree that Nevada's application of its damages law in this case reflects a special, and constitutionally forbidden, "'policy of hostility to the public Acts' of a sister State," namely, California.

Chris Koster of Missouri, *Timothy C. Fox* of Montana, *Doug Peterson* of Nebraska, *Adam Paul Laxalt* of Nevada, *Joseph A. Foster* of New Hampshire, *Roy Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *Michael DeWine* of Ohio, *E. Scott Pruitt* of Oklahoma, *Ellen F. Rosenblum* of Oregon, *Kathleen G. Kane* of Pennsylvania, *Peter F. Kilmartin* of Rhode Island, *Marty J. Jackley* of South Dakota, *Herbert H. Slatery III* of Tennessee, *Ken Paxton* of Texas, *Sean Reyes* of Utah, *William H. Sorrell* of Vermont, *Mark R. Herring* of Virginia, *Robert W. Ferguson* of Washington, *Brad D. Schimel* of Wisconsin, and *Peter K. Michael* of Wyoming; for the Council of State Governments et al. by *Quin M. Sorenson* and *Lisa Soronen*; for the Multistate Tax Commission by *Gregory S. Matson*, *Helen Hecht*, *Sheldon Laskin*, and *Bruce Fort*; for South Carolina State Ports Authority by *Alan Wilson*, Attorney General, *Robert D. Cook*, Solicitor General, *James Emory Smith, Jr.*, Deputy Solicitor General, *Warren L. Dean, Jr.*, *C. Jonathan Benner*, and *Kathleen E. Kraft*.

Lindsay C. Harrison and *Stephen I. Vladeck*, *pro se*, filed a brief for Professors of Federal Jurisdiction as *amici curiae* urging affirmance.

Franchise Tax Bd. of Cal. v. *Hyatt*, 538 U. S. 488, 499 (2003) (quoting *Carroll* v. *Lanza*, 349 U. S. 408, 413 (1955)); U. S. Const., Art. IV, § 1 (Full Faith and Credit Clause). We set aside the Nevada Supreme Court's decision accordingly.

I

Gilbert P. Hyatt, the respondent here, moved from California to Nevada in the early 1990's. He says that he moved to Nevada in September 1991. California's Franchise Tax Board, however, after an investigation and tax audit, claimed that Hyatt moved to Nevada later, in April 1992, and that he consequently owed California more than $10 million in taxes, associated penalties, and interest.

Hyatt filed this lawsuit in Nevada state court against California's Franchise Tax Board, a California state agency. Hyatt sought damages for what he considered the board's abusive audit and investigation practices, including rifling through his private mail, combing through his garbage, and examining private activities at his place of worship. See App. 213–245, 267–268.

California recognized that, under *Hall*, the Constitution permits Nevada's courts to assert jurisdiction over California despite California's lack of consent. California nonetheless asked the Nevada courts to dismiss the case on other constitutional grounds. California law, it pointed out, provided state agencies with immunity from lawsuits based upon actions taken during the course of collecting taxes. Cal. Govt. Code Ann. § 860.2 (West 1995); see also § 860.2 (West 2012). It argued that the Constitution's Full Faith and Credit Clause required Nevada to apply California's sovereign immunity law to Hyatt's case. Nevada's Supreme Court, however, rejected California's claim. It held that Nevada's courts, as a matter of comity, would immunize California where Nevada law would similarly immunize its own agencies and officials (*e. g.*, for actions taken in the performance of a "discretionary" function), but they would not immu-

nize California where Nevada law permitted actions against Nevada agencies, say, for acts taken in bad faith or for intentional torts. App. to Pet. for Cert. in *Franchise Tax Bd. of Cal.* v. *Hyatt*, O. T. 2002, No. 02–42, p. 12. We reviewed that decision, and we affirmed. *Franchise Tax Bd.*, *supra*, at 499.

On remand, the case went to trial. A jury found in Hyatt's favor and awarded him close to $500 million in damages (both compensatory and punitive) and fees (including attorney's fees). California appealed. It argued that the trial court had not properly followed the Nevada Supreme Court's earlier decision. California explained that in a similar suit against similar Nevada officials, Nevada statutory law would limit damages to $50,000, and it argued that the Constitution's Full Faith and Credit Clause required Nevada to limit damages similarly here.

The Nevada Supreme Court accepted the premise that Nevada statutes would impose a $50,000 limit in a similar suit against its own officials. See 130 Nev. 662, 692–693, 335 P. 3d 125, 145–146 (2014); see also Nev. Rev. Stat. § 41.035(1) (1995). But the court rejected California's conclusion. Instead, while setting aside much of the damages award, it nonetheless affirmed $1 million of the award (earmarked as compensation for fraud), and it remanded for a retrial on the question of damages for intentional infliction of emotional distress. In doing so, it stated that "damages awarded on remand . . . are not subject to any statutory cap." 130 Nev., at 705, 335 P. 3d, at 153. The Nevada Supreme Court explained its holding by stating that California's efforts to control the actions of its own agencies were inadequate as applied to Nevada's own citizens. Hence, Nevada's "policy interest in providing adequate redress to Nevada['s] citizens [wa]s paramount to providing [California] a statutory cap on damages under comity." *Id.*, at 694, 335 P. 3d, at 147.

California petitioned for certiorari. We agreed to decide two questions. First, whether to overrule *Hall*. And, sec-

ond, if we did not do so, whether the Constitution permits Nevada to award Hyatt damages against a California state agency that are greater than those that Nevada would award in a similar suit against its own state agencies.

II

In light of our 4-to-4 affirmance of Nevada's exercise of jurisdiction over California's state agency, we must consider the second question: Whether the Constitution permits Nevada to award damages against California agencies under Nevada law that are greater than it could award against Nevada agencies in similar circumstances. We conclude that it does not. The Nevada Supreme Court has ignored both Nevada's typical rules of immunity and California's immunity-related statutes (insofar as California's statutes would prohibit a monetary recovery that is greater in amount than the maximum recovery that Nevada law would permit in similar circumstances). Instead, it has applied a special rule of law that evinces a "'policy of hostility'" toward California. *Franchise Tax Bd.*, *supra*, at 499 (quoting *Carroll* v. *Lanza*, *supra*, at 413). Doing so violates the Constitution's requirement that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." Art. IV, § 1.

The Court's precedents strongly support this conclusion. A statute is a "public Act" within the meaning of the Full Faith and Credit Clause. See, *e. g.*, *Carroll* v. *Lanza*, *supra*, at 411; see also 28 U. S. C. § 1738 (referring to "[t]he Acts of the legislature" in the full faith and credit context). We have said that the Clause "does not require a State to substitute for its own statute, applicable to persons and events within it, the statute of another State reflecting a conflicting and opposed policy." *Carroll* v. *Lanza*, 349 U. S., at 412. But when affirming a State's decision to decline to apply another State's statute on this ground, we have consistently emphasized that the State had "not adopt[ed] any policy of hostility to the public Acts" of that other State. *Id.*, at 413.

In *Carroll* v. *Lanza*, the Court considered a negligence action brought by a Missouri worker in Arkansas' courts. We held that the Arkansas courts need not apply a time limitation contained in Missouri's (but not in Arkansas') workman's compensation law. *Id.*, at 413–414. In doing so, we emphasized both that (1) Missouri law (compared with Arkansas law) embodied "a conflicting and opposed policy," and (2) Arkansas law did not embody "any policy of hostility to the public Acts of Missouri." *Id.*, at 412–413. This second requirement was well established in earlier law. See, *e. g.*, *Broderick* v. *Rosner*, 294 U. S. 629, 642–643 (1935) (New Jersey may not enforce a jurisdictional statute that would permit enforcement of certain claims under New Jersey law but "deny the enforcement" of similar, valid claims under New York law); *Hughes* v. *Fetter*, 341 U. S. 609, 611–612 (1951) (invalidating a Wisconsin statute that "close[d] the doors of its courts" to an Illinois cause of action while permitting adjudication of similar Wisconsin claims).

We followed this same approach when we considered the litigation now before us for the first time. See *Franchise Tax Bd.*, 538 U. S., at 498–499. Nevada had permitted Hyatt to sue California in Nevada courts. See *id.*, at 497 (citing *Hall*, 440 U. S., at 414–421). Nevada's courts recognized that California's law of complete immunity would prevent any recovery in this case. The Nevada Supreme Court consequently did not apply California law. It applied Nevada law instead. We upheld that decision as consistent with the Full Faith and Credit Clause. But in doing so, we emphasized both that (1) the Clause does not require one State to apply another State's law that violates its "own legitimate public policy," *Franchise Tax Bd.*, *supra*, at 497–498 (citing *Hall*, *supra*, at 424), and (2) Nevada's choice of law did not "exhibi[t] a 'policy of hostility to the public Acts' of a sister State," *Franchise Tax Bd.*, *supra*, at 499 (quoting *Carroll* v. *Lanza*, *supra*, at 413). Rather, Nevada had evinced "a healthy regard for California's sovereign status," we said, by "relying on the contours of Nevada's own sovereign immu-

nity from suit as a benchmark for its analysis." *Franchise Tax Bd.*, *supra*, at 499.

The Nevada decision before us embodies a critical departure from its earlier approach. Nevada has not applied the principles of Nevada law ordinarily applicable to suits against Nevada's own agencies. Rather, it has applied a special rule of law applicable only in lawsuits against its sister States, such as California. With respect to damages awards greater than $50,000, the ordinary principles of Nevada law do not "conflic[t]" with California law, for both laws would grant immunity. *Carroll* v. *Lanza*, 349 U. S., at 412. Similarly, in respect to such amounts, the "polic[ies]" underlying California law and Nevada's usual approach are not "opposed"; they are consistent. *Id.*, at 412–413.

But that is not so in respect to Nevada's special rule. That rule, allowing damages awards greater than $50,000, is not only "opposed" to California law, *ibid.*; it is also inconsistent with the general principles of Nevada immunity law, see *Franchise Tax Bd.*, *supra*, at 499. The Nevada Supreme Court explained its departure from those general principles by describing California's system of controlling its own agencies as failing to provide "adequate" recourse to Nevada's citizens. 130 Nev., at 694, 335 P. 3d, at 147. It expressed concerns about the fact that California's agencies "'operat[e] outside'" the systems of "'legislative control, administrative oversight, and public accountability'" that Nevada applies to its own agencies. *Ibid.* (quoting *Faulkner* v. *University of Tenn.*, 627 So. 2d 362 (Ala. 1992)). Such an explanation, which amounts to little more than a conclusory statement disparaging California's own legislative, judicial, and administrative controls, cannot justify the application of a special and discriminatory rule. Rather, viewed through a full faith and credit lens, a State that disregards its own ordinary legal principles on this ground *is* hostile to another State. A constitutional rule that would permit this kind of discriminatory hostility is likely to cause chaotic interference by some

States into the internal, legislative affairs of others. Imagine, for example, that many or all States enacted such discriminatory, special laws, and justified them on the sole basis that (in their view) a sister State's law provided inadequate protection to their citizens. Would each affected sister State have to change its own laws? Entirely? Piece by piece, in order to respond to the new special laws enacted by every other State? It is difficult to reconcile such a system of special and discriminatory rules with the Constitution's vision of 50 individual and equally dignified States. In light of the "constitutional equality" among the States, *Coyle* v. *Smith*, 221 U. S. 559, 580 (1911), Nevada has not offered "sufficient policy considerations" to justify the application of a special rule of Nevada law that discriminates against its sister States, *Carroll* v. *Lanza*, *supra*, at 413. In our view, Nevada's rule lacks the "healthy regard for California's sovereign status" that was the hallmark of its earlier decision, and it reflects a constitutionally impermissible "'policy of hostility to the public Acts' of a sister State." *Franchise Tax Bd.*, *supra*, at 499 (quoting *Carroll* v. *Lanza*, *supra*, at 413).

In so holding we need not, and do not, intend to return to a complex "balancing-of-interests approach to conflicts of law under the Full Faith and Credit Clause." *Franchise Tax Bd.*, *supra*, at 496. Long ago this Court's efforts to apply that kind of analysis led to results that seemed to differ depending, for example, upon whether the case involved commercial law, a shareholders' action, insurance claims, or workman's compensation statutes. See, *e. g.*, *Bradford Elec. Light Co.* v. *Clapper*, 286 U. S. 145, 157–159 (1932); *Carroll* v. *Lanza*, *supra*, at 414–420 (Frankfurter, J., dissenting) (listing, and trying to classify, nearly 50 cases). We have since abandoned that approach, and we continue to recognize that a State need not "'substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'" *Franchise Tax Bd.*, 538

U. S., at 496 (quoting *Pacific Employers Ins. Co.* v. *Industrial Accident Comm'n*, 306 U. S. 493, 501 (1939)). But here, we can safely conclude that, in devising a special—and hostile—rule for California, Nevada has not "sensitively applied principles of comity with a healthy regard for California's sovereign status." *Franchise Tax Bd.*, *supra*, at 499; see *Thomas* v. *Washington Gas Light Co.*, 448 U. S. 261, 272 (1980) (plurality opinion) (Clause seeks to prevent "parochial entrenchment on the interests of other States"); *Allstate Ins. Co.* v. *Hague*, 449 U. S. 302, 323, and n. 10 (1981) (Stevens, J., concurring in judgment) (Clause is properly brought to bear when a State's choice of law "threatens the federal interest in national unity by unjustifiably infringing upon the legitimate interests of another State"); cf. *Supreme Court of N. H.* v. *Piper*, 470 U. S. 274, 288 (1985) (Privileges and Immunities Clause prevents the New Hampshire Supreme Court from promulgating a rule that limits bar admission to state residents, discriminating against out-of-state lawyers); *Bendix Autolite Corp.* v. *Midwesco Enterprises, Inc.*, 486 U. S. 888, 894 (1988) (Commerce Clause invalidates a statute of limitations that "imposes a greater burden on out-of-state companies than it does on [in-state] companies").

For these reasons, insofar as the Nevada Supreme Court has declined to apply California law in favor of a special rule of Nevada law that is hostile to its sister States, we find its decision unconstitutional. We vacate its judgment and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE ALITO concurs in the judgment.

CHIEF JUSTICE ROBERTS, with whom JUSTICE THOMAS joins, dissenting.

Petitioner Franchise Tax Board is the California agency that collects California's state income tax. Respondent Gil-

bert Hyatt, a resident of Nevada, filed suit in Nevada state court against the Board, alleging that it had committed numerous torts in the course of auditing his California tax returns. The Board is immune from such a suit in California courts. The last time this case was before us, we held that the Nevada Supreme Court could apply Nevada law to resolve the Board's claim that it was immune from suit in Nevada as well. Following our decision, the Nevada Supreme Court upheld a $1 million jury award against the Board after concluding that the Board did not enjoy immunity under Nevada law.

Today the Court shifts course. It now holds that the Full Faith and Credit Clause requires the Nevada Supreme Court to afford the Board immunity to the extent Nevada agencies are entitled to immunity under Nevada law. Because damages in a similar suit against Nevada agencies are capped at $50,000 by Nevada law, the Court concludes that damages against the Board must be capped at that level as well.

That seems fair. But, for better or worse, the word "fair" does not appear in the Full Faith and Credit Clause. The Court's decision is contrary to our precedent holding that the Clause does not block a State from applying its own law to redress an injury within its own borders. The opinion also departs from the text of the Clause, which—when it applies—requires a State to give *full* faith and credit to another State's laws. The Court instead permits partial credit: To comply with the Full Faith and Credit Clause, the Nevada Supreme Court need only afford the Board the same limited immunity that Nevada agencies enjoy.

I respectfully dissent.

I

In 1991 Gilbert Hyatt sold his house in California and rented an apartment, registered to vote, and opened a bank account in Nevada. When he filed his 1991 and 1992 tax returns, he claimed Nevada as his place of residence. Unlike California, Nevada has no state income tax, and the

move saved Hyatt millions of dollars in California taxes. California's Franchise Tax Board was suspicious, and it initiated an audit.

In the course of the audit, employees of the Board traveled to Nevada and allegedly peered through Hyatt's windows, rummaged around in his garbage, contacted his estranged family members, and shared his personal information not only with newspapers but also with his business contacts and even his place of worship. Hyatt claims that one employee in particular had it in for him, referring to him in antisemitic terms and taking "trophy-like pictures" in front of his home after the audit. Brief for Respondent 3. As a result of the audit, the Board determined that Hyatt was a resident of California for 1991 and part of 1992, and that he accordingly owed over $10 million in unpaid state income taxes, penalties, and interest.

Hyatt protested the audit before the Board, which upheld the audit following an 11-year administrative proceeding. Hyatt is still challenging the audit in California court. In 1998, Hyatt also filed suit against the Board in Nevada state court. In that suit, which is the subject of this case, Hyatt claimed that the Board committed a variety of torts, including fraud, intentional infliction of emotional distress, and invasion of privacy. The Board is immune from suit under California law, and it argued that Nevada was required under the Full Faith and Credit Clause to enforce California's immunity law.

When the case reached the Nevada Supreme Court, that court held, applying general principles of comity under Nevada law, that the Board was entitled to immunity for its negligent but not intentional torts—the same immunity afforded Nevada state agencies. Not satisfied, the Board pursued its claim of complete immunity to this Court, but we affirmed. We ruled that the Full Faith and Credit Clause did not prohibit Nevada from applying its own immunity law to the dispute. *Franchise Tax Bd. of Cal.* v. *Hyatt*, 538 U. S. 488, 498–499 (2003).

On remand, the trial court conducted a four-month jury trial. The jury found for Hyatt, awarding him $1 million for fraud, $52 million for invasion of privacy, $85 million for emotional distress, and $250 million in punitive damages. On appeal, the Nevada Supreme Court significantly reduced the award, concluding that the invasion of privacy claims failed as a matter of law. Applying principles of comity, the Nevada Supreme Court also held that because Nevada state agencies are not subject to punitive damages, the Board was not liable for the $250 million punitive damages award. The court did hold the Board responsible for the $1 million fraud judgment, however, and it remanded for a new trial on damages for the emotional distress claim. Although tort liability for Nevada state agencies was capped at $50,000 under Nevada law, the court held that it was against Nevada's public policy to apply that cap to the Board's liability for the fraud and emotional distress claims. The Board sought review by this Court, and we again granted certiorari. 576 U. S. 1083 (2015).

II

A

The Full Faith and Credit Clause provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U. S. Const., Art. IV, § 1. The purpose of the Clause "was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation." *Milwaukee County* v. *M. E. White Co.*, 296 U. S. 268, 276–277 (1935).

The Full Faith and Credit Clause applies in a straightforward fashion to state court judgments: "A judgment entered in one State must be respected in another provided that the first State had jurisdiction over the parties and the subject matter." *Nevada* v. *Hall*, 440 U. S. 410, 421 (1979). The Clause is more difficult to apply to "public Acts," which

include the laws of other States. See *Carroll* v. *Lanza*, 349 U. S. 408, 411 (1955). State courts must give full faith and credit to those laws. But what does that mean in practice?

It is clear that state courts are not always required to apply the laws of other States. State laws frequently conflict, and a "rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own." *Alaska Packers Assn.* v. *Industrial Accident Comm'n of Cal.*, 294 U. S. 532, 547 (1935). Accordingly, this Court has treated the Full Faith and Credit Clause as a "conflicts of law" provision that dictates when a State must apply the laws of another State rather than its own. *Franchise Tax Bd.*, 538 U. S., at 496; see also *Hall*, 440 U. S., at 424 (California court is not required to apply Nevada law).

Under the Full Faith and Credit Clause, "it is frequently the case" that "a court can lawfully apply either the law of one State or the contrary law of another." *Franchise Tax Bd.*, 538 U. S., at 496 (internal quotation marks omitted). As we have explained,

> "the very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." *Pacific Employers Ins. Co.* v. *Industrial Accident Comm'n*, 306 U. S. 493, 501 (1939).

This Court has generally held that when a State chooses "to apply its own rule of law to give affirmative relief for an action arising within its borders," the Full Faith and Credit Clause is satisfied. *Carroll*, 349 U. S., at 413; see *Hall*, 440

U. S., at 424 (California court may apply California law consistent with the State's interest in "providing full protection to those who are injured on its highways" (internal quotation marks omitted)).

A State may not apply its own law, however, if doing so reflects a "policy of hostility to the public Acts" of another State. *Carroll*, 349 U. S., at 413. A State is considered to have adopted such a policy if it has "no sufficient policy considerations to warrant" its refusal to apply the other State's laws. *Ibid.* For example, when a State "seeks to exclude from its courts actions arising under a foreign statute" but permits similar actions under its own laws, the State has adopted a policy of hostility to the "public Acts" of another State. *Ibid.*; see *Hughes* v. *Fetter*, 341 U. S. 609, 611–613 (1951). In such cases, this Court has held that the forum State must open its doors and permit the plaintiff to seek relief under another State's laws. See, *e. g.*, *id.*, at 611 ("Wisconsin cannot escape [its] constitutional obligation to enforce the rights and duties validly created under the laws of other states by the simple device of removing jurisdiction from courts otherwise competent").

B

According to the Court, the Nevada Supreme Court violated the Full Faith and Credit Clause by applying "a special rule of law that evinces a policy of hostility toward California." *Ante*, at 176 (internal quotation marks omitted). As long as Nevada provides immunity to its state agencies for awards above $50,000, the majority reasons, the State has no legitimate policy rationale for refusing to give similar immunity to the agencies of other States. The Court concludes that the Nevada Supreme Court is accordingly required to rewrite Nevada law to afford the Board the same immunity to which Nevada agencies are entitled. In the majority's view, that result is "strongly" supported by this Court's precedents. *Ibid.* I disagree.

Carroll explains that the Full Faith and Credit Clause prohibits a State from adopting a "policy of hostility to the public Acts" of another State. 349 U. S., at 413. But it does not stop there. *Carroll* goes on to describe what adopting a "policy of hostility" means: A State may not refuse to apply another State's law where there are "*no* sufficient policy considerations to warrant such refusal." *Ibid.* (emphasis added). Where a State chooses a different rule from a sister State in order "to give affirmative relief for an action arising within its borders," the State has a sufficient policy reason for applying its own law, and the Full Faith and Credit Clause is satisfied. *Ibid.*

In this case, the Nevada Supreme Court applied Nevada rather than California immunity law in order to uphold the "state's policy interest in providing adequate redress to Nevada citizens." 130 Nev. 662, 694, 335 P. 3d 125, 147 (2014). This Court has long recognized that "[f]ew matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power" than "the bodily safety and economic protection" of people injured within its borders. *Pacific Employers Ins. Co.*, 306 U. S., at 503; see *Hall*, 440 U. S., at 424. Hyatt alleges that the Board committed multiple torts, including fraud and intentional infliction of emotional distress. See 130 Nev., at 669, 335 P. 3d, at 130. Under *Pacific Employers Insurance* and *Carroll*, there is no doubt that Nevada has a "sufficient" policy interest in protecting Nevada residents from such injuries.

The majority, however, does not regard that policy interest as sufficient justification for denying the Board immunity. Despite this Court's decision to get out of the business of "appraising and balancing state interests under the Full Faith and Credit Clause," *Franchise Tax Bd.*, 538 U. S., at 498, the majority concludes that Nevada cannot *really* have a state policy to protect its citizens from the kinds of torts alleged here, because the State capped its own liability at

$50,000 in similar situations. See *ante*, at 178–179. But that fails to credit the Nevada Supreme Court's explanation for why a damages cap for Nevada state agencies is fully consistent with the State's policy of protecting its citizens.

According to the Nevada Supreme Court, Nevada law treats its own agencies differently from the agencies of other States because Nevada agencies are "subject to legislative control, administrative oversight, and public accountability" in Nevada. 130 Nev., at 694, 335 P. 3d, at 147 (internal quotation marks omitted). The same is not true of other litigants, such as the Board, who operate "outside such controls." *Ibid.* (internal quotation marks omitted). The majority may think that Nevada is being unfair, but it cannot be said that the State failed to articulate a sufficient policy explanation for its decision to apply a damages cap to Nevada state agencies, but not to the agencies of other States.

As the Court points out, the Constitution certainly has a "vision of 50 individual and equally dignified States," *ante*, at 179, which is why California remains free to adopt a policy similar to that of Nevada, should it wish to do so. See *Coyle* v. *Smith*, 221 U. S. 559, 567 (1911) (The Union "was and is a union of States, equal in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself"). Nevada is not, however, required to treat its sister State as equally committed to the protection of Nevada citizens.

It is true that this Court in the prior iteration of this case found no Full Faith and Credit Clause violation in part because the "Nevada Supreme Court sensitively applied principles of comity with a healthy regard for California's sovereign status, relying on the contours of Nevada's own sovereign immunity from suit as a benchmark for its analysis." *Franchise Tax Bd.*, 538 U. S., at 499. But the Nevada court adhered to its policy of sensitivity to comity concerns this time around as well. In deference to the Board's sovereignty, the court threw out a $250 million punitive damages

award, on top of its previous decision that the Board was not liable at all for its negligent acts. That is more than a "healthy regard" for California's sovereign status.

Even if the Court is correct that Nevada violated the Full Faith and Credit Clause, however, it is wrong about the remedy. The majority concludes that in the sovereign immunity context, the Full Faith and Credit Clause is not a choice of law provision, but a create-your-own-law provision: The Court does not require the Nevada Supreme Court to apply either Nevada law (no immunity for the Board) or California law (complete immunity for the Board), but instead requires a new hybrid rule, under which the Board enjoys partial immunity.

The majority's approach is nowhere to be found in the Full Faith and Credit Clause. Where the Clause applies, it expressly requires a State to give *full* faith and credit to another State's laws. If the majority is correct that Nevada has no sufficient policy justification for applying Nevada immunity law, then California law applies. And under California law, the Board is entitled to *full* immunity. Or, if Nevada has a sufficient policy reason to apply its own law, then Nevada law applies, and the Board is subject to *full* liability.

I respectfully dissent.

Syllabus

MOLINA-MARTINEZ *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14–8913. Argued January 12, 2016—Decided April 20, 2016

The Federal Sentencing Guidelines first enter the sentencing process when the United States Probation Office prepares a presentence report containing, as relevant here, an advisory Guidelines range based on the seriousness of a defendant's offense and the extent of his criminal history. A district court may depart from the Guidelines, but it "must consult [them] and take them into account when sentencing." *United States* v. *Booker*, 543 U. S. 220, 264. Given the Guidelines' complexity, a district court's use of an incorrect Guidelines range may go unnoticed. That error can be remedied on appeal pursuant to Federal Rule of Criminal Procedure 52(b), provided that (1) there is an error that was not intentionally relinquished or abandoned, *United States* v. *Olano*, 507 U. S. 725, 732–733; (2) the error is plain, *i. e.*, clear or obvious, *id.*, at 734; and (3) the error affected the defendant's substantial rights, *ibid.*, which in the ordinary case means he or she must "show a reasonable probability that, but for the error," the outcome of the proceeding would have been different, *United States* v. *Dominguez Benitez*, 542 U. S. 74, 82. Once these three conditions have been met, the court of appeals should exercise its discretion to correct the forfeited error if the error "'seriously affects the fairness, integrity or public reputation of judicial proceedings.'" *Olano*, *supra*, at 736 (brackets omitted).

Petitioner Molina-Martinez pleaded guilty to being unlawfully present in the United States after having been deported following an aggravated felony conviction. The Guidelines range in his presentence report was 77 to 96 months. He requested, and the Probation Office recommended, a 77-month sentence, while the Government requested 96 months. The District Court, with little explanation, sentenced him to the lowest end of what it believed to be the applicable Guidelines range—77 months. On appeal, Molina-Martinez argued for the first time that the Probation Office and the District Court miscalculated his Guidelines range, which should have been 70 to 87 months, and noted that his 77-month sentence would have been in the middle of the correct range, not at the bottom. The Fifth Circuit agreed that the District Court used an incorrect Guidelines range but found that Molina-Martinez could not satisfy Rule 52(b)'s requirement that the error affect his substantial rights. It reasoned that a defendant whose sentence falls within what would have

been the correct Guidelines range must, on appeal, identify "additional evidence" showing that use of the incorrect Guidelines range in fact affected his sentence.

Held: Courts reviewing Guidelines errors cannot apply a categorical "additional evidence" rule in cases, like this one, where a district court applies an incorrect range but sentences the defendant within the correct range. Pp. 198–205.

(a) The Guidelines establish the essential framework for sentencing proceedings. Sentencing courts "'*must* begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.'" *Peugh* v. *United States*, 569 U. S. 530, 541. Sentencing Commission statistics confirm that the Guidelines inform and instruct the district court's determination of an appropriate sentence. In the usual case, the systemic function of the selected Guidelines range will affect a defendant's sentence. As a result, a defendant who shows that the district court mistakenly deemed applicable an incorrect, higher range will, in the ordinary case, have demonstrated a reasonable probability of a different outcome. That showing will suffice for relief if Rule 52(b)'s other requirements are met. Pp. 198–201.

(b) The unworkable nature of the Fifth Circuit's "additional evidence" rule is evident here, where the record shows that the District Court gave little explanation for the sentence it selected, rejected the Government's request for a sentence at the top of the erroneous Guidelines range, and chose the sentence requested by the defendant and recommended by the Probation Office—a sentence at the bottom of the erroneous Guidelines range. This demonstrates that the Guidelines served as the starting point for the sentencing and were the focal point for the proceedings that followed. Given the sentence the District Court chose, and because the court said nothing to suggest that it would have imposed the same sentence regardless of the Guidelines range, there is at least a reasonable probability that the court would have imposed a different sentence had it known that 70 months was the lowest sentence the Commission deemed appropriate. P. 202.

(c) Rejection of the Fifth Circuit's rule means only that a defendant can rely on the application of an incorrect Guidelines range to show an effect on his substantial rights, not that the Government will have to prove that every Guidelines error was harmless. And the Government's concern over the judicial resources needed for the resentencing proceedings that might result from today's holding is unfounded because the holding is consistent with the approach taken by most Courts of Appeals and because remanding for resentencing is less costly than remanding for retrial. Pp. 202–204.

588 Fed. Appx. 333, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined, *post*, p. 205.

Timothy Crooks argued the cause for petitioner. With him on the briefs were *Marjorie A. Meyers* and *Laura Fletcher Leavitt*.

Scott A. C. Meisler argued the cause for the United States. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Caldwell*, *Deputy Solicitor General Dreeben*, and *Jenny C. Ellickson*.

JUSTICE KENNEDY delivered the opinion of the Court.

This case involves the Federal Sentencing Guidelines. In sentencing petitioner, the District Court applied a Guidelines range higher than the applicable one. The error went unnoticed by the court and the parties, so no timely objection was entered. The error was first noted when, during briefing to the Court of Appeals for the Fifth Circuit, petitioner himself raised the mistake. The Court of Appeals refused to correct the error because, in its view, petitioner could not establish a reasonable probability that but for the error he would have received a different sentence. Under that court's decisions, if a defendant's ultimate sentence falls within what would have been the correct Guidelines range, the defendant, on appeal, must identify "additional evidence" to show that use of the incorrect Guidelines range did in fact affect his sentence. Absent that evidence, in the Court of Appeals' view, a defendant who is sentenced under an incorrect range but whose sentence is also within what would have been the correct range cannot demonstrate he has been prejudiced by the error.

Most Courts of Appeals have not adopted so rigid a standard. Instead, in recognition of the Guidelines' central role in sentencing, other Courts of Appeals have concluded that

a district court's application of an incorrect Guidelines range can itself serve as evidence of an effect on substantial rights. See, *e. g.*, *United States* v. *Sabillon-Umana*, 772 F. 3d 1328, 1333 (CA10 2014) (application of an erroneous Guidelines range "'runs the risk of affecting the ultimate sentence *regardless of* whether the court ultimately imposes a sentence within or outside'" that range); *United States* v. *Vargem*, 747 F. 3d 724, 728–729 (CA9 2014); *United States* v. *Story*, 503 F. 3d 436, 440 (CA6 2007). These courts recognize that, in most cases, when a district court adopts an incorrect Guidelines range, there is a reasonable probability that the defendant's sentence would be different absent the error. This Court granted certiorari to reconcile the difference in approaches.

I

A

The Sentencing Guidelines provide the framework for the tens of thousands of federal sentencing proceedings that occur each year. Congress directed the United States Sentencing Commission (USSC or Commission) to establish the Guidelines. 28 U. S. C. § 994(a)(1). The goal was to achieve "'*uniformity* in sentencing . . . imposed by different federal courts for similar criminal conduct,' as well as '*proportionality* in sentencing through a system that imposes appropriately different sentences for criminal conduct of different severity.'" *Rita* v. *United States*, 551 U. S. 338, 349 (2007). To those ends, the Commission engaged in "a deliberative and dynamic process" to create Guidelines that account for a variety of offenses and circumstances. USSC, Guidelines Manual § 2, ch. 1, pt. A, intro. comment., p. 14 (Nov. 2015) (USSG). As part of that process, the Commission considered the objectives of federal sentencing identified in the Sentencing Reform Act of 1984—the same objectives that federal judges must consider when sentencing defendants. Compare 28 U. S. C. § 991(b) with 18 U. S. C. § 3553(a). The

result is a set of elaborate, detailed Guidelines that aim to embody federal sentencing objectives "both in principle and in practice." *Rita*, *supra*, at 350.

Uniformity and proportionality in sentencing are achieved, in part, by the Guidelines' significant role in sentencing. See *Peugh* v. *United States*, 569 U. S. 530, 541 (2013). The Guidelines enter the sentencing process long before the district court imposes the sentence. The United States Probation Office first prepares a presentence report which includes a calculation of the advisory Guidelines range it considers to be applicable. Fed. Rules Crim. Proc. 32(d)(1)(A)–(C); see generally 18 U. S. C. § 3552(a). The applicable Guidelines range is based on the seriousness of a defendant's offense (indicated by his "offense level") and his criminal history (indicated by his "criminal history category"). Rules 32(d)(1)(B)–(C). The presentence report explains the basis for the Probation Office's calculations and sets out the sentencing options under the applicable statutes and Guidelines. Rule 32(d)(1). It also contains detailed information about the defendant's criminal history and personal characteristics, such as education and employment history. Rule 32(d)(2).

At the outset of the sentencing proceedings, the district court must determine the applicable Guidelines range. *Peugh*, *supra*, at 541. To do so, the court considers the presentence report as well as any objections the parties might have. The court then entertains the parties' arguments regarding an appropriate sentence, including whether the sentence should be within the Guidelines range or not. Although the district court has discretion to depart from the Guidelines, the court "must consult those Guidelines and take them into account when sentencing." *United States* v. *Booker*, 543 U. S. 220, 264 (2005).

B

The Guidelines are complex, and so there will be instances when a district court's sentencing of a defendant within the

framework of an incorrect Guidelines range goes unnoticed. In that circumstance, because the defendant failed to object to the miscalculation, appellate review of the error is governed by Federal Rule of Criminal Procedure 52(b).

Rule 52, in both its parts, is brief. It states:

> "(a) HARMLESS ERROR. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.
>
> "(b) PLAIN ERROR. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention."

The starting point for interpreting and applying paragraph (b) of the Rule, upon which this case turns, is the Court's decision in *United States* v. *Olano*, 507 U. S. 725 (1993). *Olano* instructs that a court of appeals has discretion to remedy a forfeited error provided certain conditions are met. First, there must be an error that has not been intentionally relinquished or abandoned. *Id.*, at 732–733. Second, the error must be plain—that is to say, clear or obvious. *Id.*, at 734. Third, the error must have affected the defendant's substantial rights, *ibid.*, which in the ordinary case means he or she must "show a reasonable probability that, but for the error," the outcome of the proceeding would have been different, *United States* v. *Dominguez Benitez*, 542 U. S. 74, 76, 83 (2004). Once these three conditions have been met, the court of appeals should exercise its discretion to correct the forfeited error if the error "'seriously affects the fairness, integrity or public reputation of judicial proceedings.'" *Olano*, *supra*, at 736 (brackets omitted).

II

The petitioner here, Saul Molina-Martinez, pleaded guilty to being unlawfully present in the United States after having been deported following an aggravated felony conviction, in violation of 8 U. S. C. §§ 1326(a) and (b). As required, the Pro-

bation Office prepared a presentence report that related Molina-Martinez's offense of conviction, his criminal history, his personal characteristics, and the available sentencing options. The report also included the Probation Office's calculation of what it believed to be Molina-Martinez's Guidelines range. The Probation Office calculated Molina-Martinez's total offense level as 21. It concluded that Molina-Martinez's criminal history warranted 18 points, which included 11 points for five aggravated burglary convictions from 2011. Those 18 criminal history points resulted in a criminal history category of VI. That category, combined with an offense level of 21, resulted in a Guidelines range of 77 to 96 months.

At the sentencing hearing Molina-Martinez's counsel and the Government addressed the court. The Government acknowledged that the Probation Office had "recommended the low end on this case, 77 months." App. 30. But, the prosecution told the court, it "disagree[d] with that recommendation," and was "asking for a high end sentence of 96 months"—the top of the Guidelines range. *Ibid.* Like the Probation Office, counsel for Molina-Martinez urged the court to enter a sentence at the bottom of the Guidelines range. Counsel asserted that "77 months is a severe sentence" and that "after the 77 months, he'll be deported with probably a special release term." *Id.*, at 32. A sentence of 77 months, counsel continued, "is more than adequate to ensure he doesn't come back again." *Ibid.*

After hearing from the parties, the court stated it was adopting the presentence report's factual findings and Guidelines calculations. It then ordered Molina-Martinez's sentence:

> "It's the judgment of the Court that the defendant, Saul Molina-Martinez, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 77 months. Upon release from imprisonment, Defendant

> shall be placed on supervised release for a term of three years without supervision." *Id.*, at 33.

The court provided no further explanation for the sentence.

On appeal, Molina-Martinez's attorney submitted a brief pursuant to *Anders* v. *California*, 386 U. S. 738 (1967). The attorney explained that, in his opinion, there were no nonfrivolous grounds for appeal. Molina-Martinez, however, submitted a *pro se* response to his attorney's *Anders* brief. In it he identified for the first time what he believed to be an error in the calculation of his criminal history points under the Guidelines. The Court of Appeals concluded that Molina-Martinez's argument did not appear frivolous. It directed his lawyer to file either a supplemental *Anders* brief or a brief on the merits of the Guidelines issue.

Molina-Martinez, through his attorney, filed a merits brief arguing that the Probation Office and the District Court erred in calculating his criminal history points, resulting in the application of a higher Guidelines range. The error, Molina-Martinez explained, occurred because the Probation Office failed to apply §4A1.2(a)(2) of the Guidelines. See USSG §4A1.2(a)(2) (Nov. 2012). That provision addresses how multiple sentences imposed on the same day are to be counted for purposes of determining a defendant's criminal history. It instructs that, when prior sentences were imposed on the same day, they should be counted as a single sentence unless the offenses "were separated by an intervening arrest (*i. e.*, the defendant is arrested for the first offense prior to committing the second offense)." *Ibid.*

Molina-Martinez's presentence report included five aggravated burglary convictions for which he had been sentenced on the same day. The Probation Office counted each sentence separately, which resulted in the imposition of 11 criminal history points. Molina-Martinez contended this was error because none of the offenses were separated by an intervening arrest and because he had been sentenced for all five burglaries on the same day. Under a correct calculation, in his view, the burglaries should have resulted in 5

criminal history points instead of 11. That would have lowered his criminal history category from VI to V. The correct criminal history category, in turn, would have resulted in a Guidelines range of 70 to 87 months rather than 77 to 96 months. Had the correct range been used, Molina-Martinez's 77-month sentence would have been in the middle of the range, not at the bottom.

Molina-Martinez acknowledged that, because he did not object in the District Court, he was entitled to relief only if he could satisfy Rule 52(b)'s requirements. He nevertheless maintained relief was warranted because the error was plain, affected his substantial rights, and impugned the fairness, integrity, and public reputation of judicial proceedings.

The Court of Appeals disagreed. It held that Molina-Martinez had not established that the District Court's application of an incorrect Guidelines range affected his substantial rights. It reasoned that, when a correct sentencing range overlaps with an incorrect range, the reviewing court "'do[es] not assume, in the absence of additional evidence, that the sentence [imposed] affects a defendant's substantial rights.'" 588 Fed. Appx. 333, 335 (CA5 2014) (*per curiam*); see also *United States* v. *Blocker*, 612 F. 3d 413, 416 (CA5 2010). Molina-Martinez, the court ruled, had not put forth the additional evidence necessary to show that the error affected his substantial rights. "The mere fact that the court sentenced Molina-Martinez to a low-end sentence," the Court of Appeals reasoned, "is insufficient on its own to show that Molina-Martinez would have received a similar low-end sentence had the district court used the correct Guidelines range." 588 Fed. Appx., at 335. Instead, Molina-Martinez needed to identify "'additional evidence'" in the record showing that the Guidelines had an effect on the District Court's selection of his sentence. *Ibid.* The court noted that "[t]he district court made no explicit statement suggesting that the Guidelines range was a primary factor in sentencing." *Ibid.* And the court did not view as probative "the parties' anchoring of their sentencing arguments in the

Guidelines" or "the district court's refusal to grant the government's request for a high-end sentence of 96 months." *Ibid.*

This Court granted certiorari to resolve the disagreement among Courts of Appeals over how to determine whether the application of an incorrect Guidelines range at sentencing affected the defendant's substantial rights. See 576 U. S. 1095 (2015).

III

The Court of Appeals for the Fifth Circuit stands generally apart from other Courts of Appeals with respect to its consideration of unpreserved Guidelines errors. This Court now holds that its approach is incorrect.

Nothing in the text of Rule 52(b), its rationale, or the Court's precedents supports a requirement that a defendant seeking appellate review of an unpreserved Guidelines error make some further showing of prejudice beyond the fact that the erroneous, and higher, Guidelines range set the wrong framework for the sentencing proceedings. This is so even if the ultimate sentence falls within both the correct and incorrect range. When a defendant is sentenced under an incorrect Guidelines range—whether or not the defendant's ultimate sentence falls within the correct range—the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error.

A

Today's holding follows from the essential framework the Guidelines establish for sentencing proceedings. The Court has made clear that the Guidelines are to be the sentencing court's "starting point and . . . initial benchmark." *Gall* v. *United States*, 552 U. S. 38, 49 (2007). Federal courts understand that they "'*must* begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.'" *Peugh*, 569 U. S., at 541. The Guidelines are "the framework for sentencing" and "anchor . . . the district

court's discretion." *Id.*, at 542, 549. "Even if the sentencing judge sees a reason to vary from the Guidelines, 'if the judge uses the sentencing range as the beginning point to explain the decision to deviate from it, *then the Guidelines are in a real sense a basis for the sentence.*'" *Id.*, at 542.

The Guidelines' central role in sentencing means that an error related to the Guidelines can be particularly serious. A district court that "improperly calculat[es]" a defendant's Guidelines range, for example, has committed a "significant procedural error." *Gall*, *supra*, at 51. That same principle explains the Court's ruling that a "retrospective increase in the Guidelines range applicable to a defendant creates a sufficient risk of a higher sentence to constitute an *ex post facto* violation." *Peugh*, 569 U. S., at 544.

The Commission's statistics demonstrate the real and pervasive effect the Guidelines have on sentencing. In most cases district courts continue to impose "either within-Guidelines sentences or sentences that depart downward from the Guidelines on the Government's motion." *Id.*, at 543; see USSC, 2014 Annual Report and 2014 Sourcebook of Federal Sentencing Statistics S–50 (19th ed.) (Table N) (2014 Sourcebook). In less than 20% of cases since 2007 have district courts "imposed above- or below-Guidelines sentences absent a Government motion." *Peugh*, *supra*, at 544; see also 2011 Annual Report and 2011 Sourcebook of Federal Sentencing Statistics 63 (16th ed.) (Figure G); 2015 Annual Report and 2015 Sourcebook of Federal Sentencing Statistics (20th ed.) (Figure G), online at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2015/FigureG.pdf (as last visited Apr. 15, 2016). As the Court has recognized, "when a Guidelines range moves up or down, offenders' sentences [tend to] move with it." *Peugh*, *supra*, at 544; USSC, Final Quarterly Data Report, FY 2014, pp. 32–37 (Figures C to H). These realities have led the Court to observe that there is "considerable

empirical evidence indicating that the Sentencing Guidelines have the intended effect of influencing the sentences imposed by judges." *Peugh*, *supra*, at 543.

These sources confirm that the Guidelines are not only the starting point for most federal sentencing proceedings but also the lodestar. The Guidelines inform and instruct the district court's determination of an appropriate sentence. In the usual case, then, the systemic function of the selected Guidelines range will affect the sentence. This fact is essential to the application of Rule 52(b) to a Guidelines error. From the centrality of the Guidelines in the sentencing process it must follow that, when a defendant shows that the district court used an incorrect range, he should not be barred from relief on appeal simply because there is no other evidence that the sentencing outcome would have been different had the correct range been used.

In most cases a defendant who has shown that the district court mistakenly deemed applicable an incorrect, higher Guidelines range has demonstrated a reasonable probability of a different outcome. And, again in most cases, that will suffice for relief if the other requirements of Rule 52(b) are met. There may be instances when, despite application of an erroneous Guidelines range, a reasonable probability of prejudice does not exist. The sentencing process is particular to each defendant, of course, and a reviewing court must consider the facts and circumstances of the case before it. See *United States* v. *Davila*, 569 U. S. 597, 611 (2013) ("Our essential point is that particular facts and circumstances matter"). The record in a case may show, for example, that the district court thought the sentence it chose was appropriate irrespective of the Guidelines range. Judges may find that some cases merit a detailed explanation of the reasons the selected sentence is appropriate. And that explanation could make it clear that the judge based the sentence he or she selected on factors independent of the Guidelines. The Government remains free to "poin[t] to parts of the record"—including relevant statements by the judge—"to counter any

ostensible showing of prejudice the defendant may make." *United States* v. *Vonn*, 535 U. S. 55, 68 (2002). Where, however, the record is silent as to what the district court might have done had it considered the correct Guidelines range, the court's reliance on an incorrect range in most instances will suffice to show an effect on the defendant's substantial rights. Indeed, in the ordinary case a defendant will satisfy his burden to show prejudice by pointing to the application of an incorrect, higher Guidelines range and the sentence he received thereunder. Absent unusual circumstances, he will not be required to show more.

The Court of Appeals' rule to the contrary fails to take account of the dynamics of federal sentencing. In a significant number of cases the sentenced defendant will lack the additional evidence the Court of Appeals' rule would require, for sentencing judges often say little about the degree to which the Guidelines influenced their determination. District courts, as a matter of course, use the Guidelines range to instruct them regarding the appropriate balance of the relevant federal sentencing factors. This Court has told judges that they need not provide extensive explanations for within-Guidelines sentences because "[c]ircumstances may well make clear that the judge rests his decision upon the Commission's own reasoning." *Rita*, 551 U. S., at 356–357. In these situations, reviewing courts may presume that a sentence imposed within a properly calculated Guidelines range is reasonable. *Id.*, at 341. As a result, the cases where the Guidelines are most likely to have influenced the district court's sentencing decision—those where the court chose a sentence within what it believed to be the applicable Guidelines range—are also the cases least likely to provide the defendant with evidence of the Guidelines' influence beyond the sentence itself. The defendants in these cases should not be prevented by a categorical rule from establishing on appeal that there is a reasonable probability the Guidelines range applied by the sentencing court had an effect on their within-Guidelines sentence.

B

This case illustrates the unworkable nature of the Court of Appeals' additional evidence rule. Here the court held that Molina-Martinez could not establish an effect on his substantial rights. Yet the record points to a different conclusion. The District Court said nothing specific about why it chose the sentence it imposed. It merely "adopt[ed] the . . . guideline applications in the presentence investigation report," App. 33, which set the range at 77 to 96 months; rejected the Government's argument for a sentence at the top of the Guidelines range; and agreed with the defendant's request for, and the Probation Office's recommendation of, a sentence at the bottom of the range. As intended, the Guidelines served as the starting point for the sentencing and were the focal point for the proceedings that followed.

The 77-month sentence the District Court selected is conspicuous for its position as the lowest sentence within what the District Court believed to be the applicable range. As Molina-Martinez explained to the Court of Appeals, the District Court's selection of a sentence at the bottom of the range, despite the Government's request for the maximum Guidelines sentence, "evinced an intention . . . to give the minimum recommended by the Guidelines." Brief for Appellant in No. 13–40324 (CA5), p. 18. The District Court said nothing to suggest that it would have imposed a 77-month sentence regardless of the Guidelines range. Given these circumstances, there is at least a reasonable probability that the District Court would have imposed a different sentence had it known that 70 months was in fact the lowest sentence the Commission deemed appropriate.

IV

The Government contends that permitting a defendant to establish prejudice through the fact of a Guidelines error alone eliminates the main difference between Rules 52(a) and 52(b)—which party must prove whether the complained-of

error had an effect. Brief for United States 21. As noted, Rule 52(a) states: "Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded." When a defendant makes a timely objection, the Government can rely on Rule 52(a) to argue that the error does not warrant correction because it was harmless. Although Rules 52(a) and (b) both require an inquiry into whether the complained-of error was prejudicial, there is " 'one important difference' " between the subparts—under (b), but not (a), " '[i]t is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.' " Brief for United States 18 (quoting *Olano*, 507 U. S., at 734). In the Government's view, ruling for Molina-Martinez will require the Government to prove the harmlessness of every Guidelines error raised on appeal regardless of whether it was preserved. Brief for United States 27–28.

The holding here does not lead to that result. The decision today simply states that courts reviewing sentencing errors cannot apply a categorical rule requiring additional evidence in cases, like this one, where the district court applied an incorrect range but nevertheless sentenced the defendant within the correct range. Rejection of that rule means only that a defendant can rely on the application of an incorrect Guidelines range to show an effect on his substantial rights.

The Government expresses concern over the judicial resources needed for the resentencing proceedings that might result from the Court's holding. It is doubtful today's holding will result in much of an increased burden. As already noted, today's holding is consistent with the approach taken by most Courts of Appeals. See, *e. g.*, *Sabillon-Umana*, 772 F. 3d, at 1333 (collecting cases). Yet only a small fraction of cases are remanded for resentencing because of Guidelines-related errors. See 2014 Sourcebook S–6, S–153 (Tables 2 and 62) (of the roughly 75,000 cases sentenced in 2014, only 620 resulted in a remand for resentencing because of a statu-

tory or Guidelines-related error). Under the *Olano* framework, appellate courts retain broad discretion in determining whether a remand for resentencing is necessary. Courts have, for example, developed mechanisms short of a full remand to determine whether a district court in fact would have imposed a different sentence absent the error. See, *e. g.*, *United States* v. *Currie*, 739 F. 3d 960, 967 (CA7 2014) (ordering "limited remand so that the district judge [could] consider, and state on the record, whether she would have imposed the same sentence . . . knowing that [the defendant] was subject to a five-year rather than a ten-year statutory minimum term of imprisonment"). And even when a court of appeals does decide that resentencing is appropriate, "a remand for resentencing, while not costless, does not invoke the same difficulties as a remand for retrial does." *United States* v. *Wernick*, 691 F. 3d 108, 117–118 (CA2 2012); see also *Sabillon-Umana*, *supra*, at 1334 (noting that the "cost of correction is . . . small" because "[a] remand for sentencing . . . doesn't require that a defendant be released or retried"). The Government's concern about additional, burdensome procedures appears unfounded, and, in any event, does not warrant reading into Rule 52(b) a requirement that does not exist.

* * *

In the ordinary case the Guidelines accomplish their purpose. They serve as the starting point for the district court's decision and anchor the court's discretion in selecting an appropriate sentence. It follows, then, that in most cases the Guidelines range will affect the sentence. When that is so, a defendant sentenced under an incorrect Guidelines range should be able to rely on that fact to show a reasonable probability that the district court would have imposed a different sentence under the correct range. That probability is all that is needed to establish an effect on substantial rights for purposes of obtaining relief under Rule 52(b).

The contrary judgment of the Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring in part and concurring in the judgment.

I agree with the Court that the Fifth Circuit's rigid approach to unpreserved Guidelines errors is incorrect. And I agree that petitioner has shown a reasonable probability that the District Court would have imposed a different sentence in his case if his recommended Guidelines sentence had been accurately calculated. Unlike the Court, however, I would not speculate about how often the reasonable probability test will be satisfied in future cases. The Court's predictions in dicta about how plain-error review will play out are predicated on the view that sentencing judges will continue to rely very heavily on the Guidelines in the future, but that prediction may not turn out to be accurate. We should not make predictions about the future effects of Guidelines errors, particularly since some may misunderstand those predictions as veiled directives.

I

"'No procedural principle is more familiar to this Court than that a constitutional right,' or a right of any other sort, 'may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before the tribunal having jurisdiction to determine it.'" *United States* v. *Olano*, 507 U. S. 725, 731 (1993) (quoting *Yakus* v. *United States*, 321 U. S. 414, 444 (1944)). Consistent with this principle, Rule 52 of the Federal Rules of Criminal Procedure treats defendants who preserve their claims much more favorably than those who fail to register a timely objection. When the defendant has made a timely objection to an error,

the Government generally bears the burden of showing that the error was harmless. *Olano*, 507 U. S., at 734. By contrast, when a defendant has failed to make a timely objection, "[i]t is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice." *Ibid.*; see also *id.*, at 741–742 (KENNEDY, J., concurring).

This framework applies to errors in the calculation of an advisory Guidelines sentence. If the defendant does not call the error to the attention of the sentencing judge, the defendant may obtain relief on appeal only if he or she proves that the error was prejudicial—specifically, that there is a "reasonable probability" that, but for the error, the sentence would have been different. *United States* v. *Dominguez Benitez*, 542 U. S. 74, 81–83 (2004). Meeting this burden "should not be too easy for defendants." *Id.*, at 82. Instead, the standard should be robust enough to "enforce the policies that underpin Rule 52(b) generally, to encourage timely objections and reduce wasteful reversals by demanding strenuous exertion to get relief for unpreserved error." *Ibid.* By placing this burden on the defendant, Rule 52(b) compels defense counsel to devote careful attention to the potential complexities of the Guidelines *at sentencing*, thus providing the district court—which "is ordinarily in the best position to determine the relevant facts and adjudicate the dispute"—with "the opportunity to consider and resolve" any objections. *Puckett* v. *United States*, 556 U. S. 129, 134 (2009); see also *ibid.* ("[A]ppellate-court authority to remedy" unpreserved errors "is strictly circumscribed" in order to "induce the timely raising of claims and objections"); *United States* v. *Vonn*, 535 U. S. 55, 73 (2002) ("[T]he value of finality requires defense counsel to be on his toes, not just the judge, and the defendant who just sits there when a mistake can be fixed cannot just sit there when he speaks up later on"); *Olano*, *supra*, at 742–743 (KENNEDY, J., concurring) ("[T]he operation of Rule 52(b) does not permit a party to withhold an objection . . . and then to demand automatic reversal").

Whether a defendant can show a "reasonable probability" of a different sentence depends on the "particular facts and circumstances" of each case. *United States* v. *Davila*, 569 U. S. 597, 611 (2013). "We have previously warned against courts' determining whether an error is harmless through the use of mandatory presumptions and rigid rules rather than case-specific application of judgment, based upon examination of the record." *Shinseki* v. *Sanders*, 556 U. S. 396, 407 (2009) (citing *Kotteakos* v. *United States*, 328 U. S. 750, 760 (1946)). Instead of relying on presumptions, a court of appeals must "engage in [a] full-record assessment" to determine whether a defendant who forfeited a claim of Guidelines error has met his case-specific burden of showing of prejudice. *Davila*, *supra*, at 612. The answer may be affected by a variety of factors, including any direct evidence, the nature and magnitude of the error, the sentencing judge's view of the Guidelines,[1] the approach of the circuit in question,[2] and the particular crime at issue.[3]

[1] See, *e. g.*, United States Sentencing Commission, Report on the Continuing Impact of *United States* v. *Booker* on Federal Sentencing 3 (2012) (*Booker* Report) ("[T]he Commission's analysis of individual judge data showed that the identity of the judge has played an increasingly important role in the sentencing outcomes in many districts"); Bowman, Dead Law Walking: The Surprising Tenacity of the Federal Sentencing Guidelines, 51 Houston L. Rev. 1227, 1266 (2014) ("Inter-Judge Disparity Has . . . Increased Since *Booker*"); Scott, Inter-Judge Sentencing Disparity After *Booker*: A First Look, 63 Stan. L. Rev. 1, 30 (2010) ("[I]n their guideline sentencing patterns, judges have responded in starkly different ways to *Booker*, with some following a 'free at last' pattern and others a 'business as usual' pattern").

[2] See, *e. g.*, *Booker* Report 6 ("The influence of the guidelines . . . has varied by circuit"); Bowman, *supra*, at 1261 ("Different Districts Have Had Very Different Post-*Booker* Experiences"); Yang, Have Interjudge Sentencing Disparities Increased in an Advisory Guidelines Regime? Evidence from *Booker*, 89 N. Y. U. L. Rev. 1268, 1277, 1319–1323 (2014) (presenting "evidence of substantial interdistrict differences in sentencing outcomes").

[3] See, *e. g.*, *Booker* Report 5 ("The influence of the guidelines . . . has generally remained stable in drug trafficking, firearms, and immigration offenses, but has diminished in fraud and child pornography offenses").

Under the specific circumstances here, Molina-Martinez met his burden. As the Court points out, Molina-Martinez demonstrated that the Guidelines "were the focal point for the proceedings"; that "[t]he 77-month sentence the District Court selected is conspicuous for its position as the lowest sentence within what the District Court believed to be the applicable range"; and that "the District Court's selection of a sentence at the bottom of the range, despite the Government's request for the maximum Guidelines sentence, 'evinced an intention . . . to give the minimum recommended by the Guidelines.'" *Ante*, at 202. This evidence establishes a "reasonable probability that the District Court would have imposed a different sentence had it known that 70 months was in fact the lowest sentence the Commission deemed appropriate." *Ibid.*

In concluding otherwise, the Fifth Circuit applied exactly the sort of strict, categorical rule against which we have warned. Under the Fifth Circuit's approach, Molina-Martinez could not satisfy his burden with circumstantial evidence regarding the parties' sentencing arguments or the District Court's selection of a sentence at the very bottom of the range. See 588 Fed. Appx. 333, 335 (CA5 2014) (*per curiam*). Rather, the Fifth Circuit would require a defendant to produce direct evidence, such as an "explicit statement suggesting that the Guidelines range was a primary factor in sentencing." *Ibid.* But there is no good reason to preclude defendants from showing prejudice via the type of circumstantial evidence at issue here. As this case illustrates, the manner in which a district court applies an incorrect Guidelines range can itself serve as evidence of an effect on substantial rights. I thus concur in the Court's opinion insofar as it rejects the Fifth Circuit's misguided approach and finds that Molina-Martinez demonstrated a reasonable probability of a different sentence absent the Guidelines error.

II

I cannot, however, join the Court's dicta speculating that "most" defendants who forfeit a Guidelines error will be able to show a reasonable probability of prejudice. *Ante*, at 198, 200, 204. Things may turn out that way, but I see no reason to prejudge an empirical question that is unnecessary to our decision in this case and that will be worked out by the lower courts on a case-by-case basis.[4]

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[4] Some of the Court's dicta could perhaps be interpreted not as predictions, but as instructions to lower courts to side with the forfeiting defendant unless the Government can point to "unusual circumstances." See *ante*, at 201 ("[I]n the ordinary case a defendant will satisfy his burden to show prejudice by pointing to the application of an incorrect, higher Guidelines range and the sentence he received thereunder. Absent unusual circumstances, he will not be required to show more"). For several reasons, however, I do not think the opinion can be fairly viewed as requiring such a result. First, the Court makes clear that today's decision does *not* shift the burden of persuasion from a forfeiting defendant to the Government. See *ante*, at 203 (Under Rule 52(b), "'[i]t is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice,'" and "[t]he holding here does not" shift the burden). Second, the opinion acknowledges that a "court's reliance on an incorrect range" will not always "suffice to show an effect on the defendant's substantial rights"—even where "the record is silent as to what the district court might have done had it considered the correct Guidelines range." *Ante*, at 201. It follows that even where the Government fails to identify *any* direct evidence of harmlessness, the defendant cannot automatically satisfy his burden simply by pointing to the application of an incorrect Guidelines range. Instead of employing a strict presumption against the Government, the Court emphasizes, "a reviewing court must consider the facts and circumstances of the case before it." *Ante*, at 200; see also *ibid.* ("'Our essential point is that particular facts and circumstances matter'" (quoting *United States* v. *Davila*, 569 U. S. 597, 611 (2013))). Given these caveats, I do not read the Court's opinion as replacing the Fifth Circuit's inflexible pro-Government presumption with an equally inflexible pro-defendant presumption. Rather, I take the Court at its word: "The decision today simply states that courts reviewing sentencing errors cannot apply a categorical rule requiring additional evidence in cases, like this one, where the district court applied an incorrect range but nevertheless sentenced the defendant within the correct range." *Ante*, at 203.

The Court's proclamations about what will occur in "most" cases are based on Sentencing Commission statistics indicating that the Guidelines tend to influence sentences. See *ante*, at 200. Perhaps these statistics are probative of the Guidelines' current impact on sentencing. But they provide an unstable and shifting basis for the Court's prophecies about the future. The Guidelines are now entirely advisory, see *United States* v. *Booker*, 543 U. S. 220, 245 (2005), and in time the lower courts may increasingly drift away from the Guidelines and back toward the sentencing regime that prevailed prior to their issuance.[5] As circumstances change, and as judges who spent decades applying mandatory Guidelines ranges are replaced with new judges less wedded to the Guidelines, the statistics underlying the Court's forecasts may change dramatically.[6] Because I cannot join the

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[5] See, *e. g.*, Assessing *Booker* and Its Aftermath, Practice Under the Federal Sentencing Guidelines § 1.02(C)(1), pp. 1–14 to 1–16 (D. Debold ed., 5th ed. 2016) (Debold) ("Since the first weeks after *Booker*, district courts have been engaged in a dynamic debate over the precise weight to be given the now advisory Guidelines," and "there are reasons to expect continued evolution in sentencing norms"); *id.*, § 1.02(C)(2) ("[D]istrict courts can be expected to continue to test the boundaries of their discretion . . . . Accordingly, while it is clear that district courts now enjoy more discretion at sentencing, the proper bounds of that discretion will continue to be explored").

[6] See, *e. g.*, Yang, *supra*, at 1277 (finding that "Judges who have no prior experience sentencing under the mandatory Guidelines regime are more likely to depart from the Guidelines-recommended range than their pre-*Booker* counterparts, suggesting that newer judges are less anchored to the Guidelines"); *id.*, at 1318–1319 ("The 'anchor' effect of the Guidelines sentence may be more prominent for pre-*Booker* appointees because these judges are more acculturated to and experienced with constraining their sentences to the dictates of the Guidelines. In contrast, the 'anchor' effect is less prominent for post-*Booker* appointees. These potential anchoring differences . . . may 'increase as the years go by and the bench is filled with individuals who have no history with binding guidelines' "); see also, *e. g.*, Debold § 1.02(C)(1), at 1–16 ("Sentencing judges, particularly more recent appointees, are also growing increasingly skeptical of the Guidelines as they become more comfortable viewing the Guidelines as

Court's questionable predictions, I concur only in part and in the judgment.

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advice and look deeper into the reasoning supporting (or failing to support) the Guidelines' recommendations"); Gertner, Supporting Advisory Guidelines, 3 Harv. L. & Pol'y Rev. 261, 270 (2009) (describing continued Guideline sentencing as the result of "the habits ingrained during twenty years of mandatory Guideline sentencing"); Stith, The Arc of the Pendulum: Judges, Prosecutors, and the Exercise of Discretion, 117 Yale L. J. 1420, 1496–1497 (2008) ("[A]s a new generation of prosecutors and judges enters into service, the pendulum may swing back toward the local exercise of informed discretion, if *Booker* lasts that long. But incumbent sentencing decision makers may be reluctant to regard as unreasonable the sentences they were obliged to seek and impose for two decades under the command and the conceit of law").

Syllabus

BANK MARKAZI, AKA CENTRAL BANK OF IRAN *v.* PETERSON ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 14–770. Argued January 13, 2016—Decided April 20, 2016

American nationals may seek money damages from state sponsors of terrorism in the courts of the United States. See 28 U. S. C. § 1605A. Prevailing plaintiffs, however, often face practical and legal difficulties enforcing their judgments. To place beyond dispute the availability of certain assets for satisfaction of judgments rendered in terrorism cases against Iran, Congress enacted the Iran Threat Reduction and Syria Human Rights Act of 2012. As relevant here, the Act makes a designated set of assets available to satisfy the judgments underlying a consolidated enforcement proceeding which the statute identifies by the District Court's docket number. 22 U. S. C. § 8772. Section 8772(a)(2) requires a court, before allowing execution against these assets, to determine, *inter alia*, "whether Iran holds equitable title to, or the beneficial interest in, the assets."

Respondents—more than 1,000 victims of Iran-sponsored acts of terrorism, their estate representatives, and surviving family members—rank within 16 discrete groups, each of which brought suit against Iran. To enforce judgments they obtained by default, the 16 groups moved for turnover of about $1.75 billion in bond assets held in a New York bank account—assets that, respondents alleged, were owned by Bank Markazi, the Central Bank of Iran. The turnover proceeding began in 2008. In 2012, the judgment holders updated their motions to include execution claims under § 8772. Bank Markazi maintained that § 8772 could not withstand inspection under the separation-of-powers doctrine, contending that Congress had usurped the judicial role by directing a particular result in the pending enforcement proceeding. The District Court disagreed, concluding that § 8772 permissibly changed the law applicable in a pending litigation. The Second Circuit affirmed.

Held: Section 8772 does not violate the separation of powers. Pp. 225–236.

(a) Article III of the Constitution establishes an independent Judiciary with the "province and duty . . . to say what the law is" in particular cases and controversies. *Marbury* v. *Madison*, 1 Cranch 137, 177. Necessarily, that endowment of authority blocks Congress from "requir[ing] federal courts to exercise the judicial power in a manner that Article III forbids." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 218.

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Although Article III bars Congress from telling a court how to apply pre-existing law to particular circumstances, *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429, 438–439, Congress may amend a law and make the amended prescription retroactively applicable in pending cases, *Landgraf* v. *USI Film Products*, 511 U. S. 244, 267–268; *United States* v. *Schooner Peggy*, 1 Cranch 103, 110. In *United States* v. *Klein*, 13 Wall. 128, 146, this Court enigmatically observed that Congress may not "prescribe rules of decision to the Judicial Department . . . in [pending] cases." More recent decisions have clarified that *Klein* does not inhibit Congress from "amend[ing] applicable law." *Robertson*, 503 U. S., at 441; *Plaut*, 514 U. S., at 218. Section 8772 does just that: It requires a court to apply a new legal standard in a pending postjudgment enforcement proceeding. No different result obtains because, as Bank Markazi argues, the outcome of applying § 8772 to the facts in the proceeding below was a "foregone conclusio[n]." Brief for Petitioner 47. A statute does not impinge on judicial power when it directs courts to apply a new legal standard to undisputed facts. See *Pope* v. *United States*, 323 U. S. 1, 11. Pp. 225–232.

(b) Nor is § 8772 invalid because, as Bank Markazi further objects, it prescribes a rule for a single, pending case identified by caption and docket number. The amended law upheld in *Robertson* also applied to cases identified in the statute by caption and docket number. 503 U. S., at 440. Moreover, § 8772 is not an instruction governing one case only: It facilitates execution of judgments in 16 suits. While consolidated for administrative purposes at the execution stage, the judgment-execution claims were not independent of the original actions for damages and each retained its separate character. In any event, the Bank's argument rests on the flawed assumption that legislation must be generally applicable. See *Plaut*, 514 U. S., at 239, n. 9. This Court and lower courts have upheld as a valid exercise of Congress' legislative power laws governing one or a very small number of specific subjects. Pp. 232–234.

(c) Adding weight to this decision, § 8772 is an exercise of congressional authority regarding foreign affairs, a domain in which the controlling role of the political branches is both necessary and proper. Measures taken by the political branches to control the disposition of foreign-state property, including blocking specific foreign-state assets or making them available for attachment, have never been rejected as invasions upon the Article III judicial power. Cf. *Dames & Moore* v. *Regan*, 453 U. S. 654, 674. Notably, before enactment of the Foreign Sovereign Immunities Act, the Executive regularly made case-specific determinations whether sovereign immunity should be recognized, and courts accepted those determinations as binding. See, *e. g.*, *Republic*

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of Austria v. *Altmann*, 541 U. S. 677, 689–691. This practice, too, was never perceived as an encroachment on the federal courts' jurisdiction. *Dames & Moore*, 453 U. S., at 684–685. Pp. 234–236.

758 F. 3d 185, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which KENNEDY, BREYER, ALITO, and KAGAN, JJ., joined, and in all but Part II–C of which THOMAS, J., joined. ROBERTS, C. J., filed a dissenting opinion, in which SOTOMAYOR, J., joined, *post*, p. 236.

Jeffrey A. Lamken argued the cause for petitioner. With him on the briefs were *Robert K. Kry*, *David M. Lindsey*, and *Andreas A. Frischknecht*.

Theodore B. Olson argued the cause for respondents. With him on the brief were *Matthew D. McGill*, *Jonathan C. Bond*, *Ashley E. Johnson*, *Liviu Vogel*, *James P. Bonner*, *Patrick L. Rocco*, *Shale D. Stiller*, *Keith Martin Fleischman*, *Douglass A. Mitchell*, *Steven R. Perles*, *Thomas Fortune Fay*, *Suzelle M. Smith*, *Dan Howarth*, and *James L. Bernard*.

Deputy Solicitor General Kneedler argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Mizer*, *Ginger D. Anders*, *Sharon Swingle*, and *Lewis S. Yelin*.*

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*A brief of *amici curiae* urging reversal was filed for Federal Courts Scholars by *Ernest A. Young*, *pro se*.

Briefs of *amici curiae* urging affirmance were filed for Agudas Chasidei Chabad by *Nathan Lewin* and *Alyza D. Lewin*; for the Bipartisan Legal Advisory Group of the United States House of Representatives et al. by *Kerry W. Kircher*, *William Pittard*, *Eleni M. Roumel*, and *Isaac B. Rosenberg*; for Constitutional Law Scholars et al. by *Erik R. Zimmerman* and *Edward A. Hartnett*, *pro se*; for Former Senior Officials of the Office of Legal Counsel by *Kelly P. Dunbar*, *David M. Lehn*, *Adriel I. Cepeda Derieux*, and *Mark C. Fleming*; for the Foundation for Defense of Democracies by *Erin E. Murphy* and *Michael D. Lieberman*; for National Security Law Professors by *Jimmy Gurulé*, *pro se*; for Senator Sheldon Whitehouse et al. by *John M. Eubanks*, *Michael E. Elsner*, and *Peter Margulies*; and for the United States Senate by *Patricia Mack Bryan*, *Morgan J. Frankel*, *Grant R. Vinik*, and *Thomas E. Caballero*.

JUSTICE GINSBURG delivered the opinion of the Court.*

A provision of the Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U. S. C. § 8772, makes available for postjudgment execution a set of assets held at a New York bank for Bank Markazi, the Central Bank of Iran. The assets would partially satisfy judgments gained in separate actions by over 1,000 victims of terrorist acts sponsored by Iran. The judgments remain unpaid. Section 8772 is an unusual statute: It designates a particular set of assets and renders them available to satisfy the liability and damages judgments underlying a consolidated enforcement proceeding that the statute identifies by the District Court's docket number. The question raised by petitioner Bank Markazi: Does § 8772 violate the separation of powers by purporting to change the law for, and directing a particular result in, a single pending case?

Section 8772, we hold, does not transgress constraints placed on Congress and the President by the Constitution. The statute, we point out, is not fairly portrayed as a "one-case-only regime." Brief for Petitioner 27. Rather, it covers a category of postjudgment execution claims filed by numerous plaintiffs who, in multiple civil actions, obtained evidence-based judgments against Iran together amounting to billions of dollars. Section 8772 subjects the designated assets to execution "to satisfy *any* judgment" against Iran for damages caused by specified acts of terrorism. § 8772(a)(1) (emphasis added). Congress, our decisions make clear, may amend the law and make the change applicable to pending cases, even when the amendment is outcome determinative.

Adding weight to our decision, Congress passed, and the President signed, § 8772 in furtherance of their stance on a matter of foreign policy. Action in that realm warrants respectful review by courts. The Executive has historically

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* JUSTICE THOMAS joins all but Part II–C of this opinion.

made case-specific sovereign-immunity determinations to which courts have deferred. And exercise by Congress and the President of control over claims against foreign governments, as well as foreign-government-owned property in the United States, is hardly a novelty. In accord with the courts below, we perceive in § 8772 no violation of separation-of-powers principles, and no threat to the independence of the Judiciary.

I

A

We set out here statutory provisions relevant to this case. American nationals may file suit against state sponsors of terrorism in the courts of the United States. See 28 U. S. C. § 1605A. Specifically, they may seek "money damages . . . against a foreign state for personal injury or death that was caused by" acts of terrorism, including "torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support" to terrorist activities. § 1605A(a)(1). This authorization—known as the "terrorism exception"—is among enumerated exceptions prescribed in the Foreign Sovereign Immunities Act of 1976 (FSIA) to the general rule of sovereign immunity.[1]

Victims of state-sponsored terrorism, like others proceeding under an FSIA exception, may obtain a judgment against a foreign state on "establish[ing] [their] claim[s] . . . by evidence satisfactory to the court." § 1608(e). After gaining a judgment, however, plaintiffs proceeding under the terrorism exception "have often faced practical and legal difficul-

[1] The FSIA "provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country" and renders a foreign government "presumptively immune from the jurisdiction of United States courts unless one of the Act's express exceptions to sovereign immunity applies." *OBB Personenverkehr AG* v. *Sachs*, 577 U. S. 27, 30–31 (2015) (internal quotation marks omitted); see 28 U. S. C. § 1330(a) (conferring jurisdiction over "any claim . . . with respect to which the foreign state is not entitled to immunity"); § 1604 (on "[i]mmunity of a foreign state from jurisdiction").

ties" at the enforcement stage. Brief for United States as *Amicus Curiae* 2. Subject to stated exceptions, the FSIA shields foreign-state property from execution. § 1609. When the terrorism exception was adopted, only foreign-state property located in the United States and "used for a commercial activity" was available for the satisfaction of judgments. § 1610(a)(7), (b)(3). Further limiting judgment-enforcement prospects, the FSIA shields from execution property "of a foreign central bank or monetary authority held for its own account." § 1611(b)(1).

To lessen these enforcement difficulties, Congress enacted the Terrorism Risk Insurance Act of 2002 (TRIA), which authorizes execution of judgments obtained under the FSIA's terrorism exception against "the blocked assets of [a] terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)." § 201(a), 116 Stat. 2337, note following 28 U. S. C. § 1610. A "blocked asset" is any asset seized by the Executive Branch pursuant to either the Trading with the Enemy Act (TWEA), 40 Stat. 411, 50 U. S. C. App. 1 *et seq.*, or the International Emergency Economic Powers Act (IEEPA), 91 Stat. 1626, 50 U. S. C. § 1701 *et seq.* See TRIA § 201(d)(2). Both measures, TWEA and IEEPA, authorize the President to freeze the assets of "foreign enemy state[s]" and their agencies and instrumentalities. Brief for United States as *Amicus Curiae* 25. These blocking regimes "put control of foreign assets in the hands of the President so that he may dispose of them in the manner that best furthers the United States' foreign-relations and national-security interests." *Ibid.* (internal quotation marks omitted).[2]

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[2] Again expanding the availability of assets for postjudgment execution, Congress, in 2008, amended the FSIA to make available for execution the property (whether or not blocked) of a foreign state sponsor of terrorism, or its agency or instrumentality, to satisfy a judgment against that state. See § 1083 of the National Defense Authorization Act for Fiscal Year 2008, 122 Stat. 341, 28 U. S. C. § 1610(g). Section 1610(g) does not take prece-

Invoking his authority under the IEEPA, the President, in February 2012, issued an Executive Order blocking "[a]ll property and interests in property of any Iranian financial institution, including the Central Bank of Iran, that are in the United States." Exec. Order No. 13599, 3 CFR 215 (2012 Comp.). The availability of these assets for execution, however, was contested.[3]

To place beyond dispute the availability of some of the Executive Order No. 13599-blocked assets for satisfaction of judgments rendered in terrorism cases, Congress passed the statute at issue here: § 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012, 126 Stat. 1258, 22 U. S. C. § 8772. Enacted as a freestanding measure, not as an amendment to the FSIA or the TRIA,[4] § 8772 provides that, if a court makes specified findings, "a financial asset . . . shall be subject to execution . . . in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by" the acts of terrorism enumerated in the FSIA's terrorism exception. § 8772(a)(1). Section 8772(b) defines as available for execution by holders of terrorism judgments against Iran "the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG), that were restrained by restrain-

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dence over "any other provision of law," as the TRIA does. See TRIA § 201(a). Hence, the FSIA's central-bank immunity provision, see *supra*, at 217, limits § 1610(g), but not the TRIA.

[3] As a defense to execution, Bank Markazi contended that the blocked assets were not assets "of" Bank Markazi. See TRIA § 201(a). Referring to state property law, Bank Markazi asserted that the assets were "of" a financial intermediary which held them in the United States on Bank Markazi's behalf. See App. to Pet. for Cert. 96a–100a.

[4] Title 22 U. S. C. § 8772(a)(1) applies "notwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempt[s] any inconsistent provision of State law."

ing notices and levies secured by the plaintiffs in those proceedings."

Before allowing execution against an asset described in § 8772(b), a court must determine that the asset is:

> "(A) held in the United States for a foreign securities intermediary doing business in the United States;
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> "(B) a blocked asset (whether or not subsequently unblocked) . . . ; and
>
> "(C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran . . . ." § 8772(a)(1).

In addition, the court in which execution is sought must determine "whether Iran holds equitable title to, or the beneficial interest in, the assets . . . and that no other person possesses a constitutionally protected interest in the assets . . . under the Fifth Amendment to the Constitution of the United States." § 8772(a)(2).

B

Respondents are victims of Iran-sponsored acts of terrorism, their estate representatives, and surviving family members. See App. to Pet. for Cert. 52a–53a; Brief for Respondents 6. Numbering more than 1,000, respondents rank within 16 discrete groups, each of which brought a lawsuit against Iran pursuant to the FSIA's terrorism exception. App. to Brief for Respondents 1a–2a. All of the suits were filed in the United States District Court for the District of Columbia.[5] Upon finding a clear evidentiary basis for

[5] The 16 judgments include: *Wultz* v. *Islamic Republic of Iran*, 864 F. Supp. 2d 24 (DC 2012); *Murphy* v. *Islamic Republic of Iran*, 740 F. Supp. 2d 51 (DC 2010); *Valore* v. *Islamic Republic of Iran*, 700 F. Supp. 2d 52 (DC 2010) (granting judgment in consolidation of four actions at issue here: *Valore*, No. 1:03–cv–01959; *Bonk* v. *Islamic Republic of Iran*, No. 1:08–cv–01273; *Spencer* v. *Islamic Republic of Iran*, No. 1:06–cv–00750; and *Arnold* v. *Islamic Republic of Iran*, No. 1:06–cv–00516); *Estate of Brown* v. *Islamic Republic of Iran*, No. 1:08–cv–00531 (D DC, Feb. 1,

Iran's liability to each suitor, the court entered judgments by default. See, *e. g.*, *Peterson* v. *Islamic Republic of Iran*, 264 F. Supp. 2d 46, 49 (2003). The majority of respondents sought redress for injuries suffered in connection with the 1983 bombing of the U. S. Marine barracks in Beirut, Lebanon. App. to Pet. for Cert. 21a.[6] "Together, [respondents] have obtained billions of dollars in judgments against Iran, the vast majority of which remain unpaid." *Id.*, at 53a.[7] The validity of those judgments is not in dispute. *Id.*, at 55a.

2010); *Acosta* v. *Islamic Republic of Iran*, 574 F. Supp. 2d 15 (DC 2008); *Beer* v. *Islamic Republic of Iran*, 574 F. Supp. 2d 1 (DC 2008); *Kirschenbaum* v. *Islamic Republic of Iran*, 572 F. Supp. 2d 200 (DC 2008); *Levin* v. *Islamic Republic of Iran*, 529 F. Supp. 2d 1 (DC 2007); *Estate of Heiser* v. *Islamic Republic of Iran*, 466 F. Supp. 2d 229 (DC 2006); *Estate of Bland* v. *Islamic Republic of Iran*, No. 1:05–cv–02124 (D DC, Dec. 6, 2006); *Greenbaum* v. *Islamic Republic of Iran*, 451 F. Supp. 2d 90 (DC 2006); *Campuzano* v. *Islamic Republic of Iran*, 281 F. Supp. 2d 258 (DC 2003) (awarding judgment in both the *Rubin* action, *Rubin* v. *Islamic Republic of Iran*, No. 1:01–cv–01655, the plaintiffs of which are respondents here, and the *Campuzano* action, the plaintiffs of which are not); *Peterson* v. *Islamic Republic of Iran*, 264 F. Supp. 2d 46 (DC 2003). Three additional groups of plaintiffs with claims against Iran were voluntarily dismissed from the instant litigation after "informing the [District Court] that none of the plaintiffs in those actions ha[d] obtained judgments for damages against Iran." App. to Pet. for Cert. 19a.

[6] "At approximately 6:25 a.m. Beirut time, . . . [a] truck crashed through a . . . barrier and a wall of sandbags, and entered the barracks. When the truck reached the center of the barracks, the bomb in the truck detonated. . . . " *Peterson*, 264 F. Supp. 2d, at 56 (footnote omitted). "As a result of the Marine barracks explosion, 241 servicemen were killed . . . ." *Id.*, at 58. The United States has long recognized Iran's complicity in this attack. See H. R. Rep. No. 104–523, pt. 1, p. 9 (1996) ("After an Administration determination of Iran's involvement in the bombing of the Marine barracks in Beirut in October 1983, Iran was placed on the U. S. list of state sponsors of terrorism on January 19, 1984.").

[7] Some of these 16 judgments awarded compensatory and punitive damages. See, *e. g.*, *Wultz*, 864 F. Supp. 2d, at 42; *Acosta*, 574 F. Supp. 2d, at 31. Both § 201(a) of the TRIA and § 8772(a)(1) permit execution only "to the extent of any compensatory damages."

To enforce their judgments, the 16 groups of respondents first registered them in the United States District Court for the Southern District of New York. See 28 U. S. C. § 1963 ("A judgment . . . may be registered . . . in any other district . . . . A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner."). They then moved under Federal Rule of Civil Procedure 69 for turnover of about $1.75 billion in bond assets held in a New York bank account—assets that, respondents alleged, were owned by Bank Markazi. See App. to Pet. for Cert. 52a–54a, 60a, and n. 1; Second Amended Complaint in No. 10–CIV–4518 (SDNY), p. 6.[8] This turnover proceeding began in 2008 when the terrorism judgment holders in *Peterson*, 264 F. Supp. 2d 46, filed writs of execution and the District Court restrained the bonds. App. to Pet. for Cert. 14a–15a, 62a. Other groups of terrorism judgment holders—some of which had filed their own writs of execution against the bonds—were joined in No. 10–CIV–4518, the *Peterson* enforcement proceeding, through a variety of procedural mechanisms.[9] It is this consolidated judgment-enforcement proceeding and assets restrained in that proceeding that § 8772 addresses.

Although the enforcement proceeding was initiated prior to the issuance of Executive Order No. 13599 and the enactment of § 8772, the judgment holders updated their motions

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[8] Federal Rule of Civil Procedure 69(a)(1) provides: "A money judgment is enforced by writ of execution . . . . The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies."

[9] Some moved to intervene; others became part of the proceeding by way of an interpleader motion filed by Citibank. App. to Pet. for Cert. 15a, 52a–53a, n. 1; Third-Party Petition Alleging Claims in the Nature of Interpleader in No. 10–CIV–4518 (SDNY), pp. 12–14. One group of respondents intervened much later than the others, in 2013, after § 8772's enactment. See App. to Pet. for Cert. 18a–19a.

in 2012 to include execution claims under § 8772. Plaintiffs' Supplemental Memorandum of Law in Support of Their Motion for Partial Summary Judgment in No. 10–CIV–4518 (SDNY).[10] Making the findings necessary under § 8772, the District Court ordered the requested turnover. App. to Pet. for Cert. 109a.[11]

In reaching its decision, the court reviewed the financial history of the assets and other record evidence showing that Bank Markazi owned the assets. See *id.*, at 111a–113a, and n. 17. Since at least early 2008, the court recounted, the bond assets have been held in a New York account at Citibank directly controlled by Clearstream Banking, S. A. (Clearstream), a Luxembourg-based company that serves "as an intermediary between financial institutions worldwide." *Id.*, at 56a–57a (internal quotation marks omitted). Initially, Clearstream held the assets for Bank Markazi and deposited interest earned on the bonds into Bank Markazi's Clearstream account. At some point in 2008, Bank Markazi instructed Clearstream to position another intermediary—Banca UBAE, S. p. A., an Italian bank—between the bonds and Bank Markazi. *Id.*, at 58a–59a. Thereafter, Clearstream deposited interest payments in UBAE's account, which UBAE then remitted to Bank Markazi. *Id.*, at 60a–61a.[12]

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[10] Before § 8772's enactment, respondents' execution claims relied on the TRIA. Even earlier, *i. e.*, prior to Executive Order No. 13599, which blocked the assets and thereby opened the door to execution under the TRIA, respondents sought turnover pursuant to the FSIA's terrorism judgment execution provisions. See Second Amended Complaint in No. 10–CIV–4518 (SDNY), pp. 27, 35–36; *supra*, at 217–218, and n. 2.

[11] In April 2012, the last of the bonds matured, leaving only "cash associated with the bonds" still restrained in the New York bank account. App. to Pet. for Cert. 61a.

[12] Citibank is a "neutral stakeholder," seeking only "resolution of ownership of [the] funds." App. to Pet. for Cert. 54a (internal quotation marks omitted). UBAE did not contest turnover of the $1.75 billion in assets at

Resisting turnover of the bond assets, Bank Markazi and Clearstream, as the District Court observed, "filled the proverbial kitchen sink with arguments." *Id.*, at 111a. They argued, *inter alia*, the absence of subject-matter and personal jurisdiction, *id.*, at 73a–104a, asserting that the blocked assets were not assets "of" the Bank, see *supra*, at 218, n. 3, and that the assets in question were located in Luxembourg, not New York, App. to Pet. for Cert. 100a. Several of their objections to execution became irrelevant following enactment of § 8772, which, the District Court noted, "sweeps away . . . any . . . federal or state law impediments that might otherwise exist, so long as the appropriate judicial determination is made." *Id.*, at 73a; § 8772(a)(1) (Act applies "notwithstanding any other provision of law"). After § 8772's passage, Bank Markazi changed its defense. It conceded that Iran held the requisite "equitable title to, or a beneficial interest in, the assets," § 8772(a)(2)(A), but maintained that § 8772 could not withstand inspection under the separation-of-powers doctrine. See Defendant Bank Markazi's Supplemental Memorandum of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment in No. 10–CIV–4518 (SDNY), pp. 1–3, 10–16.[13]

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issue here (though it disputed the District Court's personal jurisdiction in anticipation of other execution claims not now before us). See Memorandum of Law in Support of Banca UBAE, S. p. A.'s Opposition to the Plaintiffs' Motion for Partial Summary Judgment in No. 10–CIV–4518 (SDNY), pp. 1–2.

[13] In addition, Bank Markazi advanced one argument not foreclosed by § 8772's text, and another that, at least in Bank Markazi's estimation, had not been rendered irrelevant by § 8772. First, Bank Markazi argued that the availability of the assets for execution was a nonjusticiable political question because execution threatened to interfere with European blocking regulations. App. to Pet. for Cert. 92a–94a. Second, the Bank urged that execution would violate U. S. treaty obligations to Iran. See Defendant Bank Markazi's Supplemental Memorandum of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment in No. 10–CIV–4518 (SDNY), pp. 2–3, 21–25. The District Court found these arguments un-

"[I]n passing § 8772," Bank Markazi argued, "Congress effectively dictated specific factual findings in connection with a specific litigation—invading the province of the courts." App. to Pet. for Cert. 114a. The District Court disagreed. The ownership determinations § 8772 required, see *supra*, at 222, the court said, "[were] not mere fig leaves," for "it [was] quite possible that the [c]ourt could have found that defendants raised a triable issue as to whether the [b]locked [a]ssets were owned by Iran, or that Clearstream and/or UBAE ha[d] some form of beneficial or equitable interest," App. to Pet. for Cert. 115a. Observing from the voluminous filings that "[t]here [was] . . . plenty . . . to [litigate]," the court described § 8772 as a measure that "merely chang[es] the law applicable to pending cases; it does not usurp the adjudicative function assigned to federal courts." *Ibid.* (internal quotation marks omitted). Further, the court reminded, "Iran's liability and its required payment of damages was . . . established years prior to the [enactment of § 8772]"; "[a]t issue [here] is merely execution [of judgments] on assets present in this district." *Id.*, at 116a.[14]

The Court of Appeals for the Second Circuit unanimously affirmed. *Peterson* v. *Islamic Republic of Iran*, 758 F. 3d 185 (2014).[15] On appeal, Bank Markazi again argued that § 8772 violates the separation of powers "by compelling the

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availing. The matter was justiciable, the court concluded, because § 8772's enactment demonstrated that the political branches were not troubled about interference with European blocking regulations. App. to Pet. for Cert. 94a–96a. And treaty provisions interposed no bar to enforcement of § 8772 because, the court reiterated, § 8772 displaces "any" inconsistent provision of law, treaty obligations included. *Id.*, at 101a–102a.

[14] Bank Markazi and Clearstream unsuccessfully sought to defeat turnover on several other constitutional grounds: the Bill of Attainder, *Ex Post Facto*, Equal Protection, and Takings Clauses. See *id.*, at 115a–119a. Those grounds are no longer pressed.

[15] Clearstream and UBAE settled with respondents before the Second Circuit's decision. *Peterson* v. *Islamic Republic of Iran*, 758 F. 3d 185, 189 (2014).

courts to reach a predetermined result in this case." *Id.*, at 191. In accord with the District Court, the Second Circuit responded that "§ 8772 does not compel judicial findings [or results] under old law"; "rather, it retroactively changes the law applicable in this case, a permissible exercise of legislative authority." *Ibid.* Congress may so prescribe, the appeals court noted, "even when the result under the revised law is clear." *Ibid.*

To consider the separation-of-powers question Bank Markazi presents, we granted certiorari, 576 U. S. 1094 (2015), and now affirm.[16]

II

Article III of the Constitution establishes an independent Judiciary, a Third Branch of Government with the "province and duty . . . to say what the law is" in particular cases and controversies. *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). Necessarily, that endowment of authority blocks Congress from "requir[ing] federal courts to exercise the judicial power in a manner that Article III forbids." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 218 (1995). Congress, no doubt, "may not usurp a court's power to interpret and apply the law to the [circumstances] before it," Brief for Former Senior Officials of the Office of Legal Counsel as *Amici Curiae* 3, 6, for "[t]hose who apply [a] rule to particular cases, must of necessity expound and interpret that rule," *Marbury*, 1 Cranch, at 177.[17] And our decisions place off

[16] Respondents suggest that we decide this case on the ground that § 201(a) of the TRIA independently authorizes execution against the assets here involved, instead of reaching the constitutional question petitioner raises regarding § 8772. Brief for Respondents 53. The Court of Appeals, however, did not "resolve th[e] dispute under the TRIA," 758 F. 3d, at 189, nor do we. This Court generally does not decide issues unaddressed on first appeal—especially where, as here, the matter falls outside the question presented and has not been thoroughly briefed before us.

[17] Consistent with this limitation, respondents rightly acknowledged at oral argument that Congress could not enact a statute directing that, in "Smith v. Jones," "Smith wins." Tr. of Oral Arg. 40. Such a statute

limits to Congress "vest[ing] review of the decisions of Article III courts in officials of the Executive Branch." *Plaut*, 514 U. S., at 218 (citing *Hayburn's Case*, 2 Dall. 409 (1792), and, *e. g.*, *Chicago & Southern Air Lines, Inc.* v. *Waterman S. S. Corp.*, 333 U. S. 103, 114 (1948)). Congress, we have also held, may not "retroactively comman[d] the federal courts to reopen final judgments." *Plaut*, 514 U. S., at 219.

A

Citing *United States* v. *Klein*, 13 Wall. 128 (1872), Bank Markazi urges a further limitation. Congress treads impermissibly on judicial turf, the Bank maintains, when it "prescribe[s] rules of decision to the Judicial Department . . . in [pending] cases." *Id.*, at 146. According to the Bank, § 8772 fits that description. Brief for Petitioner 19, 43. *Klein* has been called "a deeply puzzling decision," Meltzer, Congress, Courts, and Constitutional Remedies, 86 Geo. L. J. 2537, 2538 (1998).[18] More recent decisions, however, have made it clear that *Klein* does not inhibit Congress from "amend[ing] applicable law." *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429, 441 (1992); see *id.*, at 437–438; *Plaut*, 514 U. S., at 218 (*Klein*'s "prohibition does not take hold when Congress 'amend[s] applicable law.' " (quoting *Robertson*, 503 U. S., at 441)). Section 8772, we hold, did just that.

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would create no new substantive law; it would instead direct the court how pre-existing law applies to particular circumstances. See *infra* this page and 227–232. THE CHIEF JUSTICE challenges this distinction, *post*, at 247, but it is solidly grounded in our precedent. See *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429, 439 (1992) (A statute is invalid if it "fail[s] to supply new law, but direct[s] results under old law."), discussed in R. Fallon, J. Manning, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 324 (7th ed. 2015).

[18] See also *id.*, at 323 (calling *Klein* a "delphic opinion"); Tyler, The Story of *Klein*: The Scope of Congress's Authority To Shape the Jurisdiction of the Federal Courts, in Federal Courts Stories 87 (V. Jackson & J. Resnik eds. 2010) (Tyler) (calling *Klein* "baffl[ing]").

Klein involved Civil War legislation providing that persons whose property had been seized and sold in wartime could recover the proceeds of the sale in the Court of Claims upon proof that they had "never given any aid or comfort to the present rebellion." Ch. 120, § 3, 12 Stat. 820; see *Klein*, 13 Wall., at 139. In 1863, President Lincoln pardoned "persons who . . . participated in the . . . rebellion" if they swore an oath of loyalty to the United States. Presidential Proclamation No. 11, 13 Stat. 737. One of the persons so pardoned was a southerner named Wilson, whose cotton had been seized and sold by Government agents. Klein was the administrator of Wilson's estate. 13 Wall., at 132. In *United States* v. *Padelford*, 9 Wall. 531, 543 (1870), this Court held that the recipient of a Presidential pardon must be treated as loyal, *i. e.*, the pardon operated as "a complete substitute for proof that [the recipient] gave no aid or comfort to the rebellion." Thereafter, Klein prevailed in an action in the Court of Claims, yielding an award of $125,300 for Wilson's cotton. 13 Wall., at 132.

During the pendency of an appeal to this Court from the Court of Claims judgment in *Klein*, Congress enacted a statute providing that no pardon should be admissible as proof of loyalty. Moreover, acceptance of a pardon without disclaiming participation in the rebellion would serve as conclusive evidence of disloyalty. The statute directed the Court of Claims and the Supreme Court to dismiss for want of jurisdiction any claim based on a pardon. 16 Stat. 235; R. Fallon, J. Manning, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 323, n. 29 (7th ed. 2015) (Hart and Wechsler). Affirming the judgment of the Court of Claims, this Court held that Congress had no authority to "impai[r] the effect of a pardon," for the Constitution entrusted the pardon power "[t]o the executive alone." *Klein*, 13 Wall., at 147. The Legislature, the Court stated, "cannot change the effect of . . . a pardon any more than the executive can change a law." *Id.*, at 148. Lacking

authority to impair the pardon power of the Executive, Congress could not "direc[t] [a] court to be instrumental to that end." *Ibid.* In other words, the statute in *Klein* infringed the judicial power, not because it left too little for courts to do, but because it attempted to direct the result without altering the legal standards governing the effect of a pardon—standards Congress was powerless to prescribe. See *id.*, at 146–147; *Robertson*, 503 U. S., at 438 (Congress may not "compe[l] . . . findings or results under old law").[19]

Bank Markazi, as earlier observed, *supra*, at 226, argues that § 8772 conflicts with *Klein*. The Bank points to a statement in the *Klein* opinion questioning whether "the legislature may prescribe rules of decision to the Judicial Department . . . in cases pending before it." 13 Wall., at 146. One cannot take this language from *Klein* "at face value," however, "for congressional power to make valid statutes retroactively applicable to pending cases has often been recognized." Hart and Wechsler 324. See, *e. g.*, *United States* v. *Schooner Peggy*, 1 Cranch 103, 110 (1801). As we explained in *Landgraf* v. *USI Film Products*, 511 U. S. 244, 267 (1994), the restrictions that the Constitution places on retroactive legislation "are of limited scope":

> "The *Ex Post Facto* Clause flatly prohibits retroactive application of penal legislation. Article I, § 10, cl. 1, prohibits States from passing . . . laws 'impairing the Obligation of Contracts.' The Fifth Amendment's Tak-

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[19] Given the issue before the Court—Presidential pardons Congress sought to nullify by withdrawing federal-court jurisdiction—commentators have rightly read *Klein* to have at least this contemporary significance: Congress "may not exercise [its authority, including its power to regulate federal jurisdiction,] in a way that requires a federal court to act unconstitutionally." Meltzer, Congress, Courts, and Constitutional Remedies, 86 Geo. L. J. 2537, 2549 (1998). See also Tyler 112 ("Congress may not employ the courts in a way that forces them to become active participants in violating the Constitution.").

> ings Clause prevents the Legislature (and other government actors) from depriving private persons of vested property rights except for a 'public use' and upon payment of 'just compensation.' The prohibitions on 'Bills of Attainder' in Art. I, §§ 9–10, prohibit legislatures from singling out disfavored persons and meting out summary punishment for past conduct. The Due Process Clause also protects the interests in fair notice and repose that may be compromised by retroactive legislation; a justification sufficient to validate a statute's prospective application under the Clause 'may not suffice' to warrant its retroactive application." *Id.*, at 266 (citation and footnote omitted).

"Absent a violation of one of those specific provisions," when a new law makes clear that it is retroactive, the arguable "unfairness of retroactive civil legislation is not a sufficient reason for a court to fail to give [that law] its intended scope." *Id.*, at 267. So yes, we have affirmed, Congress may indeed direct courts to apply newly enacted, outcome-altering legislation in pending civil cases. See *Plaut*, 514 U. S., at 226. Any lingering doubts on that score have been dispelled by *Robertson*, 503 U. S., at 441, and *Plaut*, 514 U. S., at 218.

Bank Markazi argues most strenuously that § 8772 did not simply amend pre-existing law. Because the judicial findings contemplated by § 8772 were "foregone conclusions," the Bank urges, the statute "effectively" directed certain fact-findings and specified the outcome under the amended law. See Brief for Petitioner 42, 47. See also *post*, at 247–248. Recall that the District Court, closely monitoring the case, disagreed. *Supra*, at 224; App. to Pet. for Cert. 115a ("[The] determinations [required by § 8772 were] not mere fig leaves," for "it [was] quite possible that the [c]ourt could have found that defendants raised a triable issue as to whether the [b]locked [a]ssets were owned by Iran, or that

Clearstream and/or UBAE ha[d] some form of beneficial or equitable interest.").[20]

In any event, a statute does not impinge on judicial power when it directs courts to apply a new legal standard to undisputed facts. "When a plaintiff brings suit to enforce a legal obligation it is not any the less a case or controversy upon which a court possessing the federal judicial power may rightly give judgment, because the plaintiff's claim is uncontested or incontestable." *Pope* v. *United States*, 323 U. S. 1, 11 (1944). In *Schooner Peggy*, 1 Cranch, at 109–110, for example, this Court applied a newly ratified treaty that, by requiring the return of captured property, effectively permitted only one possible outcome. And in *Robertson*, 503 U. S., at 434–435, 438–439, a statute replaced governing environmental-law restraints on timber harvesting with new

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[20] The District Court understandably concluded that § 8772 left it "plenty . . . to adjudicate." App. to Pet. for Cert. 115a. For one, the statute did not define its key terms, "beneficial interest" and "equitable title." To arrive at fitting definitions, the District Court consulted legal dictionaries and precedent. See *id.*, at 111a–112a; *Zivotofsky* v. *Clinton*, 566 U. S. 189, 196 (2012) (Interpretation of statutes "is a familiar judicial exercise."). Further, § 8772 required the District Court to determine whether the Bank owned the assets in question. § 8772(a)(2)(A). Clearstream contended that there were triable issues as to whether Bank Markazi was the owner of the blocked assets. App. to Pet. for Cert. 37a–39a, 111a. The court rejected that contention, finding that Clearstream and UBAE were merely accountholders, maintaining the assets "on behalf of" the Bank. *Id.*, at 112a–113a; see *id.*, at 38a–39a. Next, § 8772 required the court to determine whether any party, other than the Bank, possessed a "constitutionally protected interest" in the assets. § 8772(a)(2)(B). Clearstream argued that it had such an interest, but the court disagreed. App. to Pet. for Cert. 117a–118a (determining that Clearstream had no constitutionally protected "investment-backed expectatio[n]" in the assets). Finally, prior to the statute's enactment, Bank Markazi and Clearstream had argued that the assets in question were located in Luxembourg, not New York. *Supra*, at 223. Leaving the issue for court resolution, Congress, in § 8772(a)(1)(A), required the District Court to determine whether the assets were "held in the United States."

legislation that permitted harvesting in all but certain designated areas. Without inquiring whether the new statute's application in pending cases was a "foregone conclusio[n]," Brief for Petitioner 47, we upheld the legislation because it left for judicial determination whether any particular actions violated the new prescription. In short, § 8772 changed the law by establishing new substantive standards, entrusting to the District Court application of those standards to the facts (contested or uncontested) found by the court.

Resisting this conclusion, THE CHIEF JUSTICE compares § 8772 to a hypothetical "law directing judgment for Smith if the court finds that Jones was duly served with notice of the proceedings." *Post,* at 248.[21] Of course, the hypothesized law would be invalid—as would a law directing judgment for Smith, for instance, if the court finds that the sun rises in the east. For one thing, a law so cast may well be irrational and, therefore, unconstitutional for reasons distinct from the separation-of-powers issues considered here. See, *e. g.*, *infra*, at 234, n. 27. For another, the law imagined by the dissent does what *Robertson* says Congress cannot do: Like a statute that directs, in "Smith v. Jones," "Smith wins," see *supra,* at 225, n. 17, it "compel[s] . . . findings or results under old law," for it fails to supply any new legal standard effectuating the lawmakers' reasonable policy judgment, 503 U. S., at 438.[22] By contrast, § 8772 provides a new

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[21] Recall, again, that respondents are judgment creditors who prevailed on the merits of their respective cases. Section 8772 serves to facilitate their ability to collect amounts due to them from assets of the judgment debtor.

[22] The dissent also analogizes § 8772 to a law that makes "conclusive" one party's flimsy evidence of a boundary line in a pending property dispute, notwithstanding that the governing law ordinarily provides that an official map establishes the boundary. *Post,* at 237. Section 8772, however, does not restrict the evidence on which a court may rely in making the required findings. A more fitting analogy for depicting § 8772's operation might be: In a pending property dispute, the parties contest whether an ambigu-

standard clarifying that, if Iran owns certain assets, the victims of Iran-sponsored terrorist attacks will be permitted to execute against those assets. Applying laws implementing Congress' policy judgments, with fidelity to those judgments, is commonplace for the Judiciary.

B

Section 8772 remains "unprecedented," Bank Markazi charges, because it "prescribes a rule for a single pending case—identified by caption and docket number." Brief for Petitioner 17.[23] The amended law in *Robertson*, however, also applied to cases identified by caption and docket number, 503 U. S., at 440, and was nonetheless upheld. Moreover, § 8772, as already described, see *supra*, at 219–221, facilitates execution of judgments in 16 suits, together encompassing more than 1,000 victims of Iran-sponsored terrorist attacks.[24] Although consolidated for administrative purposes at the execution stage,[25] the judgment-execution

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ous statute makes a 1990 or 2000 county map the relevant document for establishing boundary lines. To clarify the matter, the legislature enacts a law specifying that the 2000 map supersedes the earlier map.

[23] At oral argument, Bank Markazi clarified that its argument extended beyond a single pending case, encompassing as well "a limited category of cases." Tr. of Oral Arg. 5. See also *id.*, at 57–58.

[24] Section 8772's limitation to one consolidated proceeding operates unfairly, Bank Markazi suggests, because other judgment creditors "would be subject to a completely different rule" if they "sought to execute against the same assets" outside No. 10–CIV–4518. Brief for Petitioner 26 (citing § 8772(c) ("Nothing in this section shall be construed . . . to affect . . . any proceedings other than" No. 10–CIV–4518)). But nothing in § 8772 prevented additional judgment creditors from joining the consolidated proceeding after the statute's enactment. Indeed, one group of respondents did so. See *supra*, at 221, n. 9.

[25] District courts routinely consolidate multiple related matters for a single decision on common issues. See, *e. g.*, *Securities Investor Protection Corp.* v. *Bernard L. Madoff Inv. Securities LLC*, 476 B. R. 715, 717 (SDNY 2012) (deciding several legal questions arising in over 80 cases concerning "the massive Ponzi scheme perpetrated by Bernard L. Madoff").

claims brought pursuant to Federal Rule of Civil Procedure 69 were not independent of the original actions for damages and each claim retained its separate character. See *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 834–835, n. 10 (1988) (postjudgment garnishment action brought under Rule 69 is part of the "process to enforce a judgment," not a new suit (alteration omitted and emphasis deleted)); 10 Cyclopedia of Federal Procedure § 36:8, p. 385 (3d ed. 2010) ("Proceedings in execution are proceedings in the action itself . . . ."); 9A C. Wright & A. Miller, Federal Practice and Procedure § 2382, p. 10 (3d ed. 2008) ("[A]ctions do not lose their separate identity because of consolidation.").[26]

The Bank's argument is further flawed, for it rests on the assumption that legislation must be generally applicable, that "there is something wrong with particularized legislative action." *Plaut*, 514 U. S., at 239, n. 9. We have found that assumption suspect:

> "While legislatures usually act through laws of general applicability, that is by no means their only legitimate mode of action. Private bills in Congress are still common, and were even more so in the days before establishment of the Claims Court. Even laws that impose a duty or liability upon a single individual or firm are not on that account invalid—or else we would not have the extensive jurisprudence that we do concerning the Bill of Attainder Clause, including cases which say that [the Clause] requires not merely 'singling out' but also *pun-*

[26] Questioning this understanding of the proceedings below, THE CHIEF JUSTICE emphasizes that many of the judgment creditors were joined in the *Peterson* enforcement proceeding by interpleader. See *post*, at 243, n. 1. That is true, *supra*, at 221, n. 9, but irrelevant. As explained above, execution proceedings are continuations of merits proceedings, not new lawsuits. Thus, the fact that many creditors joined by interpleader motion did not transform execution claims in 16 separate suits into "a single case." *Post*, at 243, n. 1.

> *ishment*, see, *e. g., United States* v. *Lovett*, 328 U. S. 303, 315–318 (1946), [or] a case [holding] that Congress may legislate 'a legitimate class of one,' *Nixon* v. *Administrator of General Services*, 433 U. S. 425, 472 (1977)." *Ibid.*[27]

This Court and lower courts have upheld as a valid exercise of Congress' legislative power diverse laws that governed one or a very small number of specific subjects. *E. g., Regional Rail Reorganization Act Cases*, 419 U. S. 102, 158–161 (1974) (upholding Act that applied to specific railroads in a single region); *Pope*, 323 U. S., at 9–14 (upholding special Act giving a contractor the right to recover additional compensation from the Government); *The Clinton Bridge*, 10 Wall. 454, 462–463 (1870) (upholding Act governing a single bridge); *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 18 How. 421, 430–432 (1856) (similar); *Biodiversity Assoc.* v. *Cables*, 357 F. 3d 1152, 1156, 1164–1171 (CA10 2004) (upholding law that abrogated specific settlement agreement between U. S. Forest Service and environmental groups); *SeaRiver Maritime Financial Holdings, Inc.* v. *Mineta*, 309 F. 3d 662, 667, 674–675 (CA9 2002) (upholding law that effectively applied to a single oil tanker); *National Coalition To Save Our Mall* v. *Norton*, 269 F. 3d 1092, 1097 (CADC 2001) (upholding law that applied to a single memorial).

C

We stress, finally, that § 8772 is an exercise of congressional authority regarding foreign affairs, a domain in which the controlling role of the political branches is both necessary and proper. See, *e. g., Zivotofsky* v. *Kerry*, 576 U. S. 1, 22

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[27] Laws narrow in scope, including "class of one" legislation, may violate the Equal Protection Clause if arbitrary or inadequately justified. *Village of Willowbrook* v. *Olech*, 528 U. S. 562, 564 (2000) (*per curiam*) (internal quotation marks omitted); *New Orleans* v. *Dukes*, 427 U. S. 297, 305–306 (1976) (*per curiam*).

(2015). In furtherance of their authority over the Nation's foreign relations, Congress and the President have, time and again, as exigencies arose, exercised control over claims against foreign states and the disposition of foreign-state property in the United States. See *Dames & Moore* v. *Regan*, 453 U. S. 654, 673–674, 679–681 (1981) (describing this history). In pursuit of foreign policy objectives, the political branches have regulated specific foreign-state assets by, *inter alia*, blocking them or governing their availability for attachment. See *supra*, at 217 (describing the TWEA and the IEEPA); *e. g.*, *Dames & Moore*, 453 U. S., at 669–674. Such measures have never been rejected as invasions upon the Article III judicial power. Cf. *id.*, at 674 (Court resists the notion "that the Federal Government as a whole lacked the power" to "nullif[y] . . . attachments and orde[r] the transfer of [foreign-state] assets.").[28]

Particularly pertinent, the Executive, prior to the enactment of the FSIA, regularly made case-specific determinations whether sovereign immunity should be recognized, and courts accepted those determinations as binding. See *Republic of Austria* v. *Altmann*, 541 U. S. 677, 689–691 (2004); *Ex parte Peru*, 318 U. S. 578, 588–590 (1943). As this Court explained in *Republic of Mexico* v. *Hoffman*, 324 U. S. 30, 35 (1945), it is "not for the courts to deny an immunity which our government has seen fit to allow, or to allow an immunity on new grounds which the government has not seen fit to recognize." This practice, too, was never perceived as an encroachment on the federal courts' jurisdiction. See

[28] THE CHIEF JUSTICE correctly notes that the Court in *Dames & Moore* v. *Regan*, 453 U. S. 654, 661 (1981), urged caution before extending its analysis to "'other situations'" not presented in that case. *Post*, at 250. Much of the Court's cause for concern, however, was the risk that the ruling could be construed as license for the broad exercise of unilateral executive power. See 453 U. S., at 688; *American Ins. Assn.* v. *Garamendi*, 539 U. S. 396, 438 (2003) (GINSBURG, J., dissenting). As § 8772 is a law passed by Congress and signed by the President, that risk is nonexistent here.

Dames & Moore, 453 U. S., at 684–685 ("[P]rior to the enactment of the FSIA [courts would not have] reject[ed] as an encroachment on their jurisdiction the President's determination of a foreign state's sovereign immunity.").

Enacting the FSIA in 1976, Congress transferred from the Executive to the courts the principal responsibility for determining a foreign state's amenability to suit. See *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 488–489 (1983). But it remains Congress' prerogative to alter a foreign state's immunity and to render the alteration dispositive of judicial proceedings in progress. See *Republic of Iraq* v. *Beaty*, 556 U. S. 848, 856–857, 865 (2009). By altering the law governing the attachment of particular property belonging to Iran, Congress acted comfortably within the political branches' authority over foreign sovereign immunity and foreign-state assets.

* * *

For the reasons stated, we are satisfied that § 8772—a statute designed to aid in the enforcement of federal-court judgments—does not offend "separation of powers principles . . . protecting the role of the independent Judiciary within the constitutional design." *Miller* v. *French*, 530 U. S. 327, 350 (2000). The judgment of the Court of Appeals for the Second Circuit is therefore

Affirmed.

CHIEF JUSTICE ROBERTS, with whom JUSTICE SOTOMAYOR joins, dissenting.

Imagine your neighbor sues you, claiming that your fence is on his property. His evidence is a letter from the previous owner of your home, accepting your neighbor's version of the facts. Your defense is an official county map, which under state law establishes the boundaries of your land. The map shows the fence on your side of the property line. You also argue that your neighbor's claim is six months outside the statute of limitations.

Now imagine that while the lawsuit is pending, your neighbor persuades the legislature to enact a new statute. The new statute provides that for your case, and your case alone, a letter from one neighbor to another is conclusive of property boundaries, and the statute of limitations is one year longer. Your neighbor wins. Who would you say decided your case: the legislature, which targeted your specific case and eliminated your specific defenses so as to ensure your neighbor's victory, or the court, which presided over the *fait accompli*?

That question lies at the root of the case the Court confronts today. Article III of the Constitution commits the power to decide cases to the Judiciary alone. See *Stern* v. *Marshall*, 564 U. S. 462, 484 (2011). Yet, in this case, Congress arrogated that power to itself. Since 2008, respondents have sought $1.75 billion in assets owned by Bank Markazi, Iran's central bank, in order to satisfy judgments against Iran for acts of terrorism. The Bank has vigorously opposed those efforts, asserting numerous legal defenses. So, in 2012, four years into the litigation, respondents persuaded Congress to enact a statute, 22 U. S. C. § 8772, that for this case alone eliminates each of the defenses standing in respondents' way. Then, having gotten Congress to resolve all outstanding issues in their favor, respondents returned to court . . . and won.

Contrary to the majority, I would hold that § 8772 violates the separation of powers. No less than if it had passed a law saying "respondents win," Congress has decided this case by enacting a bespoke statute tailored to this case that resolves the parties' specific legal disputes to guarantee respondents victory.

I

A

Article III, § 1 of the Constitution vests the "judicial Power of the United States" in the Federal Judiciary. That

provision, this Court has observed, "safeguards the role of the Judicial Branch in our tripartite system." *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833, 850 (1986). It establishes the Judiciary's independence by giving the Judiciary distinct and inviolable authority. "Under the basic concept of separation of powers," the judicial power "can no more be shared with another branch than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto." *Stern*, 564 U. S., at 483 (internal quotation marks omitted). The separation of powers, in turn, safeguards individual freedom. See *Bond* v. *United States*, 564 U. S. 211, 223 (2011). As Hamilton wrote, quoting Montesquieu, "'there is no liberty if the power of judging be not separated from the legislative and executive powers.'" The Federalist No. 78, p. 466 (C. Rossiter ed. 1961); see Montesquieu, The Spirit of the Laws 157 (A. Cohler, B. Miller, & H. Stone eds. 1989) (Montesquieu).

The question we confront today is whether § 8772 violates Article III by invading the judicial power.

B

"The Framers of our Constitution lived among the ruins of a system of intermingled legislative and judicial powers." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 219 (1995). We surveyed those ruins in *Plaut* to determine the scope of the judicial power under Article III, and we ought to return to them today for that same purpose.

Throughout the 17th and 18th centuries, colonial legislatures performed what are now recognized as core judicial roles. They "functioned as courts of equity of last resort, hearing original actions or providing appellate review of judicial judgments." *Ibid.* They "constantly heard private petitions, which often were only the complaints of one individual or group against another, and made final judgments on these complaints." G. Wood, The Creation of the Ameri-

can Republic 1776–1787, pp. 154–155 (1969). And they routinely intervened in cases still pending before courts, granting continuances, stays of judgments, "new trials, and other kinds of relief in an effort to do what 'is agreeable to Right and Justice.'" *Id.*, at 155; see Judicial Action by the Provincial Legislature of Massachusetts, 15 Harv. L. Rev. 208, 216–218 (1902) (collecting examples of such laws).

The judicial power exercised by colonial legislatures was often expressly vested in them by the colonial charter or statute. In the Colonies of Massachusetts, Connecticut, and Rhode Island, for example, the assemblies officially served as the highest court of appeals. See 1 Public Records of the Colony of Connecticut 25 (Trumbull ed. 1850); M. Clarke, Parliamentary Privilege in the American Colonies 31–33 (1943). Likewise, for more than a half century, the colonial assembly of Virginia could review and set aside court judgments. *Id.*, at 37–38. And in New Hampshire, where British authorities directed judicial appeals to the governor and his council, those officials often referred such matters to the assembly for decision. *Id.*, at 33. Colonial assemblies thus sat atop the judicial pyramid, with the final word over when and how private disputes would be resolved.

Legislative involvement in judicial matters intensified during the American Revolution, fueled by the "vigorous, indeed often radical, populism of the revolutionary legislatures and assemblies." *Plaut*, 514 U. S., at 219; see Wood, *supra,* at 155–156. The Pennsylvania Constitution of 1776 epitomized the ethos of legislative supremacy. It established a unicameral assembly unconstrained by judicial review and vested with authority to "'redress grievances.'" Report of the Committee of the Pennsylvania Council of Censors 42 (F. Bailey ed. 1784) (Council Report); see Williams, State Constitutions of the Founding Decade: Pennsylvania's Radical 1776 Constitution and Its Influences on American Constitutionalism, 62 Temp. L. Rev. 541, 547–548, 556 (1989). The assembly, in turn, invoked that authority to depart from legal rules

in resolving private disputes in order to ease the "hardships which will always arise from the operation of general laws." Council Report 42–43.

The Revolution-era "crescendo of legislative interference with private judgments of the courts," however, soon prompted a "sense of a sharp necessity to separate the legislative from the judicial power." *Plaut*, 514 U. S., at 221. In 1778, an influential critique of a proposed (and ultimately rejected) Massachusetts constitution warned that "[i]f the legislative and judicial powers are united, the maker of the law will also interpret it; and the law may then speak a language, dictated by the whims, the caprice, or the prejudice of the judge." The Essex Result, in Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780, p. 337 (O. Handlin & M. Handlin eds. 1966). In Virginia, Thomas Jefferson complained that the assembly had, "in many instances, decided rights which should have been left to judiciary controversy." Jefferson, Notes on the State of Virginia 120 (Peden ed. 1982). And in Pennsylvania, the Council of Censors—a body appointed to assess compliance with the state constitution—decried the state assembly's practice of "extending their deliberations to the cases of individuals" instead of deferring to "the usual process of law," citing instances when the assembly overturned fines, settled estates, and suspended prosecutions. Council Report 38, 42. "[T]here is reason to think," the Censors observed, "that favour and partiality have, from the nature of public bodies of men, predominated in the distribution of this relief." *Id.*, at 38.

Vermont's Council of Censors sounded similar warnings. Its 1786 report denounced the legislature's "assumption of the judicial power," which the legislature had exercised by staying and vacating judgments, suspending lawsuits, resolving property disputes, and "legislating for individuals, and for particular cases." Vermont State Papers 1779–1786, pp. 537–542 (W. Slade ed. 1823). The Censors concluded that

"[t]he legislative body is, in truth, by no means competent to the determination of causes between party and party," having exercised judicial power "without being shackled with rules," guided only by "crude notions of equity." *Id.*, at 537, 540.

The States' experiences ultimately shaped the Federal Constitution, figuring prominently in the Framers' decision to devise a system for securing liberty through the division of power:

> "Before and during the debates on ratification, Madison, Jefferson, and Hamilton each wrote of the factional disorders and disarray that the system of legislative equity had produced in the years before the framing; and each thought that the separation of the legislative from the judicial power in the new Constitution would cure them." *Plaut*, 514 U. S., at 221.

As Professor Manning has concluded, "Article III, in large measure, reflects a reaction against the practice" of legislative interference with state courts. Manning, Response, Deriving Rules of Statutory Interpretation From the Constitution, 101 Colum. L. Rev. 1648, 1663 (2001).

Experience had confirmed Montesquieu's theory. The Framers saw that if the "power of judging . . . were joined to legislative power, the power over the life and liberty of the citizens would be arbitrary." Montesquieu 157. They accordingly resolved to take the unprecedented step of establishing a "truly distinct" judiciary. The Federalist No. 78, at 466 (A. Hamilton). To help ensure the "complete independence of the courts of justice," *ibid.*, they provided life tenure for judges and protection against diminution of their compensation. But such safeguards against indirect interference would have been meaningless if Congress could simply exercise the judicial power directly. The central pillar of judicial independence was Article III itself, which vested "[t]he judicial Power of the United States" in "one

supreme Court" and such "inferior Courts" as might be established. The judicial power was to be the Judiciary's alone.

II

A

Mindful of this history, our decisions have recognized three kinds of "unconstitutional restriction[s] upon the exercise of judicial power." *Plaut*, 514 U. S., at 218. Two concern the effect of judgments once they have been rendered: "Congress cannot vest review of the decisions of Article III courts in officials of the Executive Branch," *ibid.*, for to do so would make a court's judgment merely "an advisory opinion in its most obnoxious form," *Chicago & Southern Air Lines, Inc.* v. *Waterman S. S. Corp.*, 333 U. S. 103, 113 (1948). And Congress cannot "retroactively command[ ] the federal courts to reopen final judgments," because Article III "gives the Federal Judiciary the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy." *Plaut*, 514 U. S., at 218–219. Neither of these rules is directly implicated here.

This case is about the third type of unconstitutional interference with the judicial function, whereby Congress assumes the role of judge and decides a particular pending case in the first instance. Section 8772 does precisely that, changing the law—for these proceedings alone—simply to guarantee that respondents win. The law serves no other purpose—a point, indeed, that is hardly in dispute. As the majority acknowledges, the statute "'sweeps away . . . any . . . federal or state law impediments that might otherwise exist'" to bar respondents from obtaining Bank Markazi's assets. *Ante*, at 223 (quoting App. to Pet. for Cert. 73a). In the District Court, Bank Markazi had invoked sovereign immunity under the Foreign Sovereign Immunities Act of 1976, 28 U. S. C. § 1611(b)(1). Brief for Petitioner 28. Section 8772(a)(1) eliminates that immunity. Bank Markazi had

argued that its status as a separate juridical entity under federal common law and international law freed it from liability for Iran's debts. See *First Nat. City Bank* v. *Banco Para el Comercio Exterior de Cuba*, 462 U. S. 611, 624–627 (1983); Brief for Petitioner 27–28. Section 8772(d)(3) ensures that the Bank is liable. Bank Markazi had argued that New York law did not allow respondents to execute their judgments against the Bank's assets. See N. Y. U. C. C. Law Ann. § 8–112(c) (West 2002); see also App. to Pet. for Cert. 126a (agreeing with this argument). Section 8772(a)(1) makes those assets subject to execution. See *id.*, at 97a.

Section 8772 authorized attachment, moreover, only for the

> "financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG), that were restrained by restraining notices and levies secured by the plaintiffs in those proceedings . . . ." § 8772(b).

And lest there be any doubt that Congress's sole concern was deciding this particular case, rather than establishing any generally applicable rules, § 8772 provided that nothing in the statute "shall be construed . . . to affect the availability, or lack thereof, of a right to satisfy a judgment in any other action against a terrorist party in any proceedings other than" these. § 8772(c)(1).[1]

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[1] The majority quarrels with the description of § 8772 as being directed to a single case, noting that the claimants had sought attachment of the assets in various prior proceedings. *Ante*, at 232–233. Those proceedings, however, were not simply consolidated below, but rather were joined in the single interpleader action that was referenced by docket number in § 8772. See § 8772(b). See generally 7 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 1702 (3d ed. 2001) (explaining that interpleader is a "joinder device" that brings together multiple claimants to a

B

There has never been anything like § 8772 before. Neither the majority nor respondents have identified another statute that changed the law for a pending case in an outcome-determinative way and explicitly limited its effect to particular judicial proceedings. That fact alone is "[p]erhaps the most telling indication of the severe constitutional problem" with the law. *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 505 (2010) (internal quotation marks omitted). Congress's "prolonged reticence would be amazing if such interference were not understood to be constitutionally proscribed." *Plaut*, 514 U. S., at 230.

Section 8772 violates the bedrock rule of Article III that the judicial power is vested in the Judicial Branch alone. We first enforced that rule against an Act of Congress during the Reconstruction era in *United States* v. *Klein*, 13 Wall. 128 (1872). *Klein* arose from congressional opposition to conciliation with the South, and in particular to the pardons Presidents Lincoln and Johnson had offered to former Confederate rebels. See *id.*, at 140–141; see, *e. g.*, Presidential Proclamation No. 11, 13 Stat. 737. Although this Court had held that a pardon was proof of loyalty and entitled its holder to compensation in the Court of Claims for property seized by Union forces during the war, see *United States* v. *Padelford*, 9 Wall. 531, 543 (1870), the Radical Republican Congress wished to prevent pardoned rebels from obtaining such compensation. It therefore enacted a law prohibiting claim-

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piece of property in a "single" action to "protect[ ] the stakeholder from the vexation of multiple suits"). That is presumably why respondents did not dispute Bank Markazi's characterization of the proceedings as "a single pending case" when they opposed certiorari, Pet. for Cert. i, and why the majority offers no citation to refute Wright & Miller's characterization of an interpleader action as a "single proceeding," 7 Federal Practice and Procedure § 1704. In any event, nothing in the majority's opinion suggests that the result would be different under its analysis even if it concluded that only a single case were involved.

ants from using a pardon as evidence of loyalty, instead requiring the Court of Claims and Supreme Court to dismiss for want of jurisdiction any suit based on a pardon. See Act of July 12, 1870, ch. 251, 16 Stat. 235; see also *United States* v. *Sioux Nation*, 448 U. S. 371, 403 (1980).

Klein's suit was among those Congress wished to block. Klein represented the estate of one V. F. Wilson, a Confederate supporter whom Lincoln had pardoned. On behalf of the estate, Klein had obtained a sizable judgment in the Court of Claims for property seized by the Union. *Klein*, 13 Wall., at 132–134. The Government's appeal from that judgment was pending in the Supreme Court when the law targeting such suits took effect. The Government accordingly moved to dismiss the entire proceeding.

This Court, however, denied that motion and instead declared the law unconstitutional. It held that the law "passed the limit which separates the legislative from the judicial power." *Id.*, at 147. The Court acknowledged that Congress may "make exceptions and prescribe regulations to the appellate power," but it refused to sustain the law as an exercise of that authority. *Id.*, at 146. Instead, the Court held that the law violated the separation of powers by attempting to "decide" the case by "prescrib[ing] rules of decision to the Judicial Department of the government in cases pending before it." *Id.*, at 145–146. "It is of vital importance," the Court stressed, that the legislative and judicial powers "be kept distinct." *Id.*, at 147.

The majority characterizes *Klein* as a delphic, puzzling decision whose central holding—that Congress may not prescribe the result in pending cases—cannot be taken at face value.[2] It is true that *Klein* can be read too broadly, in a

[2] The majority instead seeks to recast *Klein* as being primarily about congressional impairment of the President's pardon power, *ante*, at 227–228, despite *Klein*'s unmistakable indication that the impairment of the pardon power was an *alternative* ground for its holding, secondary to its Article III concerns. 13 Wall., at 147 ("The rule prescribed is *also* liable to just

way that would swallow the rule that courts generally must apply a retroactively applicable statute to pending cases. See *United States* v. *Schooner Peggy*, 1 Cranch 103, 110 (1801). But *Schooner Peggy* can be read too broadly, too. Applying a retroactive law that says "Smith wins" to the pending case of *Smith* v. *Jones* implicates profound issues of separation of powers, issues not adequately answered by a citation to *Schooner Peggy*. And just because *Klein* did not set forth clear rules defining the limits on Congress's authority to legislate with respect to a pending case does not mean—as the majority seems to think—that Article III itself imposes no such limits.

The same "record of history" that drove the Framers to adopt Article III to implement the separation of powers ought to compel us to give meaning to their design. *Plaut*, 514 U. S., at 218. The nearly two centuries of experience with legislative assumption of judicial power meant that "[t]he Framers were well acquainted with the danger of subjecting the determination of the rights of one person to the tyranny of shifting majorities." *INS* v. *Chadha*, 462 U. S. 919, 961 (1983) (Powell, J., concurring in judgment) (internal quotation marks omitted). Article III vested the judicial power in the Judiciary alone to protect against that threat

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exception as impairing the effect of a pardon, and thus infringing the constitutional power of the Executive." (emphasis added)). The majority then suggests that *Klein* stands simply for the proposition that Congress may not require courts to act unconstitutionally. *Ante*, at 227–228, and n. 19. That is without doubt a good rule, recognized by this Court since *Marbury* v. *Madison*, 1 Cranch 137 (1803). But it is hard to reconstruct *Klein* along these lines, given its focus on the threat to the separation of powers from allowing Congress to manipulate jurisdictional rules to dictate judicial results. See Hart, The Power of Congress To Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic, 66 Harv. L. Rev. 1362, 1373 (1953) ("[I]f Congress directs an Article III court to decide a case, I can easily read into Article III a limitation on the power of Congress to tell the court *how* to decide it . . . as the Court itself made clear long ago in *United States v. Klein*.").

to liberty. It defined not only what the Judiciary can do, but also what Congress cannot.

The Court says it would reject a law that says "Smith wins" because such a statute "would create no new substantive law." *Ante*, at 225–226, n. 17. Of course it would: Prior to the passage of the hypothetical statute, the law did not provide that Smith wins. After the passage of the law, it does. Changing the law is simply how Congress acts. The question is whether its action constitutes an exercise of judicial power. Saying Congress "creates new law" in one case but not another simply expresses a conclusion on that issue; it does not supply a reason.

"Smith wins" is a new law, tailored to one case in the same way as § 8772 and having the same effect. All that both statutes "effectuat[e]," in substance, is lawmakers' "policy judgment" that one side in one case ought to prevail. *Ante*, at 231. The cause for concern is that though the statutes are indistinguishable, it is plain that the majority recognizes no limit under the separation of powers beyond the prohibition on statutes as brazen as "Smith wins." Hamilton warned that the Judiciary must take "all possible care . . . to defend itself against [the] attacks" of the other branches. The Federalist No. 78, at 466. In the Court's view, however, Article III is but a constitutional Maginot Line, easily circumvented by the simplest maneuver of taking away every defense against Smith's victory, without saying "Smith wins."

Take the majority's acceptance of the District Court's conclusion that § 8772 left "plenty" of factual determinations for the court "to adjudicate." *Ante*, at 230, and n. 20 (internal quotation marks omitted). All § 8772 actually required of the court was two factual determinations—that Bank Markazi has an equitable or beneficial interest in the assets, and that no other party does, § 8772(a)(2)—both of which were well established by the time Congress enacted § 8772. Not only had the assets at issue been frozen pursuant to an Executive Order blocking "property of the Government of Iran,"

Exec. Order No. 13599, 77 Fed. Reg. 6659 (2012), but the Bank had "repeatedly insisted that it is the sole beneficial owner of the Blocked Assets," App. to Pet. for Cert. 113a. By that measure of "plenty," the majority would have to uphold a law directing judgment for Smith if the court finds that Jones was duly served with notice of the proceedings, and that Smith's claim was within the statute of limitations. In reality, the Court's "plenty" is plenty of nothing, and, apparently, nothing is plenty for the Court. See D. Heyward & I. Gershwin, Porgy and Bess: Libretto 28 (1958).

It is true that some of the precedents cited by the majority, *ante*, at 228–229, have allowed Congress to approach the boundary between legislative and judicial power. None, however, involved statutes comparable to § 8772. In *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429 (1992), for example, the statute at issue referenced particular cases only as a shorthand for describing certain environmental law requirements, *id.*, at 433–435, not to limit the statute's effect to those cases alone. And in *Plaut*, the Court explicitly distinguished the statute before it—which directed courts to reopen final judgments in an entire class of cases—from one that "'single[s] out' any defendant for adverse treatment (or any plaintiff for favorable treatment)." 514 U. S., at 238. *Plaut*, in any event, held the statute before it *invalid*, concluding that it violated Article III based on the same historical understanding of the judicial power outlined above. *Id.*, at 219–225, 240.[3]

I readily concede, without embarrassment, that it can sometimes be difficult to draw the line between legislative and judicial power. That should come as no surprise; Chief Justice Marshall's admonition "that 'it is a *constitution* we

[3] We have also upheld Congress's long practice of settling individual claims involving public rights, such as claims against the Government, through private bills. See generally *Pope* v. *United States*, 323 U. S. 1 (1944). But the Court points to no example of a private bill that retroactively changed the law for a single case involving private rights.

are expounding' is especially relevant when the Court is required to give legal sanctions to an underlying principle of the Constitution—that of separation of powers." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 596–597 (1952) (Frankfurter, J., concurring) (quoting *McCulloch* v. *Maryland*, 4 Wheat. 316, 407 (1819)). But however difficult it may be to discern the line between the Legislative and Judicial Branches, the entire constitutional enterprise depends on there *being* such a line. The Court's failure to enforce that boundary in a case as clear as this reduces Article III to a mere "parchment barrier[ ] against the encroaching spirit" of legislative power. The Federalist No. 48, at 308 (J. Madison).

C

Finally, the majority suggests that § 8772 is analogous to the Executive's historical power to recognize foreign state sovereign immunity on a case-by-case basis. As discussed above, however, § 8772 does considerably more than withdraw the Bank's sovereign immunity. *Supra*, at 242–243. It strips the Bank of any protection that federal common law, international law, or New York State law might have offered against respondents' claims. That is without analogue or precedent. In any event, the practice of applying case-specific executive submissions on sovereign immunity was not judicial acquiescence in an intrusion on the Judiciary's role. It was instead the result of substantive sovereign immunity law, developed and applied by the courts, which treated such a submission as a dispositive fact. See *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 486–487 (1983); *Ex parte Peru*, 318 U. S. 578, 587–588 (1943).

The majority also compares § 8772 to the political branches' authority to "exercise[ ] control over claims against foreign states and the disposition of foreign-state property in the United States." *Ante*, at 235 (citing *Dames & Moore* v. *Regan*, 453 U. S. 654 (1981)). In *Dames & Moore*, we considered whether the President had authority to suspend

claims against Iran, and to nullify existing court orders attaching Iran's property, in order to fulfill U. S. obligations under a claims-settlement agreement with that country. *Id.*, at 664–667. We held that the President had that power, based on a combination of statutory authorization, congressional acquiescence, and inherent executive power. See *id.*, at 674–675, 686.

The majority suggests that *Dames & Moore* supports the validity of § 8772. But *Dames & Moore* was self-consciously "a restricted railroad ticket, good for this day and train only." *Smith* v. *Allwright*, 321 U. S. 649, 669 (1944) (Roberts, J., dissenting). The Court stressed in *Dames & Moore* that it "attempt[ed] to lay down no general 'guidelines' covering other situations not involved here, and attempt[ed] to confine the opinion only to the very questions necessary to [the] decision of the case." 453 U. S., at 661; see also *American Ins. Assn.* v. *Garamendi*, 539 U. S. 396, 438 (2003) (GINSBURG, J., dissenting) ("Notably, the Court in *Dames & Moore* was emphatic about the 'narrowness' of its decision.").

There are, moreover, several important differences between *Dames & Moore* and this case. For starters, the executive action *Dames & Moore* upheld did not dictate how particular claims were to be resolved, but simply required such claims to be submitted to a different tribunal. 453 U. S., at 660. Furthermore, *Dames & Moore* sanctioned that action based on the political branches' "longstanding" practice of "settl[ing] the claims of [U. S.] nationals against foreign countries" by treaty or executive agreement. *Id.*, at 679. The Court emphasized that throughout our history, the political branches have at times "disposed of the claims of [U. S.] citizens without their consent, or even without consultation with them," by renouncing claims, settling them, or establishing arbitration proceedings. *Id.*, at 679–681 (internal quotation marks omitted). Those dispositions, crucially, were not exercises of judicial power, as is evident from

the fact that the Judiciary lacks authority to order settlement or establish new tribunals. That is why *Klein* was not at issue in *Dames & Moore*. By contrast, no comparable history sustains Congress's action here, which seeks to provide relief to respondents not by transferring their claims in a manner only the political branches could do, but by commandeering the courts to make a political judgment look like a judicial one. See *Medellín* v. *Texas*, 552 U. S. 491, 531 (2008) (refusing to extend the President's claims-settlement authority beyond the "narrow set of circumstances" defined by the "'systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned'" (quoting *Dames & Moore*, 453 U. S., at 686)).

If anything, what *Dames & Moore* reveals is that the political branches have extensive powers of their own in this area and could have chosen to exercise them to give relief to the claimants in this case. Cf. 50 U. S. C. § 1702(a)(1)(C) (authorizing the President, in certain emergency circumstances, to confiscate and dispose of foreign sovereign property). The authority of the political branches is sufficient; they have no need to seize ours.

* * *

At issue here is a basic principle, not a technical rule. Section 8772 decides this case no less certainly than if Congress had directed entry of judgment for respondents. As a result, the potential of the decision today "to effect important change in the equilibrium of power" is "immediately evident." *Morrison* v. *Olson*, 487 U. S. 654, 699 (1988) (Scalia, J., dissenting). Hereafter, with this Court's seal of approval, Congress can unabashedly pick the winners and losers in particular pending cases. Today's decision will indeed become a "blueprint for extensive expansion of the legislative power" at the Judiciary's expense, *Metropolitan Washington Airports Authority* v. *Citizens for Abatement*

of Aircraft Noise, Inc., 501 U. S. 252, 277 (1991), feeding Congress's tendency to "extend[ ] the sphere of its activity and draw[ ] all power into its impetuous vortex," The Federalist No. 48, at 309 (J. Madison).

I respectfully dissent.

Syllabus

HARRIS ET AL. *v.* ARIZONA INDEPENDENT REDISTRICTING COMMISSION ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

No. 14–232. Argued December 8, 2015—Decided April 20, 2016

After the 2010 census, Arizona's independent redistricting commission (Commission), comprising two Republicans, two Democrats, and one Independent, redrew Arizona's legislative districts, with guidance from legal counsel, mapping specialists, a statistician, and a Voting Rights Act of 1965 specialist. The initial plan had a maximum population deviation from absolute equality of districts of 4.07%, but the Commission adopted a revised plan with an 8.8% deviation on a 3-to-2 vote, with the Republican members dissenting. After the Department of Justice approved the revised plan as consistent with the Voting Rights Act, appellants filed suit, claiming that the plan's population variations were inconsistent with the Fourteenth Amendment. A three-judge Federal District Court entered judgment for the Commission, concluding that the "deviations were primarily a result of good-faith efforts to comply with the Voting Rights Act . . . even though partisanship played some role."

Held: The District Court did not err in upholding Arizona's redistricting plan. Pp. 258–265.

(a) The Fourteenth Amendment's Equal Protection Clause requires States to "make an honest and good faith effort to construct [legislative] districts . . . as nearly of equal population as is practicable," *Reynolds* v. *Sims*, 377 U. S. 533, 577, but mathematical perfection is not required. Deviations may be justified by "legitimate considerations," *id.*, at 579, including "traditional districting principles such as compactness [and] contiguity," *Shaw* v. *Reno*, 509 U. S. 630, 647, as well as a state interest in maintaining the integrity of political subdivisions, *Mahan* v. *Howell*, 410 U. S. 315, 328, a competitive balance among political parties, *Gaffney* v. *Cummings*, 412 U. S. 735, 752, and, before *Shelby County* v. *Holder*, 570 U. S. 529, compliance with § 5 of the Voting Rights Act. It was proper for the Commission to proceed on the last basis here. In addition, "minor deviations from mathematical equality"—*i. e.*, deviations "under 10%," *Brown* v. *Thomson*, 462 U. S. 835, 842—do not, by themselves, "make out a prima facie case of invidious discrimination under the Fourteenth Amendment [requiring] justification by the State," *Gaffney*, *supra*, at 745. Because the deviation here is under 10%, appellants

cannot rely upon the numbers to show a constitutional violation. Instead, they must show that it is more probable than not that the deviation reflects the predominance of illegitimate reapportionment factors rather than "legitimate considerations." Pp. 258–259.

(b) Appellants have failed to meet that burden here, where the record supports the District Court's conclusion that the deviations predominantly reflected Commission efforts to achieve compliance with the Voting Rights Act, not to secure political advantage for the Democratic Party. To meet the Voting Rights Act's nonretrogression requirement, a new plan, when compared to the current plan (benchmark plan), must not diminish the number of districts in which minority groups can "elect their preferred candidates of choice" (ability-to-elect districts). A State can obtain legal assurance that it has satisfied this requirement if it submits its proposed plan to the Justice Department and the Department does not object to the plan. The record shows that the Commission redrew the initial map to ensure that the plan had 10 ability-to-elect districts, the same number as the benchmark plan. But after a statistician reported that the Justice Department still might not agree with the plan, the Commission changed additional boundaries, causing District 8, a Republican-leaning district, to become more politically competitive. Because this record well supports the District Court's finding that the Commission was trying to comply with the Voting Rights Act, appellants have not shown that it is more probable than not that illegitimate considerations were the predominant motivation for the deviations. They have thus failed to show that the plan violates the Equal Protection Clause. Pp. 259–263.

(c) Appellants' additional arguments are unpersuasive. While Arizona's Democratic-leaning districts may be somewhat underpopulated and its Republican-leaning districts somewhat overpopulated, these variations may reflect only the tendency of Arizona's 2010 minority populations to vote disproportionately for Democrats and thus can be explained by the Commission's efforts to maintain at least 10 ability-to-elect districts. *Cox* v. *Larios*, 542 U. S. 947, in which the Court affirmed a District Court's conclusion that a Georgia reapportionment plan violated the Equal Protection Clause where its deviation, though less than 10%, resulted from the use of illegitimate factors, is inapposite because appellants have not carried their burden of showing the use of illegitimate factors here. And because *Shelby County* was decided after Arizona's plan was created, it has no bearing on the issue whether the State's attempt to comply with the Voting Rights Act is a legitimate state interest. Pp. 263–265.

993 F. Supp. 2d 1042, affirmed.

BREYER, J., delivered the opinion for a unanimous Court.

Mark F. (Thor) Hearne II argued the cause for appellants. With him on the briefs were *Stephen S. Davis*, *David J. Cantelme*, *Stephen G. Larson*, *Robert C. O'Brien*, *Hugh Hewitt*, and *Steven A. Haskins*.

Mark Brnovich, Attorney General of Arizona, argued the cause for Michele Reagan, Secretary of State, appellee under this Court's Rule 18.2 in support of appellants. With him on the briefs were *John R. Lopez IV*, Solicitor General, *E. Mark Braden*, and *Jason Torchinsky*.

Paul M. Smith argued the cause for appellee Arizona Independent Redistricting Commission. With him on the briefs were *Jessica Ring Amunson*, *Emily L. Chapuis*, *Mary R. O'Grady*, *Joseph Roth*, and *Joseph A. Kanefield*.

Sarah E. Harrington argued the cause for the United States as *amicus curiae* urging affirmance. On the briefs were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Gupta*, *Deputy Solicitor General Gershengorn*, *Elizabeth B. Prelogar*, *Sharon M. McGowan*, and *Bonnie I. Robin-Vergeer*.*

JUSTICE BREYER delivered the opinion of the Court.

Appellants, a group of Arizona voters, challenge a redistricting plan for the State's legislature on the ground that the plan's districts are insufficiently equal in population. See *Reynolds* v. *Sims*, 377 U. S. 533, 577 (1964). Because the maximum population deviation between the largest and

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*Briefs of *amici curiae* urging affirmance were filed for Former Officials of the United States Department of Justice Who Enforced the Voting Rights Act by *Charles Fried*, *J. Gerald Hebert*, *pro se*, and *Mark A. Posner*, *pro se*; for the Navajo Nation et al. by *Judith M. Dworkin* and *Patricia A. Ferguson-Bohnee*; and for Nicholas Stephanopoulos et al. by *Thomas G. Saunders* and *Jason D. Hirsch*.

Briefs of *amici curiae* were filed for the Southern Coalition for Social Justice by *Anita S. Earls*, *George E. Eppsteiner*, and *Allison J. Riggs*; and for Samuel S. Wang by *David N. Rosen*.

the smallest district is less than 10%, appellants cannot simply rely upon the numbers to show that the plan violates the Constitution. See *Brown* v. *Thomson*, 462 U. S. 835, 842 (1983). Nor have appellants adequately supported their contentions with other evidence. We consequently affirm a three-judge Federal District Court decision upholding the plan.

I

In 2000, Arizona voters, using the initiative process, amended the Arizona Constitution to provide for an independent redistricting commission. See *Arizona State Legislature* v. *Arizona Independent Redistricting Comm'n*, 576 U. S. 787, 826 (2015) (upholding the amendment as consistent with federal constitutional and statutory law). Each decade, the Arizona Commission on Appellate Court Appointments creates three slates of individuals: one slate of 10 Republicans, one slate of 10 Democrats, and one slate of 5 individuals not affiliated with any political party. The majority and minority leader of the Arizona Legislature each select one redistricting commission (Commission) member from the first two lists. These four selected individuals in turn choose one member from the third, nonpartisan list. See Ariz. Const., Art. IV, pt. 2, §§ 1(5)–(8). Thus, the membership of the Commission consists of two Republicans, two Democrats, and one independent.

After each decennial census, the Commission redraws Arizona's 30 legislative districts. The first step in the process is to create "districts of equal population in a grid-like pattern across the state." § 1(14). It then adjusts the grid to "the extent practicable" in order to take into account the need for population equality; to maintain geographic compactness and continuity; to show respect for "communities of interest"; to follow locality boundaries; and to use "visible geographic features" and "undivided . . . tracts." §§ 1(14)(B)–(E). The Commission will "favo[r]" political "competitive[ness]" as long as its efforts to do so "create no

significant detriment to the other goals." § 1(14)(F). Finally, it must adjust boundaries "as necessary" to comply with the Federal Constitution and with the federal Voting Rights Act of 1965. § 1(14)(A).

After the 2010 census, the legislative leadership selected the Commission's two Republican and two Democratic members, who in turn selected an independent member, Colleen Mathis. Mathis was then elected chairwoman. The Commission hired two counsel, one of whom they thought of as leaning Democrat and one as leaning Republican. It also hired consultants, including mapping specialists, a statistician, and a Voting Rights Act specialist. With the help of its staff, it drew an initial plan, based upon the gridlike map, with district boundaries that produced a maximum population deviation (calculated as the difference between the most populated and least populated district) of 4.07%. After changing several boundaries, including those of Districts 8, 24, and 26, the Commission adopted a revised plan by a vote of 3 to 2, with the two Republican members voting against it. In late April 2012, the Department of Justice approved the plan as consistent with the Voting Rights Act.

The next day, appellants filed this lawsuit, primarily claiming that the plan's population variations were inconsistent with the Fourteenth Amendment. A three-judge Federal District Court heard the case. See 28 U. S. C. § 2284(a) (providing for the convention of such a court whenever an action is filed challenging the constitutionality of apportionment of legislative districts). After a 5-day bench trial, the court, by a vote of 2 to 1, entered judgment for the Commission. The majority found that "the population deviations were primarily a result of good-faith efforts to comply with the Voting Rights Act . . . even though partisanship played some role." 993 F. Supp. 2d 1042, 1046 (Ariz. 2014). Appellants sought direct review in this Court. See 28 U. S. C. § 1253. We noted probable jurisdiction on June 30, 2015, and we now affirm.

II

A

The Fourteenth Amendment's Equal Protection Clause requires States to "make an honest and good faith effort to construct [legislative] districts . . . as nearly of equal population as is practicable." *Reynolds*, 377 U. S., at 577. The Constitution, however, does not demand mathematical perfection. In determining what is "practicable," we have recognized that the Constitution permits deviation when it is justified by "legitimate considerations incident to the effectuation of a rational state policy." *Id.*, at 579. In related contexts, we have made clear that in addition to the "traditional districting principles such as compactness [and] contiguity," *Shaw* v. *Reno*, 509 U. S. 630, 647 (1993), those legitimate considerations can include a state interest in maintaining the integrity of political subdivisions, *Mahan* v. *Howell*, 410 U. S. 315, 328 (1973), or the competitive balance among political parties, *Gaffney* v. *Cummings*, 412 U. S. 735, 752 (1973). In cases decided before *Shelby County* v. *Holder*, 570 U. S. 529 (2013), Members of the Court expressed the view that compliance with §5 of the Voting Rights Act is also a legitimate state consideration that can justify some deviation from perfect equality of population. See *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 518 (2006) (SCALIA, J., joined in relevant part by ROBERTS, C. J., and THOMAS and ALITO, JJ., concurring in judgment in part and dissenting in part); *id.*, at 475, n. 12 (Stevens, J., joined in relevant part by BREYER, J., concurring in part and dissenting in part); *id.*, at 485, n. 2 (Souter, J., joined by GINSBURG, J., concurring in part and dissenting in part); see also *Vieth* v. *Jubelirer*, 541 U. S. 267, 284 (2004) (plurality opinion) (listing examples of traditional redistricting criteria, including "compliance with requirements of the Voting Rights Act"). It was proper for the Commission to proceed on that basis here.

We have further made clear that "minor deviations from mathematical equality" do not, by themselves, "make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State." *Gaffney*, *supra*, at 745. We have defined as "minor deviations" those in "an apportionment plan with a maximum population deviation under 10%." *Brown*, 462 U. S., at 842. And we have refused to require States to justify deviations of 9.9%, *White* v. *Regester*, 412 U. S. 755, 764 (1973), and 8%, *Gaffney, supra*, at 751. See also *Fund for Accurate and Informed Representation, Inc.* v. *Weprin*, 506 U. S. 1017 (1992) (summarily affirming a District Court's finding that there was no prima facie case where the maximum population deviation was 9.43%).

In sum, in a case like this one, those attacking a state-approved plan must show that it is more probable than not that a deviation of less than 10% reflects the predominance of illegitimate reapportionment factors rather than the "legitimate considerations" to which we have referred in *Reynolds* and later cases. Given the inherent difficulty of measuring and comparing factors that may legitimately account for small deviations from strict mathematical equality, we believe that attacks on deviations under 10% will succeed only rarely, in unusual cases. And we are not surprised that appellants have failed to meet their burden here.

B

Appellants' basic claim is that deviations in their apportionment plan from absolute equality of population reflect the Commission's political efforts to help the Democratic Party. We believe that appellants failed to prove this claim because, as the District Court concluded, the deviations predominantly reflected Commission efforts to achieve compliance with the federal Voting Rights Act, not to secure political advantage for one party. Appellants failed to show to the contrary. And the record bears out this conclusion. Cf.

Anderson v. *Bessemer City*, 470 U. S. 564, 573 (1985) (explaining that a district court's factual finding as to whether discrimination occurred will not be set aside by an appellate court unless clearly erroneous).

The Voting Rights Act, among other things, forbids the use of new reapportionment plans that " 'would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.' " *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 478 (1997). A plan leads to impermissible retrogression when, compared to the plan currently in effect (typically called a "benchmark plan"), the new plan diminishes the number of districts in which minority groups can "elect their preferred candidates of choice" (often called "ability-to-elect" districts). 52 U. S. C. § 10304(b). A State can obtain legal assurance that it has satisfied the nonretrogression requirement if it submits its proposed plan to the Federal Department of Justice, and the Department does not object to the plan within 60 days. See 28 CFR §§ 51.9, 51.52(b) (2015). While *Shelby County* struck down the § 4(b) coverage formula, that decision came after the maps in this case were drawn.

The record in this case shows that the gridlike map that emerged after the first step of the redistricting process had a maximum population deviation from absolute equality of districts of 4.07%. After consulting with their Voting Rights Act expert, their mapping consultant, and their statisticians, all five Commissioners agreed that they must try to obtain Justice Department Voting Rights Act "preclearance" and that the former benchmark plan contained 10 ability-to-elect districts. They consequently set a goal of 10 such districts for the new plan. They then went through an iterative process, involving further consultation, to adjust the plan's initial boundaries in order to enhance minority voting strength. In October 2011 (by a vote of 4 to 1), they tentatively approved a draft plan with adjusted boundaries.

They believed it met their goal of 10 ability-to-elect districts. And they published the plan for public comment.

In the meantime, however, the Commission received a report from one of its statisticians suggesting that the Department of Justice might not agree that the new proposed plan contained 10 ability-to-elect districts. It was difficult to know for certain because the Justice Department did not tell States how many ability-to-elect districts it believed were present in a benchmark plan, and neither did it typically explain precisely and specifically how it would calculate the number that exist in a newly submitted plan. See 76 Fed. Reg. 7470–7471 (2011). At the same time, the ability-to-elect analysis was complex, involving more than simply adding up census figures. The Department of Justice instead conducted a "functional analysis of the electoral behavior within the particular . . . election district," *id.*, at 7471, and so might, for example, count as ability-to-elect districts "crossover" districts in which white voters combine their votes with minorities, see *Bartlett* v. *Strickland*, 556 U. S. 1, 13–14 (2009). Its calculations might take into account group voting patterns, electoral participation, election history, and voter turnout. See 76 Fed. Reg. 7471. The upshot was not random decisionmaking but the process did create an inevitable degree of uncertainty. And that uncertainty could lead a redistricting commission, as it led Arizona's, to make serious efforts to make certain that the districts it believed were ability-to-elect districts did in fact meet the criteria that the Department might reasonably apply. Cf. *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254, 278 (2015) ("The law cannot insist that a state legislature, when redistricting, determine *precisely* what percent minority population § 5 demands [because t]he standards of § 5 are complex . . . . [To do so would] lay a trap for an unwary legislature, condemning its redistricting plan as either . . . unconstitutional racial gerrymandering [or] retrogressive under § 5").

As a result of the statistician's report, the Commission became concerned about certain of its proposed boundaries. One of the Commission's counsel advised that it would be "prudent to stay the course in terms of the ten districts that are in the draft map and look to . . . strengthen them if there is a way to strengthen them." 993 F. Supp. 2d, at 1058 (internal quotation marks omitted). Subsequently, the Commission adopted several changes to the boundaries of Districts 24 and 26. It reduced the populations of those districts, thereby increasing the percentage of Hispanic voters in each. The Commission approved these changes unanimously.

Changes in the boundaries of District 8, however, proved more controversial. District 8 leaned Republican. A Democrat-appointed Commissioner asked the mapping specialist to look into modifications that might make District 8 politically more competitive. The specialist returned with a draft that shifted the boundary line between District 8 and District 11 so as to keep several communities with high minority populations together in District 8. The two Republican-appointed Commissioners objected that doing so would favor Democrats by "hyperpacking" Republicans into other districts; they added that the Commission should either favor political competitiveness throughout the State or not at all. *Id.*, at 1059 (internal quotation marks omitted).

The Democrat-appointed proponent of the change replied that District 8 had historically provided minority groups a good opportunity to elect their candidate of choice—an opportunity that the changes would preserve. The Voting Rights Act specialist then said that by slightly increasing District 8's minority population, the Commission might be able to claim an 11th ability-to-elect district; and that fact would "unquestionably enhance the submission and enhance chances for preclearance." *Ibid.* (internal quotation marks omitted). The Commission's counsel then added that having another possible ability-to-elect district could be helpful be-

cause District 26 was not as strong an ability-to-elect district as the others. See *ibid.*

Only then, after the counsel and consultants argued for District 8 changes for the sake of Voting Rights Act preclearance, did Chairwoman Mathis support those changes. On that basis, the Commission ultimately approved the changes to District 8 by a vote of 3 to 2 (with the two Republican-appointed Commissioners dissenting). The total population deviation among districts in this final map was 8.8%. While the Commission ultimately concluded that District 8 was not a true ability-to-elect district, the State's submission to the Department of Justice cited the changes to District 8 in support of the argument for preclearance. On April 26, 2012, the Department of Justice precleared the submitted plan.

On the basis of the facts that we have summarized, the District Court majority found that "the population deviations were primarily a result of good-faith efforts to comply with the Voting Rights Act . . . even though partisanship played some role." *Id.*, at 1046. This conclusion was well supported in the record. And as a result, appellants have not shown that it is more probable than not that illegitimate considerations were the predominant motivation behind the plan's deviations from mathematically equal district populations—deviations that were under 10%. Consequently, they have failed to show that the Commission's plan violates the Equal Protection Clause as interpreted in *Reynolds* and subsequent cases.

C

Appellants make three additional arguments. First, they support their claim that the plan reflects unreasonable use of partisan considerations by pointing to the fact that almost all the Democratic-leaning districts are somewhat underpopulated and almost all the Republican-leaning districts are somewhat overpopulated. That is likely true. See 993 F. Supp. 2d, at 1049 (providing a chart with percentage deviation figures by district). But that fact may well reflect the

tendency of minority populations in Arizona in 2010 to vote disproportionately for Democrats. If so, the variations are explained by the Commission's efforts to maintain at least 10 ability-to-elect districts. The Commission may have relied on data from its statisticians and Voting Rights Act expert to create districts tailored to achieve preclearance in which minority voters were a larger percentage of the district population. That might have necessitated moving other voters out of those districts, thereby leaving them slightly underpopulated. Appellants point to nothing in the record to suggest the contrary.

Second, appellants point to *Cox* v. *Larios*, 542 U. S. 947 (2004), in which we summarily affirmed a District Court's judgment that Georgia's reapportionment of representatives to state legislative districts violated the Equal Protection Clause, even though the total population deviation was less than 10%. In *Cox*, however, unlike the present case, the District Court found that those attacking the plan had shown that it was more probable than not that the use of illegitimate factors significantly explained deviations from numerical equality among districts. The District Court produced many examples showing that population deviation as well as the shape of many districts "did not result from any attempt to create districts that were compact or contiguous, or to keep counties whole, or to preserve the cores of prior districts." *Id.*, at 949. No legitimate purposes could explain them. It is appellants' inability to show that the present plan's deviations and boundary shapes result from the predominance of similarly illegitimate factors that makes *Cox* inapposite here. Even assuming, without deciding, that partisanship is an illegitimate redistricting factor, appellants have not carried their burden.

Third, appellants point to *Shelby County* v. *Holder*, 570 U. S. 529 (2013), in which this Court held unconstitutional sections of the Voting Rights Act that are relevant to this case. Appellants contend that, as a result of that holding,

Arizona's attempt to comply with the Act could not have been a legitimate state interest. The Court decided *Shelby County*, however, in 2013. Arizona created the plan at issue here in 2010. At the time, Arizona was subject to the Voting Rights Act, and we have never suggested the contrary.

* * *

For these reasons the judgment of the District Court is affirmed.

It is so ordered.

Syllabus

HEFFERNAN *v.* CITY OF PATERSON, NEW JERSEY, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 14–1280. Argued January 19, 2016—Decided April 26, 2016

Petitioner Heffernan was a police officer working in the office of Paterson, New Jersey's chief of police. Both the chief of police and Heffernan's supervisor had been appointed by Paterson's incumbent mayor, who was running for reelection against Lawrence Spagnola, a good friend of Heffernan's. Heffernan was not involved in Spagnola's campaign in any capacity. As a favor to his bedridden mother, Heffernan agreed to pick up and deliver to her a Spagnola campaign yard sign. Other police officers observed Heffernan speaking to staff at a Spagnola distribution point while holding the yard sign. Word quickly spread throughout the force. The next day, Heffernan's supervisors demoted him from detective to patrol officer as punishment for his "overt involvement" in Spagnola's campaign. Heffernan filed suit, claiming that the police chief and the other respondents had demoted him because, in their mistaken view, he had engaged in conduct that constituted protected speech. They had thereby "depriv[ed]" him of a "right . . . secured by the Constitution." 42 U. S. C. § 1983. The District Court, however, found that Heffernan had not been deprived of any constitutionally protected right because he had not engaged in any First Amendment conduct. Affirming, the Third Circuit concluded that Heffernan's claim was actionable under § 1983 only if his employer's action was prompted by Heffernan's actual, rather than his perceived, exercise of his free-speech rights.

Held:

1. When an employer demotes an employee out of a desire to prevent the employee from engaging in protected political activity, the employee is entitled to challenge that unlawful action under the First Amendment and § 1983 even if, as here, the employer's actions are based on a factual mistake about the employee's behavior. To answer the question whether an official's factual mistake makes a critical legal difference, the Court assumes that the activities that Heffernan's supervisors mistakenly *thought* he had engaged in are of a kind that they cannot constitutionally prohibit or punish. Section 1983 does not say whether the "right" protected primarily focuses on the employee's actual activity or on the supervisor's motive. Neither does precedent directly answer the question. In *Connick* v. *Myers*, 461 U. S. 138, *Garcetti* v. *Ceballos*, 547

Syllabus

U. S. 410, and *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563, there were no factual mistakes: The only question was whether the undisputed reason for the adverse action was in fact protected by the First Amendment. However, in *Waters* v. *Churchill*, 511 U. S. 661, a government employer's adverse action was based on a mistaken belief that an employee *had not* engaged in protected speech. There, this Court determined that the employer's motive, and particularly the facts as the employer reasonably understood them, mattered in determining that the employer had not violated the First Amendment. The government's motive likewise matters here, where respondents demoted Heffernan on the mistaken belief that he *had* engaged in protected speech. A rule of law finding liability in these circumstances tracks the First Amendment's language, which focuses upon the Government's activity. Moreover, the constitutional harm—discouraging employees from engaging in protected speech or association—is the same whether or not the employer's action rests upon a factual mistake. Finally, a rule of law imposing liability despite the employer's factual mistake is not likely to impose significant extra costs upon the employer, for the employee bears the burden of proving an improper employer motive. Pp. 270–274.

2. For the purposes of this opinion, the Court has assumed that Heffernan's employer demoted him out of an improper motive. However, the lower courts should decide in the first instance whether respondents may have acted under a neutral policy prohibiting police officers from overt involvement in any political campaign and whether such a policy, if it exists, complies with constitutional standards. Pp. 274–275.

777 F. 3d 147, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined, *post*, p. 275.

Mark B. Frost argued the cause for petitioner. With him on the briefs were *Ryan M. Lockman*, *Stuart Banner*, *Eugene Volokh*, *Fred A. Rowley, Jr.*, and *Grant A. Davis-Denny*.

Ginger D. Anders argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Gupta*, *Deputy Solicitor General Ger-*

shengorn, Ayesha N. Khan, Erin H. Flynn, and *April J. Anderson.*

Thomas C. Goldstein argued the cause for the respondents. With him on the brief were *Victor A. Afanador, Edward A. Hartnett, Domenick Stampone, Albert C. Lisbona,* and *Ryan P. Mulvaney.**

JUSTICE BREYER delivered the opinion of the Court.

The First Amendment generally prohibits government officials from dismissing or demoting an employee because of the employee's engagement in constitutionally protected political activity. See *Elrod* v. *Burns*, 427 U. S. 347 (1976); *Branti* v. *Finkel*, 445 U. S. 507 (1980); but cf. *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 564 (1973). In this case a government official demoted an employee because the official believed, but *incorrectly* believed, that the employee had supported a particular candidate for mayor. The question is whether the official's factual mistake makes a critical legal difference. Even though the employee had not in fact engaged in protected political activity, did his demotion "depriv[e]" him of a "righ[t] . . . secured by the Constitution"? 42 U. S. C. § 1983. We hold that it did.

I

To decide the legal question presented, we assume the following, somewhat simplified, version of the facts: In 2005, Jeffrey Heffernan, the petitioner, was a police officer in Pat-

*Briefs of *amici curiae* urging reversal were filed for the Becket Fund for Religious Liberty by *Eric C. Rassbach, Mark Rienzi,* and *Adèle Auxier Keim*; for the National Association of Government Employees by *Michael T. Kirkpatrick*; and for the Thomas Jefferson Center for the Protection of Free Speech et al. by *J. Joshua Wheeler, Clay Calvert,* and *Robert D. Richards.*

Briefs of *amici curiae* urging affirmance were filed for the National Conference of State Legislatures et al. by *Collin O'Connor Udell* and *Lisa Soronen*; and for the New Jersey State League of Municipalities by *Donald Scarinci, Robert E. Levy,* and *Roshan D. Shah.*

erson, New Jersey. He worked in the office of the chief of police, James Wittig. At that time, the mayor of Paterson, Jose Torres, was running for reelection against Lawrence Spagnola. Torres had appointed to their current positions both Chief Wittig and a subordinate who directly supervised Heffernan. Heffernan was a good friend of Spagnola's.

During the campaign, Heffernan's mother, who was bedridden, asked Heffernan to drive downtown and pick up a large Spagnola sign. She wanted to replace a smaller Spagnola sign, which had been stolen from her front yard. Heffernan went to a Spagnola distribution point and picked up the sign. While there, he spoke for a time to Spagnola's campaign manager and staff. Other members of the police force saw him, sign in hand, talking to campaign workers. Word quickly spread throughout the force.

The next day, Heffernan's supervisors demoted Heffernan from detective to patrol officer and assigned him to a "walking post." In this way they punished Heffernan for what they thought was his "overt involvement" in Spagnola's campaign. In fact, Heffernan was not involved in the campaign but had picked up the sign simply to help his mother. Heffernan's supervisors had made a factual mistake.

Heffernan subsequently filed this lawsuit in federal court. He claimed that Chief Wittig and the other respondents had demoted him because he had engaged in conduct that (on their mistaken view of the facts) constituted protected speech. They had thereby "depriv[ed]" him of a "righ[t] . . . secured by the Constitution." Rev. Stat. § 1979, 42 U. S. C. § 1983.

The District Court found that Heffernan had not engaged in any "First Amendment conduct," 2 F. Supp. 3d 563, 580 (NJ 2014); and, for that reason, respondents had not deprived him of any constitutionally protected right. The Court of Appeals for the Third Circuit affirmed. It wrote that "a free-speech retaliation claim is actionable under § 1983 only where the adverse action at issue was prompted by an em-

ployee's *actual*, rather than *perceived*, exercise of constitutional rights." 777 F. 3d 147, 153 (2015) (citing *Ambrose* v. *Robinson*, 303 F. 3d 488, 496 (CA3 2002); emphasis added). Heffernan filed a petition for certiorari. We agreed to decide whether the Third Circuit's legal view was correct. Compare 777 F. 3d, at 153 (case below), with *Dye* v. *Office of Racing Comm'n*, 702 F. 3d 286, 300 (CA6 2012) (similar factual mistake does not affect the validity of the government employee's claim).

II

With a few exceptions, the Constitution prohibits a government employer from discharging or demoting an employee because the employee supports a particular political candidate. See *Elrod* v. *Burns*, *supra*; *Branti* v. *Finkel*, *supra*. The basic constitutional requirement reflects the First Amendment's hostility to government action that "prescribe[s] what shall be orthodox in politics." *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 642 (1943). The exceptions take account of "practical realities" such as the need for "efficiency" and "effective[ness]" in government service. *Waters* v. *Churchill*, 511 U. S. 661, 672, 675 (1994) (plurality opinion); see also *Civil Service Comm'n*, *supra*, at 564 (neutral and appropriately limited policy may prohibit government employees from engaging in partisan activity), and *Branti*, *supra*, at 518 (political affiliation requirement permissible where affiliation is "an appropriate requirement for the effective performance of the public office involved").

In order to answer the question presented, we assume that the exceptions do not apply here. But see *infra*, at 274–275. We assume that the activities that Heffernan's supervisors *thought* he had engaged in are of a kind that they cannot constitutionally prohibit or punish, see *Rutan* v. *Republican Party of Ill.*, 497 U. S. 62, 69 (1990) ("joining, working for or contributing to the political party and candidates of their own choice"), but that the supervisors were mistaken about the facts. Heffernan had not engaged in those protected ac-

tivities. Does Heffernan's constitutional case consequently fail?

The text of the relevant statute does not answer the question. The statute authorizes a lawsuit by a person "deprivf ed]" of a "righ[t] . . . secured by the Constitution." 42 U. S. C. § 1983. But in this context, what precisely is that "right"? Is it a right that primarily focuses upon (the employee's) actual activity or a right that primarily focuses upon (the supervisor's) motive, insofar as that motive turns on what the supervisor believes that activity to be? The text does not say.

Neither does precedent directly answer the question. In some cases we have used language that suggests the "right" at issue concerns the employee's actual activity. In *Connick* v. *Myers*, 461 U. S. 138 (1983), for example, we said that a court should first determine whether the plaintiff spoke "'as a citizen'" on a "'matte[r] of public concern,'" *id.*, at 143. We added that, if the employee has not engaged in what can "be fairly characterized as constituting speech on a matter of public concern, it is unnecessary for us to scrutinize the reasons for her discharge." *Id.*, at 146. We made somewhat similar statements in *Garcetti* v. *Ceballos*, 547 U. S. 410, 418 (2006), and *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563 (1968).

These cases, however, did not present the kind of question at issue here. In *Connick*, for example, no factual mistake was at issue. The Court assumed that both the employer and the employee were at every stage in agreement about the underlying facts: that the employer dismissed the employee because of her having circulated within the office a document that criticized how the office was being run (that she had in fact circulated). The question was whether the circulation of that document amounted to constitutionally protected speech. If not, the Court need go no further.

Neither was any factual mistake at issue in *Pickering*. The Court assumed that both the employer (a school board)

and the employee understood the cause for dismissal, namely, a petition that the employee had indeed circulated criticizing his employer's practices. The question concerned whether the petition was protected speech. *Garcetti* is substantially similar. In each of these cases, the only way to show that the employer's motive was unconstitutional was to prove that the controversial statement or activity—in each case the undisputed reason for the firing—was in fact protected by the First Amendment.

Waters v. *Churchill*, 511 U. S. 661, is more to the point. In that case the Court did consider the consequences of an employer mistake. The employer wrongly, though reasonably, believed that the employee had spoken only on personal matters not of public concern, and the employer dismissed the employee for having engaged in that unprotected speech. The employee, however, had in fact used words that did not amount to personal "gossip" (as the employer believed) but which focused on matters of public concern. The Court asked whether, and how, the employer's factual mistake mattered.

The Court held that, as long as the employer (1) had reasonably believed that the employee's conversation had involved personal matters, not matters of public concern, and (2) had dismissed the employee because of that mistaken belief, the dismissal did not violate the First Amendment. *Id.*, at 679–680. In a word, it was the employer's motive, and in particular the facts as the employer reasonably understood them, that mattered.

In *Waters*, the employer reasonably but mistakenly thought that the employee *had not* engaged in protected speech. Here the employer mistakenly thought that the employee *had* engaged in protected speech. If the employer's motive (and in particular the facts as the employer reasonably understood them) is what mattered in *Waters*, why is the same not true here? After all, in the law, what is sauce for the goose is normally sauce for the gander.

We conclude that, as in *Waters*, the government's reason for demoting Heffernan is what counts here. When an employer demotes an employee out of a desire to prevent the employee from engaging in political activity that the First Amendment protects, the employee is entitled to challenge that unlawful action under the First Amendment and 42 U. S. C. § 1983—even if, as here, the employer makes a factual mistake about the employee's behavior.

We note that a rule of law finding liability in these circumstances tracks the language of the First Amendment more closely than would a contrary rule. Unlike, say, the Fourth Amendment, which begins by speaking of the "right of the people to be secure in their persons, houses, papers, and effects . . . ," the First Amendment begins by focusing upon the activity of the Government. It says that "Congress shall make no law . . . abridging the freedom of speech." The government acted upon a constitutionally harmful policy whether Heffernan did or did not in fact engage in political activity. That which stands for a "law" of "Congress," namely, the police department's reason for taking action, "abridg[es] the freedom of speech" of employees aware of the policy. And Heffernan was directly harmed, namely, demoted, through application of that policy.

We also consider relevant the constitutional implications of a rule that imposes liability. The constitutional harm at issue in the ordinary case consists in large part of discouraging employees—both the employee discharged (or demoted) and his or her colleagues—from engaging in protected activities. The discharge of one tells the others that they engage in protected activity at their peril. See, *e. g.*, *Elrod*, 427 U. S., at 359 (retaliatory employment action against one employee "unquestionably inhibits protected belief and association" of all employees). Hence, we do not require plaintiffs in political affiliation cases to "prove that they, or other employees, have been coerced into changing, either actually or ostensibly, their political allegiance." *Branti*, 445 U. S., at

517. The employer's factual mistake does not diminish the risk of causing precisely that same harm. Neither, for that matter, is that harm diminished where an employer announces a policy of demoting those who, say, help a particular candidate in the mayoral race, and all employees (including Heffernan), fearful of demotion, refrain from providing any such help. Cf. *Gooding* v. *Wilson*, 405 U. S. 518, 521 (1972) (explaining that overbreadth doctrine is necessary "because persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions"). The upshot is that a discharge or demotion based upon an employer's belief that the employee has engaged in protected activity can cause the same kind, and degree, of constitutional harm whether that belief does or does not rest upon a factual mistake.

Finally, we note that, contrary to respondents' assertions, a rule of law that imposes liability despite the employer's factual mistake will not normally impose significant extra costs upon the employer. To win, the employee must prove an improper employer motive. In a case like this one, the employee will, if anything, find it more difficult to prove that motive, for the employee will have to point to more than his own conduct to show an employer's intent to discharge or to demote him for engaging in what the employer (mistakenly) believes to have been different (and protected) activities. We concede that, for that very reason, it may be more complicated and costly for the employee to prove his case. But an employee bringing suit will ordinarily shoulder that more complicated burden voluntarily in order to recover the damages he seeks.

III

We now relax an assumption underlying our decision. We have assumed that the policy that Heffernan's employers implemented violated the Constitution. *Supra*, at 270. There is some evidence in the record, however, suggesting that Heffernan's employers may have dismissed him pursuant to a

different and neutral policy prohibiting police officers from overt involvement in any political campaign. See Brief for United States as *Amicus Curiae* 27–28. Whether that policy existed, whether Heffernan's supervisors were indeed following it, and whether it complies with constitutional standards, see *Civil Service Comm'n*, 413 U. S., at 564, are all matters for the lower courts to decide in the first instance. Without expressing views on the matter, we reverse the judgment of the Third Circuit and remand the case for such further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting.

Today the Court holds that a public employee may bring a federal lawsuit for money damages alleging a violation of a constitutional right that he concedes he did not exercise. *Ante*, at 268. Because federal law does not provide a cause of action to plaintiffs whose constitutional rights have not been violated, I respectfully dissent.

I

This lawsuit concerns a decision by the city of Paterson, New Jersey (hereinafter City), to demote one of its police officers, Jeffrey Heffernan. At the time of Heffernan's demotion, Paterson's mayor, Jose Torres, was running for reelection against one of Heffernan's friends, Lawrence Spagnola. The police chief demoted Heffernan after another officer assigned to Mayor Torres' security detail witnessed Heffernan pick up a Spagnola campaign sign when Heffernan was off duty. Heffernan claimed that he picked up the sign solely as an errand for his bedridden mother. Heffernan denied supporting or associating with Spagnola's campaign and disclaimed any intent to communicate support for Spagnola by retrieving the campaign sign. Despite Heffernan's as-

surances that he was not engaged in protected First Amendment activity, he filed this lawsuit alleging that his employer violated his First Amendment rights by demoting him based on its mistaken belief that Heffernan had communicated support for the Spagnola campaign.

II

Title 42 U. S. C. § 1983 provides a cause of action against "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution." For Heffernan to prevail on his § 1983 claim, then, a state actor must have deprived him of a constitutional right. Nothing in the text of § 1983 provides a remedy against public officials who attempt but fail to violate someone's constitutional rights.

There are two ways to frame Heffernan's First Amendment claim, but neither can sustain his suit. As in most § 1983 suits, his claim could be that the City interfered with his freedom to speak and assemble. But because Heffernan has conceded that he was not engaged in protected speech or assembly when he picked up the sign, the majority must resort to a second, more novel framing. It concludes that Heffernan states a § 1983 claim because the City unconstitutionally regulated employees' political speech and Heffernan was injured because that policy resulted in his demotion. See *ante*, at 273. Under that theory, too, Heffernan's § 1983 claim fails. A city's policy, even if unconstitutional, cannot be the basis of a § 1983 suit when that policy does not result in the infringement of the plaintiff's constitutional rights.

A

To state a claim for retaliation in violation of the First Amendment, public employees like Heffernan must allege

that their employer interfered with their right to speak as a citizen on a matter of public concern. Whether the employee engaged in such speech is the threshold inquiry under the Court's precedents governing whether a public employer violated the First Amendment rights of its employees. See *Garcetti* v. *Ceballos*, 547 U. S. 410, 418 (2006). If the employee has not spoken on a matter of public concern, "the employee has no First Amendment cause of action based on his or her employer's reaction to the speech." *Ibid.* If the employee did, however, speak as a citizen on a matter of public concern, then the Court looks to "whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public." *Ibid.*

Under this framework, Heffernan's claim fails at the first step. He has denied that, by picking up the yard sign, he "spoke as a citizen on a matter of public concern." *Ibid.* In fact, Heffernan denies speaking in support of or associating with the Spagnola campaign. He has claimed that he picked up the yard sign only as an errand for his bedridden mother. Demoting a dutiful son who aids his elderly, bedridden mother may be callous, but it is not unconstitutional.

To be sure, Heffernan could exercise his First Amendment rights by choosing *not* to assemble with the Spagnola campaign. Cf. *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S. 539, 559 (1985) (freedom of expression "includes both the right to speak freely and the right to refrain from speaking at all" (internal quotation marks omitted)). But such an allegation could not save his claim here. A retaliation claim requires proving that Heffernan's protected activity was a cause-in-fact of the retaliation. See *University of Tex. Southwestern Medical Center* v. *Nassar*, 570 U. S. 338, 362 (2013). And Heffernan's exercise of his right not to associate with the Spagnola campaign did not cause his demotion. Rather, his *perceived* association with the Spagnola campaign did.

At bottom, Heffernan claims that the City tried to interfere with his constitutional rights and failed. But it is not enough for the City to have attempted to infringe his First Amendment rights. To prevail on his claim, he must establish that the City *actually* did so. The City's attempt never ripened into an actual violation of Heffernan's constitutional rights because, unbeknownst to the City, Heffernan did not support Spagnola's campaign.

Though, in criminal law, a factually impossible attempt like the City's actions here could constitute an attempt,* there is no such doctrine in tort law. A plaintiff may maintain a suit only for a completed tort; "[t]here are no attempted torts." *United States* v. *Stefonek*, 179 F. 3d 1030, 1036 (CA7 1999) (internal quotation marks omitted); see also Sebok, Deterrence or Disgorgement? Reading *Ciraolo* After *Campbell*, 64 Md. L. Rev. 541, 565 (2005) (same). And "there can be no doubt that claims brought pursuant to § 1983 sound in tort." *Monterey* v. *Del Monte Dunes at Monterey, Ltd.*, 526 U. S. 687, 709 (1999). Because Heffernan could claim at most that the City attempted to interfere with his First Amendment rights, he cannot prevail on a claim under the theory that the City infringed his right to speak freely or assemble.

B

To get around this problem of factual impossibility, the majority reframes Heffernan's case as one about the City's lack of power to act with unconstitutional motives. See *ante*, at 271. Under the majority's view, the First Amendment prohibits the City from taking an adverse employment action

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*Factual impossibility occurs when "an actor engages in conduct designed to culminate in the commission of an offense that is impossible for him to consummate under the existing circumstances." 1 P. Robinson, Criminal Law Defenses § 85, p. 422 (1984). Canonical examples include an attempt to steal from an empty pocket, *State* v. *Wilson*, 30 Conn. 500, 505 (1862), or an attempt to commit false pretenses where the victim had no money, *People* v. *Arberry*, 13 Cal. App. 749, 757 (1910).

intended to impede an employee's rights to speak and assemble, regardless of whether the City has accurately perceived an employee's political affiliation. The majority surmises that an attempted violation of an employee's First Amendment rights can be just as harmful as a successful deprivation of First Amendment rights. *Ante,* at 274. And the majority concludes that the City's demotion of Heffernan based on his wrongfully perceived association with a political campaign is no different from the City's demotion of Heffernan based on his actual association with a political campaign. *Ante*, at 273.

But § 1983 does not provide a cause of action for unauthorized government acts that do not infringe the constitutional rights of the § 1983 plaintiff. See *Blessing* v. *Freestone*, 520 U. S. 329, 340 (1997) ("In order to seek redress through § 1983, . . . a plaintiff must assert the violation of a federal *right*, not merely a violation of federal *law*"). Of course the First Amendment "focus[es] upon the activity of the Government." *Ante*, at 273. See Amdt. 1 ("Congress shall make no law . . . "). And here, the "activity of Government" has caused Heffernan harm, namely, a demotion. But harm alone is not enough; it has to be the right kind of harm. Section 1983 provides a remedy only if the City has violated Heffernan's constitutional *rights*, not if it has merely caused him harm. Restated in the language of tort law, Heffernan's injury must result from activities within the zone of interests that § 1983 protects. Cf. *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U. S. 118, 130, n. 5 (2014) (discussing the zone-of-interests test in the context of negligence *per se*).

The mere fact that the government has acted unconstitutionally does not necessarily result in the violation of an individual's constitutional rights, even when that individual has been injured. Consider, for example, a law that authorized police to stop motorists arbitrarily to check their licenses and registration. That law would violate the Fourth Amend-

ment. See *Delaware* v. *Prouse*, 440 U. S. 648, 661 (1979). And motorists who were *not* stopped might suffer an injury from the unconstitutional policy; for example, they might face significant traffic delays. But these motorists would not have a § 1983 claim simply because they were injured pursuant to an unconstitutional policy. This is because they have not suffered the right kind of injury. They must allege, instead, that their injury amounted to a violation of their constitutional right against unreasonable seizures—that is, by being unconstitutionally detained.

Here too, Heffernan must allege more than an injury from an unconstitutional policy. He must establish that this policy infringed his constitutional rights to speak freely and peaceably assemble. Even if the majority is correct that demoting Heffernan for a politically motivated reason was beyond the scope of the City's power, the City never invaded *Heffernan's* right to speak or assemble. Accordingly, he is not entitled to money damages under § 1983 for the nonviolation of his First Amendment rights.

The majority tries to distinguish the Fourth Amendment by emphasizing the textual differences between that Amendment and the First. See *ante*, at 273 ("Unlike, say, the Fourth Amendment . . . , the First Amendment begins by focusing upon the activity of the Government"). But these textual differences are immaterial. All rights enumerated in the Bill of Rights "focu[s] upon the activity of the Government" by "tak[ing] certain policy choices off the table." *District of Columbia* v. *Heller*, 554 U. S. 570, 636 (2008); see also Hohfeld, Some Fundamental Legal Conceptions as Applied in Judicial Reasoning, 23 Yale L. J. 16, 30, 55–57 (1913) (recognizing that an immunity implies a corresponding lack of power). Fourth Amendment rights could be restated in terms of governmental power with no change in substantive meaning. Thus, the mere fact that the First Amendment begins "Congress shall make no law" does not broaden a citizen's ability to sue to vindicate his freedoms of speech and assembly.

To reach the opposite conclusion, the majority relies only on *Waters* v. *Churchill*, 511 U. S. 661 (1994) (plurality opinion). See *ante*, at 272–274. But *Waters* does not support the majority's expansion of § 1983 to cases where the employee did not exercise his First Amendment rights. The issue in *Waters* was whether a public employer violated the First Amendment where it reasonably believed that the speech it proscribed was unprotected. The Court concluded that the employer did not violate the First Amendment because it reasonably believed the employee's speech was unprotected: "We have never held that it is a violation of the Constitution for a government employer to discharge an employee based on substantively incorrect information." 511 U. S., at 679. And the Court reaffirmed that, to state a First Amendment retaliation claim, the public employee must allege that she spoke on a matter of public concern. See *id.*, at 681.

Unlike the employee in *Waters*, Heffernan admits that he was not engaged in constitutionally protected activity. Accordingly, unlike in *Waters*, he cannot allege that his employer interfered with conduct protected by the First Amendment. "[W]hat is sauce for the goose" is not "sauce for the gander," *ante*, at 272, when the goose speaks and the gander does not.

* * *

If the facts are as Heffernan has alleged, the City's demotion of him may be misguided or wrong. But, because Heffernan concedes that he did not exercise his First Amendment rights, he has no cause of action under § 1983. I respectfully dissent.

Syllabus

OCASIO *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 14–361. Argued October 6, 2015—Decided May 2, 2016

Petitioner Samuel Ocasio, a former police officer, participated in a kickback scheme in which he and other officers routed damaged vehicles from accident scenes to an auto repair shop in exchange for payments from the shopowners. Petitioner was charged with obtaining money from the shopowners under color of official right, in violation of the Hobbs Act, 18 U. S. C. § 1951, and of conspiring to violate the Hobbs Act, in violation of 18 U. S. C. § 371. At trial, the District Court rejected petitioner's argument that—because the Hobbs Act prohibits the obtaining of property "from another"—a Hobbs Act conspiracy requires proof that the alleged conspirators agreed to obtain property from someone outside the conspiracy. Petitioner was convicted on all counts, and the Fourth Circuit affirmed. Petitioner now challenges his conspiracy conviction, contending that he cannot be convicted of conspiring with the shopowners to obtain money from them under color of official right.

Held: A defendant may be convicted of conspiring to violate the Hobbs Act based on proof that he reached an agreement with the owner of the property in question to obtain that property under color of official right. Pp. 287–300.

(a) The general federal conspiracy statute, under which petitioner was convicted, makes it a crime to "conspire . . . to commit any offense against the United States." 18 U. S. C. § 371. Section 371's use of the term "conspire" incorporates age-old principles of conspiracy law. And under established case law, the fundamental characteristic of a conspiracy is a joint commitment to an "endeavor which, if completed, would satisfy all of the elements of [the underlying substantive] criminal offense." *Salinas* v. *United States*, 522 U. S. 52, 65. A conspirator need not agree to commit the substantive offense—or even be capable of committing it—in order to be convicted. It is sufficient that the conspirator agreed that the underlying crime *be committed* by a member of the conspiracy capable of committing it. See *id.*, at 63–65; *United States* v. *Holte*, 236 U. S. 140; *Gebardi* v. *United States*, 287 U. S. 112. Pp. 287–292.

(b) These basic principles of conspiracy law resolve this case. To establish the alleged Hobbs Act conspiracy, the Government only needed to prove an agreement that *some conspirator* commit each element of

the substantive offense. Petitioner and the shopowners reached just such an agreement: They shared a common purpose that *petitioner* and other police officers would obtain property "from another"—that is, from the shopowners—under color of official right. Pp. 292–293.

(c) Contrary to petitioner's claims, this decision does not dissolve the distinction between extortion and conspiracy to commit extortion. Nor does it transform every bribe of a public official into a conspiracy to commit extortion. And while petitioner exaggerates the impact of this decision, his argument would create serious practical problems. Under his approach, the validity of a charge of Hobbs Act conspiracy would often depend on difficult property-law questions having little to do with culpability. Pp. 293–299.

750 F. 3d 399, affirmed.

ALITO, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, BREYER, and KAGAN, JJ., joined. BREYER, J., filed a concurring opinion, *post*, p. 300. THOMAS, J., filed a dissenting opinion, *post*, p. 301. SOTOMAYOR, J., filed a dissenting opinion, in which ROBERTS, C. J., joined, *post*, p. 306.

Ethan P. Davis argued the cause for petitioner. With him on the briefs were *Ashley C. Parrish*, *Daniel S. Epps*, *Megan R. Nishikawa*, and *James P. Sullivan*.

Allon Kedem argued the cause for the United States. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Caldwell*, *Deputy Solicitor General Dreeben*, and *Stephan E. Oestreicher, Jr.**

JUSTICE ALITO delivered the opinion of the Court.

Petitioner Samuel Ocasio, a former officer in the Baltimore Police Department, participated in a kickback scheme with the owners of a local auto repair shop. When petitioner and other Baltimore officers reported to the scene of an auto accident, they persuaded the owners of damaged cars to have their vehicles towed to the repair shop, and in exchange for

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*Briefs of *amici curiae* urging reversal were filed for Former United States Attorneys by *Evan A. Young* and *Joseph C. Perry*; for the National Association of Criminal Defense Lawyers by *Andrew J. Pincus* and *Jonathan Hacker*.

this service the officers received payments from the shopowners. Petitioner was convicted of obtaining money from the shopowners under color of official right, in violation of the Hobbs Act, 18 U. S. C. § 1951, and of conspiring to violate the Hobbs Act, in violation of 18 U. S. C. § 371. He now challenges his conspiracy conviction, contending that, as a matter of law, he cannot be convicted of conspiring with the shopowners to obtain money from them under color of official right. We reject this argument because it is contrary to age-old principles of conspiracy law.

I

Hernan Alexis Moreno Mejia (known as Moreno) and Edwin Javier Mejia (known as Mejia) are brothers who coowned and operated the Majestic Auto Repair Shop (Majestic). In 2008, Majestic was struggling to attract customers, so Moreno and Mejia made a deal with a Baltimore police officer, Jhonn Corona. In exchange for kickbacks, Officer Corona would refer motorists whose cars were damaged in accidents to Majestic for towing and repairs. Officer Corona then spread the word to other members of the force, and eventually as many as 60 other officers sent damaged cars to Majestic in exchange for payments of $150 to $300 per referral.

Petitioner began to participate in this scheme in 2009. On several occasions from 2009 to 2011, he convinced accident victims to have their cars towed to Majestic. Often, before sending a car to Majestic, petitioner called Moreno from the scene of an accident to ensure that the make and model of the car, the extent of the damage, and the car's insurance coverage would allow the shopowners to turn a profit on the repairs. After directing a vehicle to Majestic, petitioner would call Moreno and request his payment.

Because police are often among the first to arrive at the scene of an accident, the Baltimore officers were well positioned to route damaged vehicles to Majestic. As a result,

the kickback scheme was highly successful: It substantially increased Majestic's volume of business and profits, and by early 2011 it provided Majestic with at least 90% of its customers.

Moreno, Mejia, petitioner, and nine other Baltimore officers were indicted in 2011. The shopowners and most of the other officers eventually pleaded guilty pursuant to plea deals, but petitioner did not.

In a superseding indictment, petitioner was charged with three counts of violating the Hobbs Act, 18 U. S. C. § 1951, by extorting money from Moreno with his consent and under color of official right. As all parties agree, the type of extortion for which petitioner was convicted—obtaining property from another with his consent and under color of official right—is the "rough equivalent of what we would now describe as 'taking a bribe.'" *Evans* v. *United States*, 504 U. S. 255, 260 (1992). To prove this offense, the Government "need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." *Id.*, at 268.

Petitioner and another Baltimore officer, Kelvin Quade Manrich, were also charged with violating the general federal conspiracy statute, 18 U. S. C. § 371. The indictment alleged that petitioner and Manrich conspired with Moreno, Mejia, and other Baltimore officers to bring about the same sort of substantive violations with which petitioner was charged.

Before trial, petitioner began to raise a variant of the legal argument that has brought his case to this Court. He sought a jury instruction stating that "[i]n order to convict a defendant of conspiracy to commit extortion under color of official right, the government must prove beyond a reasonable doubt that the conspiracy was to obtain money or property from some person who was not a member of the conspiracy." App. 53. In support of this instruction, petitioner relied on the Sixth Circuit's decision in *United States* v.

Brock, 501 F. 3d 762 (2007), which concerned two bail bondsmen who made payments to a court clerk in exchange for the alteration of court records. The Sixth Circuit held that "[t]o be covered by the [Hobbs Act], the alleged conspirators . . . must have formed an agreement to obtain 'property from *another*,' which is to say, formed an agreement to obtain property from someone outside the conspiracy." *Id.*, at 767. The District Court did not rule on this request prior to trial.

Petitioner's codefendant, Manrich, pleaded guilty during the trial, and at the close of the prosecution's case and again at the close of all evidence, petitioner moved for a judgment of acquittal on the conspiracy count based on *Brock*. The District Court denied these motions, concluding that the Fourth Circuit had already rejected *Brock*'s holding in *United States* v. *Spitler*, 800 F. 2d 1267 (1986).

The District Court also refused to give petitioner's proposed instruction. Instead, the court adopted the sort of standard instructions that are typically used in conspiracy cases. See generally L. Sand et al., Modern Federal Jury Instructions: Criminal § 19.01 (2015). In order to convict petitioner of the conspiracy charge, the jury was told, the prosecution was required to prove (1) that two or more persons entered into an unlawful agreement; (2) that petitioner knowingly and willfully became a member of the conspiracy; (3) that at least one member of the conspiracy knowingly committed at least one overt act; and (4) that the overt act was committed to further an objective of the conspiracy. The court "caution[ed]" "that mere knowledge or acquiescence, without participation in the unlawful plan, is not sufficient" to demonstrate membership in the conspiracy. App. 195. Rather, the court explained, the conspirators must have had "a mutual understanding . . . to cooperate with each other to accomplish an unlawful act," and petitioner must have joined the conspiracy "with the intention of aiding in the accomplishment of those unlawful ends." *Id.*, at 192, 195.

The jury found petitioner guilty on both the conspiracy count and the three substantive extortion counts, and the District Court sentenced him to concurrent terms of 18 months in prison on all four counts. On appeal to the Fourth Circuit, petitioner's primary argument was the same one he had pressed before the District Court: that his conspiracy conviction was fatally flawed because the conspirators had not agreed to obtain money from a person who was not a member of the conspiracy. The Fourth Circuit rejected petitioner's argument and affirmed his convictions. 750 F. 3d 399 (2014).

We then granted certiorari, 574 U. S. 1190 (2015), and we now affirm.

II

Under longstanding principles of conspiracy law, a defendant may be convicted of conspiring to violate the Hobbs Act based on proof that he entered into a conspiracy that had as its objective the obtaining of property from another conspirator with his consent and under color of official right.

A

In analyzing petitioner's arguments, we begin with the text of the statute under which he was convicted, namely, the general federal conspiracy statute, which makes it a crime to "*conspire* . . . to commit any offense against the United States." 18 U. S. C. § 371 (emphasis added). Section 371's use of the term "conspire" incorporates long-recognized principles of conspiracy law. And under established case law, the fundamental characteristic of a conspiracy is a joint commitment to an "endeavor which, if completed, would satisfy all of the elements of [the underlying] substantive criminal offense." *Salinas* v. *United States*, 522 U. S. 52, 65 (1997); see 2 J. Bishop, Commentaries on the Criminal Law § 175, p. 100 (rev. 7th ed. 1882) ("Conspiracy, in the modern law, is generally defined as a confederacy of two or more persons to accomplish some unlawful purpose");

J. Hawley & M. McGregor, The Criminal Law 99–100 (3d ed. 1899) (similar); W. LaFave, Criminal Law 672 (5th ed. 2010) (similar).

Although conspirators must "pursue the same criminal objective," "a conspirator [need] not agree to commit or facilitate each and every part of the substantive offense." *Salinas*, *supra*, at 63. A defendant must merely reach an agreement with the "specific intent that the underlying crime *be committed*" by some member of the conspiracy. 2 K. O'Malley, J. Grenig, & W. Lee, Federal Jury Practice and Instructions: Criminal § 31:03, p. 225 (6th ed. 2008) (emphasis added); see also *id.*, § 31:02, at 220 (explaining that a defendant must "intend to agree and must intend that the substantive offense *be committed*" (emphasis added)). "The government does not have to prove that the defendant intended to commit the underlying offense himself/herself." *Id.*, § 31:03, at 226. Instead, "[i]f conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators." *Salinas*, *supra*, at 64; see Sand, *supra*, § 19.01, at 19–54 ("[W]hen people enter into a conspiracy to accomplish an unlawful end, each and every member becomes an agent for the other conspirators in carrying out the conspiracy").

A few simple examples illustrate this important point. Entering a dwelling is historically an element of burglary, see, *e. g.*, LaFave, *supra*, at 1069, but a person may conspire to commit burglary without agreeing to set foot inside the targeted home. It is enough if the conspirator agrees to help the person who will actually enter the dwelling, perhaps by serving as a lookout or driving the getaway car. Likewise, "[a] specific intent to distribute drugs oneself is not required to secure a conviction for participating in a drug-trafficking conspiracy." *United States* v. *Piper*, 35 F. 3d 611, 614 (CA1 1994). Agreeing to store drugs at one's house in support of the conspiracy may be sufficient. *Ibid.*

Not only is it unnecessary for each member of a conspiracy to agree to commit each element of the substantive offense, but also a conspirator may be convicted "even though he was incapable of committing the substantive offense" himself. *Salinas*, *supra*, at 64; see *United States* v. *Rabinowich*, 238 U. S. 78, 86 (1915) ("A person may be guilty of conspiring although incapable of committing the objective offense"); Sand, *supra*, § 19.01, at 19–3 ("[Y]ou may find the defendant guilty of conspiracy despite the fact that he himself was incapable of committing the substantive crime").

The Court applied these principles in two cases involving the Mann Act. See Act of June 25, 1910, ch. 395, 36 Stat. 825. Section 2 of the Mann Act made it a crime to transport a woman or cause her to be transported across state lines for an immoral purpose.[1] In *United States* v. *Holte*, 236 U. S. 140 (1915), a federal grand jury charged a woman, Clara

[1] In full, § 2 provided as follows:

"That any person *who shall knowingly transport or cause to be transported*, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court." Act of June 25, 1910, ch. 395, 36 Stat. 825 (emphasis added).

Holte, with conspiring with a man named Chester Laudenschleger to violate this provision. The District Court dismissed the charge against Holte, holding that because a woman such as Holte could not be convicted for the substantive offense of transporting herself or causing herself to be transported across state lines, she also could not be convicted of conspiring to commit that offense.

In a succinct opinion by Justice Holmes, the Court rejected this argument, stating that "plainly a person may conspire for the commission of a crime by a third person," even if "she could not commit the substantive crime" herself. *Id.*, at 144–145.[2] The dissent argued that this holding effectively turned every woman who acquiesced in a covered interstate trip into a conspirator, see *id.*, at 148 (opinion of Lamar, J.), but the Court disagreed. The Court acknowledged that "there may be a degree of coöperation" insufficient to make a woman a conspirator, but it refused to rule out the possibility that a woman could conspire to cause herself to be transported. *Id.*, at 144. To illustrate this point, the Court provided the example of a woman who played an active role in planning and carrying out the trip.[3]

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[2] The Court assumed that Holte could not be convicted as a principal for the substantive offense of causing herself to be transported across state lines. But the Court noted that it might be possible for a woman to violate §2 of the Mann Act in a different way: by "aiding in procuring any form of transportation for" a covered interstate trip. *Holte*, 236 U. S., at 144; see 36 Stat. 825 ("aid or assist in obtaining transportation"). If a woman could commit that substantive §2 violation, the Court explained, there is no reason why she could not also be convicted of conspiring to commit that offense. See 236 U. S., at 145. The Court, however, refused to hold that this was the only ground on which a woman like Holte could be convicted for conspiring to violate §2. *Id.*, at 144–145. It thus addressed the broader question whether it was possible for a woman in Holte's position to commit the offense of conspiring "that Laudenschleger should procure transportation and should cause [Holte] to be transported." *Id.*, at 144.

[3] The Court wrote:

"Suppose, for instance, that a professional prostitute, as well able to look out for herself as was the man, should suggest and carry out a journey

The Court expanded on these points in *Gebardi* v. *United States*, 287 U. S. 112 (1932), another Mann Act conspiracy case. A man and a woman were convicted for conspiring to transport the woman from one State to another for an immoral purpose. *Id.*, at 115–116. In deciding the case, the *Gebardi* Court explicitly reaffirmed the longstanding principle that "[i]ncapacity of one to commit the substantive offense does not necessarily imply that he may with impunity conspire with others who are able to commit it." *Id.*, at 120. Moreover, the Court fully accepted *Holte*'s holding that a woman could be convicted of conspiring to cause herself to be transported across state lines. See 287 U. S., at 116–117. But the Court held that the evidence before it was insufficient to support the conspiracy convictions because it "show[ed] no more than that [the woman] went willingly upon the journeys for the purposes alleged." *Id.*, at 117. Noting that there was no evidence that the woman was "the active or moving spirit in conceiving or carrying out the transportation," the Court held that the evidence of her "mere consent" or "acquiescence" was not enough. *Id.*, at 117, 123.[4]

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within the act of 1910 in the hope of blackmailing the man, and should buy the railroad tickets, or should pay the fare from Jersey City to New York, she would be within the letter of the act of 1910, and we see no reason why the act should not be held to apply." *Id.*, at 145.

[4] The path of reasoning by which the *Gebardi* Court reached these conclusions was essentially as follows:

First, the Court perceived in §2 of the Mann Act a congressional judgment that a woman should not be convicted for the offense created by that provision if she did no more than consent to or acquiesce in the interstate trip. *Gebardi*, 287 U. S., at 123. The Court concluded that the transported woman could never be convicted under the language prohibiting a person from transporting a woman or causing a woman to be transported across state lines for an immoral purpose. See *id.*, at 118–119 ("The Act does not punish the woman for transporting herself"). And with respect to the statutory language making it a crime to "'aid or assist' someone else in transporting or in procuring transportation for herself," the Court held that aiding and assisting requires more than mere "consent" or "acquiescence." *Id.*, at 119; see also *Rosemond* v. *United States*, 572

Holte and *Gebardi* make perfectly clear that a person may be convicted of conspiring to commit a substantive offense that he or she cannot personally commit. They also show that when that person's consent or acquiescence is inherent in the underlying substantive offense, something more than bare consent or acquiescence may be needed to prove that the person was a conspirator.

B

These basic principles of conspiracy law resolve this case. In order to establish the existence of a conspiracy to violate the Hobbs Act, the Government has no obligation to demonstrate that each conspirator agreed personally to commit—or was even capable of committing—the substantive offense of Hobbs Act extortion. It is sufficient to prove that the conspirators agreed that the underlying crime *be committed* by a member of the conspiracy who was capable of committing it. In other words, each conspirator must have specifically intended that *some conspirator* commit each element of the substantive offense.[5]

That is exactly what happened here: Petitioner, Moreno, and Mejia "share[d] a common purpose," namely, that *petitioner* and other police officers would commit every element of the substantive extortion offense. *Salinas*, 522 U. S., at

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U. S. 65, 72–74 (2014) (aiding and abetting requires intent to facilitate commission of offense).

Second, turning to the issue of conspiracy, the Court reasoned that something more than the woman's mere consent or acquiescence was needed to avoid undermining the congressional judgment that it saw in §2. The Court framed its holding as follows: "[W]e perceive in the failure of the Mann Act to condemn the woman's participation in those transportations which are effected with *her mere consent*, evidence of an affirmative legislative policy to leave *her acquiescence* unpunished." *Gebardi*, *supra*, at 123 (emphasis added).

[5] Section 371 also requires that one of the conspirators commit an overt act in furtherance of the offense. Petitioner does not dispute that this element was satisfied.

63–64. Petitioner and other officers would obtain property "under color of official right," something that Moreno and Mejia were incapable of doing because they were not public officials. And petitioner and other officers would obtain that money from "another," *i. e.*, from Moreno, Mejia, or Majestic. Although Moreno and Mejia were incapable of committing the underlying substantive offense as principals,[6] they could, under the reasoning of *Holte* and *Gebardi*, conspire to commit Hobbs Act extortion by agreeing to help petitioner and other officers commit the substantive offense. See *Holte*, 236 U. S., at 145 ("[A] conspiracy with an officer or employé of the government or any other for an offence that only he could commit has been held for many years to fall within the conspiracy section . . . of the penal code"); see also *Salinas*, *supra*, at 63–64; *Gebardi*, 287 U. S., at 120–121; *Rabinowich*, 238 U. S., at 86. For these reasons, it is clear that petitioner could be convicted of conspiring to obtain property from the shopowners with their consent and under color of official right.

C

In an effort to escape this conclusion, petitioner argues that the usual rules do not apply to the type of Hobbs Act conspiracy charged in this case. His basic argument, as ultimately clarified,[7] is as follows. All members of a conspiracy

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[6] The Government argues that the lower courts have long held that a private person may be guilty of this type of Hobbs Act extortion as an aider and abettor. See Brief for United States 36–37. We have no occasion to reach that question here.

[7] Petitioner's position has evolved over the course of this litigation. As noted, petitioner requested a jury instruction stating that "[i]n order to convict a defendant of conspiracy to commit extortion under color of official right, the government must prove beyond a reasonable doubt that the conspiracy was to obtain money or property from some person who was not a member of the conspiracy." App. 53. Under this instruction, as long as the shopowners were named as conspirators, petitioner could not have been convicted even if there was ample evidence to prove that he conspired with other Baltimore officers to obtain money from the shop-

must share the same criminal objective. The objective of the conspiracy charged in this case was to obtain money "from another, with his consent . . . under color of official

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owners. (And, indeed, when he first raised his *Brock* argument, see *United States* v. *Brock*, 501 F. 3d 762 (CA6 2007), another officer, Manrich, was still in the case and was charged with the same conspiracy.)

The petition for a writ of certiorari appears to have been based on this same broad argument. The question presented was phrased as follows: "Does a conspiracy to commit extortion require that the conspirators agree to obtain property from someone outside the conspiracy?" Pet. for Cert. i. And the argument in petitioner's opening brief was similar. See Brief for Petitioner 1 (arguing that "a Hobbs Act conspiracy requires that the conspirators agree among themselves to wrongly obtain property from someone *outside* the ring of conspiracy").

As the Government's brief pointed out, this argument has strange implications. See Brief for United States 27. Assume that there was sufficient evidence to prove that petitioner conspired with other Baltimore officers to obtain money from Moreno and Mejia. Under petitioner's original, broad argument, this charge would be valid so long as Moreno and Mejia were not named as conspirators, but naming them in the indictment would render the charge invalid. Indictments, however, very often do not attempt to name all the conspirators, and the indictment in this case did not do so. See App. 36 (charging that petitioner and Manrich conspired with, among others, persons unknown). It would be very strange if the decision to name Moreno and Mejia rendered an otherwise valid charge defective. (Of course, petitioner might make the even broader argument that the conspiracy charge would fail if Moreno and Mejia, although not named as conspirators in the indictment, were later listed as conspirators in response to a bill of particulars or if the Government took that position at trial, perhaps by seeking to introduce their out-of-court statements under the co-conspirator exemption from the hearsay rule.)

In response to the Government's argument, petitioner's reply brief claimed that his argument is actually the narrower one that we now consider, *i. e.*, that, as a matter of law, Moreno and Mejia cannot be members of a conspiracy that has as its aim the obtaining of money from them with their consent and under color of official right. See Reply Brief 17–20. The reply brief contends that acceptance of this narrower argument requires his acquittal because there is insufficient evidence to show that he conspired with anyone other than Moreno and Mejia. *Ibid.* The Court of Appeals, however, concluded otherwise. See 750 F. 3d 399, 412, n. 14 (CA4 2014). Nevertheless, because that court's decision was based primarily on other grounds, we address petitioner's argument as ultimately refined.

right." But Moreno and Mejia did not have the objective of obtaining money "from another" because the money in question was their own. Accordingly, they were incapable of being members of the conspiracy charged in this case. And since there is insufficient evidence in the record to show that petitioner conspired with anyone other than Moreno and Mejia, he must be acquitted. See Reply Brief 3–11, 17–20.

This argument fails for a very simple reason: Contrary to petitioner's claim, he and the shopowners *did* have a common criminal objective. The objective was not that each conspirator, including Moreno and Mejia, would obtain money from "another" but rather that petitioner and other Baltimore officers would do so. See App. 36–37, Superseding Indictment ¶11 ("It was a purpose of the conspiracy for Moreno and Mejia to enrich over 50 BPD [Baltimore Police Department] Officers . . . in exchange for the BPD Officers' exercise of their official positions and influence to cause vehicles to be towed or otherwise delivered to Majestic"). Petitioner does not dispute that he was properly convicted for three substantive Hobbs Act violations based on proof that he obtained money "from another." The criminal objective on which petitioner, Moreno, and Mejia agreed was that *petitioner and other Baltimore officers* would commit substantive violations of this nature. Thus, under well-established rules of conspiracy law, petitioner was properly charged with and convicted of conspiring with the shopowners. Nothing in the text of the Hobbs Act even remotely undermines this conclusion, and petitioner's invocation of the rule of lenity[8] and principles of federalism[9] is unavailing.

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[8] That rule applies only when a criminal statute contains a "grievous ambiguity or uncertainty," and "only if, after seizing everything from which aid can be derived," the Court "can make no more than a guess as to what Congress intended." *Muscarello* v. *United States*, 524 U. S. 125, 138–139 (1998) (internal quotation marks omitted).

[9] We are not unmindful of the federalism concerns implicated by this case, but those same concerns were raised—and rejected—in *Evans* v. *United States*, 504 U. S. 255 (1992), see *id.*, at 290 (THOMAS, J., dissenting)

1

Petitioner argues that our interpretation makes the Hobbs Act sweep too broadly, creating a national antibribery law and displacing a carefully crafted network of state and federal statutes. He contends that a charge of conspiring to obtain money from a conspirator with his consent and under color of official right is tantamount to a charge of soliciting or accepting a bribe and that allowing such a charge undermines 18 U. S. C. § 666 (a federal bribery statute applicable to state and local officials) and state bribery laws. He also argues that extortion conspiracies of this sort were not known prior to the enactment of the Hobbs Act and that there is no evidence that Congress meant for that Act to plow this new ground.

The subtext of these arguments is that it seems unnatural to prosecute bribery on the basis of a statute prohibiting "extortion," but this Court held in *Evans* that Hobbs Act extortion "under color of official right" includes the "rough equivalent of what we would now describe as 'taking a bribe.' " 504 U. S., at 260. Petitioner does not ask us to overturn *Evans*, see, *e. g.*, Brief for Petitioner 1; Tr. of Oral Arg. 4–5, 12–13, and we have no occasion to do so. Having already held that § 1951 prohibits the "rough equivalent" of bribery, we have no principled basis for precluding the prosecution of conspiracies to commit that same offense.[10]

("The Court's construction of the Hobbs Act is repugnant . . . to basic tenets of federalism"), which we accept as controlling here, see Part II–C–1, *infra*.

[10] JUSTICE THOMAS argues that *Evans* was wrongly decided, and his position makes sense to the extent that he simply refuses to accept that case. But it founders insofar as it suggests that even if *Evans* is accepted in relation to substantive Hobbs Act charges, it should not be extended to conspiracy cases. See *post*, at 301 (dissenting opinion) ("I would not extend *Evans*' errors further"); *post*, at 302 ("[The Court's] holding . . . needlessly extends *Evans*' error to the conspiracy context"); *post*, at 304 ("The Court today takes another step away from the common-law understanding of extortion that the Hobbs Act adopted"). It would be very strange if a

Petitioner also exaggerates the reach of our decision. It does not, as he claims, dissolve the distinction between extortion and conspiracy to commit extortion. Because every act of extortion under the Hobbs Act requires property to be obtained with "consent," petitioner argues, proof of that consent will always or nearly always establish the existence of a conspiratorial agreement and thus allow the Government to turn virtually every such extortion case into a conspiracy case. But there are plenty of instances in which the "consent" required under the Hobbs Act will not be enough to constitute the sort of agreement needed under the law of conspiracy.

As used in the Hobbs Act, the phrase "with his consent" is designed to distinguish extortion ("obtaining of property from another, *with his consent*," 18 U. S. C. § 1951(b)(2) (emphasis added)) from robbery ("obtaining of personal property from the person or in the presence of another, *against his will*," § 1951(b)(1) (emphasis added)). Thus, "consent" simply signifies the taking of property under circumstances falling short of robbery, and such "consent" is quite different from the *mens rea* necessary for a conspiracy.

This conclusion is clear from the language of § 1951 prohibiting the obtaining of property "from another, with his consent, *induced by wrongful use of actual or threatened force, violence, or fear*." § 1951(b)(2) (emphasis added). This language applies when, for example, a store owner makes periodic protection payments to gang members out of fear that they will otherwise trash the store. While these payments are obtained with the store owner's grudging consent, the store owner, simply by making the demanded payments, does not enter into a conspiratorial agreement with the gang members conducting the shakedown. See *Salinas*, 522 U. S., at 63–65 (conspirators must pursue "the same criminal

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provision of the criminal code meant one thing with respect to charges of a substantive violation but something very different in cases involving a conspiracy to commit the same offense.

objective"); *United States* v. *Bailey*, 444 U. S. 394, 405 (1980) (conspiracy requires "a heightened mental state"); *Anderson* v. *United States*, 417 U. S. 211, 223 (1974) ("the prosecution must show that the offender acted with a specific intent"). Just as mere acquiescence in a Mann Act violation is insufficient to create a conspiracy, see *Gebardi*, 287 U. S., at 121–123; *Holte*, 236 U. S., at 145, the minimal "consent" required to trigger § 1951 is insufficient to form a conspiratorial agreement. Our interpretation thus does not turn virtually every act of extortion into a conspiracy.

Nor does our reading transform every bribe of a public official into a conspiracy to commit extortion. The "consent" required to pay a bribe does not necessarily create a conspiratorial agreement. In cases where the bribe payor is merely complying with an official demand, the payor lacks the *mens rea* necessary for a conspiracy. See *Salinas*, *supra*, at 63–65; *Bailey*, *supra*, at 405; *Anderson*, *supra*, at 223; *Gebardi*, *supra*, at 121–123. For example, imagine that a health inspector demands a bribe from a restaurant owner, threatening to close down the restaurant if the owner does not pay. If the owner reluctantly pays the bribe in order to keep the business open, the owner has "consented" to the inspector's demand, but this mere acquiescence in the demand does not form a conspiracy.[11]

2

While petitioner exaggerates the impact of our decision, his argument would create serious practical problems. The

[11] Petitioner also claims that naming Moreno and Mejia as conspirators opened the door for prosecutors to employ the potent party-joinder and evidentiary rules that conspiracy charges make available. See Brief for Petitioner 10–11, 18, 26–27, 37. But the naming of the shopowners had no effect on joinder. The only other defendant named in the superseding indictment, Manrich, could have been joined even if the shopowners had not been named. Nor did naming Moreno and Mejia have any effect on the admissibility of evidence of overt acts committed by the Baltimore officers named as petitioner's co-conspirators.

validity of a charge of Hobbs Act conspiracy would often depend on difficult property-law questions having little to do with criminal culpability. In this case, for example, ownership of the money obtained by petitioner is far from clear. It appears that the funds came from Majestic's account, App. 97–98, 149, and there is evidence that during the period of petitioner's membership in the conspiracy, Majestic was converted from a limited liability company to a regular business corporation, *id.*, at 145; App. in No. 12–4462 (CA4), pp. 655–656, 736. After that transformation, the money obtained by petitioner may have come from corporate funds. A corporation is an entity distinct from its shareholders, and therefore, even under petitioner's interpretation of the applicable law, Moreno and Mejia would have agreed that petitioner would obtain money "from another," not from them.

Suppose that Moreno or Mejia had made the payments by taking money from a personal bank account. Would that dictate a different outcome? Or suppose that Majestic was a partnership and the payments came from a company account. Would that mean that Moreno agreed that officers would obtain money "from another" insofar as they would obtain Mejia's share of the partnership funds and that Mejia similarly agreed that officers would obtain money "from another" insofar as they would obtain the share belonging to Moreno?

Or consider this example. Suppose that the owner and manager of a nightclub reach an agreement with a public official under which the owner will bribe the official to approve the club's liquor license application. Under petitioner's approach, the public official and the club manager may be guilty of conspiring to commit extortion, because they agreed that the official would obtain property "from another"—that is, the owner. But as "the 'another' from whom the property is obtained," Reply Brief 10, the owner could not be prosecuted. There is no apparent reason, however, why the manager but not the owner should be culpable in this situation.

III

A defendant may be convicted of conspiring to violate the Hobbs Act based on proof that he reached an agreement with the owner of the property in question to obtain that property under color of official right. Because petitioner joined such an agreement, his conspiracy conviction must stand.

The judgment of the United States Court of Appeals for the Fourth Circuit is affirmed.

It is so ordered.

JUSTICE BREYER, concurring.

I agree with the sentiment expressed in the dissenting opinion of JUSTICE THOMAS that *Evans* v. *United States*, 504 U. S. 255 (1992), may well have been wrongly decided. See *post*, at 301–302. I think it is an exceptionally difficult question whether "extortion" within the meaning of the Hobbs Act is really "the rough equivalent of . . . taking a bribe," *Evans*, 504 U. S., at 260 (internal quotation marks omitted)—especially when we admittedly decided that question in that case without the benefit of full briefing on extortion's common-law history, see *id.*, at 272 (O'Connor, J., concurring in part and concurring in judgment) ("Neither party in this case has briefed or argued the question").

The present case underscores some of the problems that *Evans* raises. For example, as in the scenario presented by today's Court, where the public health inspector asks for money from a restaurant owner in exchange for favorable reports, see *ante*, at 297–298, courts (and juries) will have to draw the difficult distinction between the somewhat involuntary behavior of the bribe payor and the voluntary behavior of the same bribe payor, which may determine whether there is or is not a conspiracy. Compare *United States* v. *Holte*, 236 U. S. 140, 144–145 (1915) (finding that a transported woman *could* conspire to violate the Mann Act), with *Gebardi* v. *United States*, 287 U. S. 112, 117, 123 (1932) (finding no such conspiracy).

Nonetheless, we must in this case take *Evans* as good law. See Tr. of Oral Arg. 20 (Petitioner "take[s] th[e] holding [in *Evans*] as a given"). That being so, I join the majority's opinion in full.

JUSTICE THOMAS, dissenting.

Today the Court holds that an extortionist can conspire to commit extortion with the person whom he is extorting. See *ante*, at 299. This holding further exposes the flaw in this Court's understanding of extortion. In my view, the Court started down the wrong path in *Evans* v. *United States*, 504 U. S. 255 (1992), which wrongly equated extortion with bribery. In so holding, *Evans* made it seem plausible that an extortionist could conspire with his victim. Rather than embrace that view, I would not extend *Evans*' errors further. Accordingly, I respectfully dissent.

I

The Hobbs Act makes it a crime to "obstruc[t], dela[y], or affec[t] commerce . . . by . . . extortion." 18 U. S. C. § 1951(a). The Act defines "extortion" as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." § 1951(b)(2).

In *Evans*, this Court held that, to obtain a conviction for extortion "under color of official right," the Government need show only "that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." 504 U. S., at 268. The Court therefore interpreted "extortion" under the Hobbs Act to be "the rough equivalent of . . . 'taking a bribe.'" *Id.*, at 260.

I dissented in *Evans* because the Court's holding disregarded the "definite and well-established meaning" of the "under color of official right" element of extortion. *Id.*, at 279 (internal quotation marks omitted). "'At common law

it was essential that . . . money or property be obtained under color of office, that is, under the pretense that the officer was entitled thereto by virtue of his office. The money or thing received must have been claimed or accepted in right of office, and the person paying must have yielded to official authority.' " *Ibid.* (quoting 3 R. Anderson, Wharton's Criminal Law and Procedure § 1393, pp. 790–791 (1957); emphasis deleted). When Congress enacted the Hobbs Act in 1946, "the offense was [thus] understood to involve not merely a wrongful taking by a public official, but a wrongful taking under a false pretense of official right." 504 U. S., at 281 (emphasis deleted).

Given the established meaning of under-color-of-official-right extortion adopted in the Hobbs Act, the Court in *Evans* erred in equating common-law extortion with taking a bribe. *Id.*, at 283. Bribery and extortion are different crimes. *Ibid.* With extortion, "the public official is the sole wrongdoer." *Ibid.* Because the official "acts 'under color of office,' the law regards the payor as an innocent victim and not an accomplice." *Ibid.* An official who solicits or takes a bribe, by contrast, does not do so "under color of office"—that is, "under [a] pretense of official entitlement." *Ibid.* With bribery, "the payor knows the recipient official is not entitled to the payment," and "he, as well as the official, may be punished for the offense." *Ibid.* (emphasis deleted).

II

Relying on *Evans*' definition of Hobbs Act extortion, see *ante*, at 285, 296, the Court holds that an extortionist can conspire to commit extortion with the person whom he is extorting. *Ante*, at 292–293, 299. That holding is irreconcilable with a correct understanding of Hobbs Act extortion and needlessly extends *Evans*' error to the conspiracy context.

The general federal conspiracy statute makes it a crime for "two or more persons [to] conspire . . . to commit any

offense against the United States." 18 U. S. C. § 371. To be guilty of conspiracy to commit under-color-of-official-right extortion, then, two or more persons must conspire to "obtai[n] . . . property from another, with his consent, induced . . . under color of official right." § 1951(b)(2).

Under a correct understanding of Hobbs Act extortion, it is illogical and wrong to say that two people conspired to extort one of themselves. As explained, in a Hobbs Act extortion case, the only perpetrator is the public official; the payor is a victim and not a participant. See *Evans*, 504 U. S., at 283 (THOMAS, J., dissenting). That understanding is irreconcilable with the view that an extortionist and his payor-victim can be co-conspirators to extortion of the payor. If a payor conspires with a public official for the payor to pay that official, then—whatever the two can be said to have done—they have not conspired to obtain payments to that official "under . . . pretense of official entitlement." *Ibid.* The extortionist and payor both know that the official is not entitled to the payments as a matter of his office. They have not conspired to commit Hobbs Act extortion.

The record confirms that the scheme here did not involve extortion as the common law understood that crime. Far from victimizing repair-shop owners Alexis Moreno and Edwin Mejia, the allegedly extortionate scheme benefited them and their repair shop. Over time, 90% or more of the shop's business came from paid-for referrals from police officers. Moreno and Mejia worked with Ocasio and other officers to maximize the shop's profits from the scheme. Moreno and Mejia both pleaded guilty to Hobbs Act extortion and conspiracy—belying any claim that they were innocent victims. The Government itself does not maintain that the repair-shop owners paid Ocasio based on his assertion of "a false pretense of official right to the payment[s]." *Id.*, at 282. The Government is instead emphatic that Moreno and Mejia "participated as full partners" in the scheme and that "[t]he record . . . refutes any suggestion that [they] were the

'victims' of th[e] scheme." Brief for United States 41. Whatever crime Ocasio may have committed, it was not a conspiracy to commit extortion.

To be sure, the Court's conclusion is plausible under *Evans*' redefinition of extortion. But that is a reason not to extend *Evans*' error. Only by blurring the distinction between bribery and extortion could *Evans* make it seem plausible that an extortionist and a victim can conspire to extort the victim. The Court today takes another step away from the common-law understanding of extortion that the Hobbs Act adopted.

III

The Court's decision is unfortunate because it expands federal criminal liability in a way that conflicts with principles of federalism. Even when *Evans* was decided nearly 25 years ago, the Hobbs Act had already "served as the engine for a stunning expansion of federal criminal jurisdiction into a field traditionally policed by state and local laws—acts of public corruption by state and local officials." 504 U. S., at 290 (THOMAS, J., dissenting). By disregarding the distinction between extortion and bribery, *Evans* expanded the Hobbs Act to allow federal prosecutors to reach more conduct by state and local government officials. See *id.*, at 291–294. That expansion was unwarranted. Congress had not made its intent to regulate state officials "unmistakably clear in the language of the" Hobbs Act, *Gregory* v. *Ashcroft*, 501 U. S. 452, 460 (1991) (internal quotation marks omitted), so this Court had no basis for reading the Hobbs Act so expansively. *Evans*, *supra*, at 291–292 (THOMAS, J., dissenting); see *Jones* v. *United States*, 529 U. S. 848, 858 (2000) ("[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance in the prosecution of crimes" (internal quotation marks omitted)).

Today the Court again broadens the Hobbs Act's reach to enable federal prosecutors to punish for conspiracy all par-

ticipants in a public-official bribery scheme. The invasion of state sovereign functions is again substantial. The Federal Government can now more expansively charge state and local officials. And it can now more easily obtain pleas or convictions from these officials: Because the Government can prosecute bribe payors with sweeping conspiracy charges, it will be easier to induce those payors to plead out and testify against state and local officials. The Court thus further wrenches from States the presumptive control that they should have over their own officials' wrongdoing.

As in *Evans*, the Court cites no statutory text "clearly" authorizing this intrusion into matters presumptively left to the States. *Jones*, *supra*, at 858. As in *Evans*, there is no need for the Court's overreach because state law already punishes the conduct at issue here. See Md. Crim. Law Code Ann. § 9–201 (2012) (punishing bribery of and bribery by a public official); cf. *United States* v. *Brock*, 501 F. 3d 762, 769 (CA6 2007) ("No one doubts that the States have criminal laws prohibiting their citizens from bribing public officials. [We cannot think of] any reason to doubt the States' willingness to invoke these laws when their citizens engage in [a brazen bribery scheme]"). And, as in *Evans*, the Court reaches its decision with barely a nod to the sovereignty interests that it tramples. See *ante*, at 295, and n. 9 (summarily dismissing as "unavailing" Ocasio's "invocation of . . . principles of federalism"). As in *Evans*, I cannot agree.

* * *

Consistent with the Hobbs Act's text, I would hold that an extortionist cannot conspire to commit extortion with the person whom he is extorting. Accordingly, I would reverse the Court of Appeals' judgment upholding Ocasio's conspiracy conviction.

For these reasons, I respectfully dissent.

JUSTICE SOTOMAYOR, with whom THE CHIEF JUSTICE joins, dissenting.

If a group of conspirators sets out to extort "another" person, we ordinarily think that they are proposing to extort money or property from a victim outside their group, not one of themselves. Their group is the conspiratorial entity and the victim is "another" person.

But in upholding the conspiracy conviction here, the Court interprets the phrase extorting property "from another" in the Hobbs Act contrary to that natural understanding. It holds that a group of conspirators can agree to obtain property "from another" in violation of the Act even if they agree only to transfer property among themselves.

That is not a natural or logical way to interpret the phrase "from another." I respectfully dissent.

I

The indictment here charged Ocasio, a former Baltimore police officer, with participating in a kickback scheme engineered by the owners of a local auto repair shop, brothers Herman Moreno and Edwin Mejia. Ocasio and other Baltimore officers referred car-accident victims to the brothers' shop for body repair work. In exchange, Moreno and Mejia paid Ocasio between $150 and $300 for each referral. The indictment pleaded that Ocasio, other officers, and the brothers conspired in violation of the federal conspiracy statute, 18 U. S. C. § 371, to commit extortion in violation of the Hobbs Act, § 1951.

The federal conspiracy statute applies whenever "two or more persons conspire" to commit a federal offense and at least one of them acts in furtherance of the offense. § 371. The Hobbs Act, a federal offense, punishes "[w]hoever" commits "extortion," § 1951(a), and defines "extortion" as "the obtaining of property from another, with his consent, . . . under color of official right," § 1951(b)(2). "Extortion" includes taking a bribe. See *Evans* v. *United States*, 504 U. S.

255 (1992).[1] Putting this all together, in charging Ocasio with conspiring to commit extortion, prosecutors charged him with agreeing to take bribes "from another" person. § 1951(b)(2).

At trial, rather than attempt to prove that Ocasio agreed with other *officers* to take bribes from Moreno and Mejia, the Government contended that when Ocasio agreed to take the brothers' bribes, he and the *brothers* agreed that Ocasio would obtain property "from another" person, *i. e.*, someone other than himself. Ocasio argued, by contrast, that it is impossible for a group of people to agree to obtain property "from another" without evidence that "another" person outside the conspiratorial agreement gave up their property. Ocasio conceded that he alone could violate the Hobbs Act by taking a bribe from one of the brothers, but maintained that he and the brothers as a group could not also violate the conspiracy statute by agreeing that one of them would take a bribe from themselves. This Court now rejects Ocasio's interpretation.

II

The Hobbs Act criminalizes extortion where a public official obtains property "from another." § 1951(b)(2). The question here is how to define "another" in the context of a conspiracy to commit extortion. "Another" is a relational word. It describes how one entity is connected to a different entity. In particular, it describes an entity "different or distinct from the one first considered." Merriam-Webster's Collegiate Dictionary 51 (11th ed. 2003).[2]

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[1] JUSTICE THOMAS sets forth why he believes *Evans* was wrongly decided. *Ante*, at 301–302 (dissenting opinion). No party asks us to overrule *Evans* in this case and so that question is not considered here.

[2] See also 1 Oxford English Dictionary 348 (1933) ("One more, one further, originally a second of two things; subsequently extended to anything additional or remaining beyond those already considered; an additional" (emphasis deleted)); 1 Oxford English Dictionary 495 (2d ed. 1989) (same); Webster's New International Dictionary 110 (2d ed. 1950) ("A different,

In this case—a conspiracy to violate the Hobbs Act by obtaining property "from another"—the relevant entity to consider is the conspiratorial group. The federal generic conspiracy statute makes it a crime for two or more people to "conspire." § 371. This Court gives the word "conspire" its conventional meaning. See *Salinas* v. *United States*, 522 U. S. 52, 63 (1997). To "conspire" is to agree, and the crux of a "conspiracy" is a "collective criminal agreement—[a] partnership in crime." *Callanan* v. *United States*, 364 U. S. 587, 593 (1961).

The most natural reading of "conspiring" to obtain property "from another," then, is a collective agreement to obtain property from an entity different or distinct from the conspiracy. But Ocasio, Moreno, and Mejia did not agree that Ocasio would obtain property from a person different or distinct from the conspirators as a group. They agreed only that Ocasio would take property from Moreno and Mejia—people who are *part of* rather than *distinct from* the conspiracy. "These three people did not agree, and could not have agreed, to obtain property from 'another' when no other person was involved." *United States* v. *Brock*, 501 F. 3d 762, 767 (CA6 2007).

This understanding of "another"—that it refers to someone outside the conspiracy—is consistent not only with the plain meaning of the Hobbs Act, but also with this Court's precedent explaining that the purpose of conspiracy law is to target the conduct of group crimes. Conspiracy law punishes the "collective criminal agreement," because a "[c]ombination" or "[g]roup association for criminal purposes" is more dangerous than separate individuals acting alone. *Calla-*

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distinct, or separate (one) from the one considered"); New Oxford American Dictionary 65 (3d ed. 2010) ("used to refer to a different person or thing from one already mentioned or known about"); American Heritage Dictionary 74 (4th ed. 2000) ("Distinctly different from the first").

nan, 364 U. S., at 593. A conspiracy is "a partnership in crime," a "confederation," a "scheme," and an "enterprise." *Pinkerton* v. *United States*, 328 U. S. 640, 644, 646–647 (1946). Accordingly, the law treats a conspiracy, at least in some ways, as an entity distinct from its individual members.

A defendant is guilty of conspiracy only if he agrees that the conspiratorial group intends to commit all the elements of the criminal offense. *Salinas*, 522 U. S., at 65 ("A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense"). Because the focus is on the group's conduct—what "endeavor" they have agreed to commit collectively—when individual members of a conspiracy act to advance the conspiratorial endeavor, they act not on behalf of themselves, but as "agents for [the conspiracy's] performance." *Hyde* v. *United States*, 225 U. S. 347, 369 (1912). It does not matter if a single member of the group undertakes to commit every element of the offense. *Salinas*, 522 U. S., at 63–64 ("The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other"). When that one member acts as an agent for the conspiracy in furthering their collective endeavor, his actions are "attributable to the others," not just the individual agent alone. *Pinkerton*, 328 U. S., at 647; see also *id.*, at 646 ("[S]o long as the partnership in crime continues, the partners act for each other in carrying it forward").

Accordingly, whether a criminal conspiracy exists depends on what the conspirators agreed to do as a group. This principle confirms that "from another" is best understood as relating the conspiratorial enterprise to another person outside the conspiracy. A conspiracy to obtain property "from another," then, is the group agreement that at least one member of the group will obtain property from someone who is not a part of their endeavor.

Departing from this natural reading of the text, the Court holds that Ocasio can be punished for conspiracy because Ocasio obtained property "from another" (Moreno and Mejia) and Ocasio, Moreno, and Mejia agreed that Ocasio would engage in that conduct. In order to reach this conclusion, the Court implicitly assumes that the Hobbs Act's use of "from another" takes as its reference point only a single member of the conspiracy, here, Ocasio, rather than the group of conspirators as a whole. See *ante*, at 287.

But what is the basis for that assumption? The Court never explains. It is not based on the plain language of the Hobbs Act. A natural reading of the text seems to foreclose it—Moreno and Mejia are not "distinct or different from" the group that formed the "collective criminal agreement." And the Court's assumption does not follow from prior precedent or any first principles of conspiracy law. See Part III, *infra*.

Both the plain meaning of the statute and general principles of conspiracy law lead to the same conclusion: A conspiracy to commit extortion by obtaining property "from another" in violation of the Hobbs Act should exist only when the conspirators agree to obtain property from someone outside the conspiracy.

III

The Court does not ground its decision in the Hobbs Act's use of the language "from another." It instead relies on what it says are "age-old principles of conspiracy law." *Ante*, at 284. But it does so to no avail. Most of these so-called principles are derived from decisions that turn on interpreting the *text* of another federal statute—the Mann Act. And the remaining generic principles the Court cites do not resolve the precise question in this case: whether the Hobbs Act's use of the phrase obtain property "from another" adopts the perspective of an individual conspirator or the conspiratorial group as a collective.

The Court's best support comes from cases interpreting the Mann Act, which made it a crime for "any person [to] knowingly transport . . . in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution or debauchery." *Ante*, at 289, n. 1 (quoting ch. 395, 36 Stat. 825; emphasis deleted). In one of its decisions, this Court held that even though the transported "woman or girl" was ostensibly the victim of the crime, nothing in the statute precluded prosecutors from also convicting the woman for conspiring with another person to transport herself illegally. *United States* v. *Holte*, 236 U. S. 140, 144 (1915). From this, the Court derives a generic principle of conspiracy law that a victim of Hobbs Act extortion can also be liable as a coconspirator, just like the victim of a Mann Act violation can. *Ante*, at 290–293.

The Court stretches this Mann Act case beyond its tethers. The Court in *Holte* based its analysis entirely on the text of the Act, not generic principles of conspiracy law. Unlike the Hobbs Act's use of "*another* person," the Mann Act prohibits transporting "*any* woman." Based on this language, the Court concluded that a woman could be held liable for conspiring with others to violate the Act. *Holte*, 236 U. S., at 144–145. For example, a "professional prostitute" could "suggest and carry out a journey" and "buy the railroad tickets." *Id.*, at 145; see also 36 Stat. 825 (Mann Act) (specifying that "procuring or obtainin[g], any ticket or tickets" was assistance of a criminal sort). Thus, the Court held, "she would be *within the letter of the act* . . . and we see no reason why the act should not be held to apply." 236 U. S., at 145 (emphasis added).

Moreover, because *Holte* based its holding on the text of the relevant substantive offense, its reasoning is consistent with this Court's actual principles of conspiracy, which adopt the perspective of the conspiratorial group to determine if their agreed-upon conduct violated the text of the statute.

If the members of an alleged Mann Act conspiracy agree to transport illegally "*any* woman," the group enterprise can logically and naturally intend to transport a female member of the group. But that logic does not hold in this case, where the Hobbs Act requires the conspirators to agree to obtain property "from another." "Any," unlike "another," is not a relational word that requires determining who is in the group and who is out.

The Court similarly attempts to create a generic conspiracy principle when it cites *Gebardi* v. *United States*, 287 U. S. 112 (1932), another Mann Act case that relies on the Act's text. In *Gebardi*, the Court considered the question whether a woman who merely acquiesced to being transported could be held liable for conspiring to violate the Act. The Court held that a conspiracy could exist only if the woman aided and assisted in her own transportation—something more than "mere agreement" or "mere acquiescence" to being transported. *Id.*, at 119, 123. The Court based this decision explicitly on the language of the Mann Act, which "does not punish the woman for transporting herself . . . . For the woman to fall within the ban of the statute she must, at the least, 'aid or assist' someone else in transporting or in procuring transportation for herself." *Id.*, at 118–119.

Accordingly, the Court reasoned, the "necessary implication" of Congress' decision not to include a woman who merely consents in the scope of the Act was "that when the Mann Act and the conspiracy statute came to be construed together, as they necessarily would be," Congress did not intend for that woman to nevertheless always be held liable as a conspirator. *Id.*, at 123. This Court later characterized *Gebardi*'s holding as an "exceptio[n] of a limited character" to ordinary conspiracy law based on the "definition of the substantive offense," *i. e.*, the text of the statute. *Pinkerton*, 328 U. S., at 643. Whatever ordinary conspiracy principles might dictate, it was clear what Congress intended the outcome to be in that case.

The Court tries to elicit a general principle of conspiracy law from *Gebardi*: that while the ostensible victim of the statute—there a woman transported, here a person paying a bribe—cannot be convicted as a co-conspirator if she merely acquiesces to the transportation or bribe, an active participant in the conspiratorial group can nevertheless be found guilty of conspiracy. *Ante*, at 297–298. The Court draws this rough analogy in an attempt to cabin the scope of future Hobbs Act conspiracy charges to exclude potential defendants whose participation in extortion amounts to no more than "mere acquiescence." But this ignores the reasoning of *Gebardi*—the Court's reliance on the express terms of the Mann Act, not any generic conspiracy principles, led the Court to exclude a woman who "merely acquiesces" to being transported.

In addition to the Mann Act, the Court argues that its interpretation is correct because Mejia and Moreno can be held liable for conspiring to commit extortion even though they were incapable of committing the substantive crime themselves. (Because they are not public officials, Mejia and Moreno cannot obtain property "under color of official right." *Ante*, at 287.) True enough. But this principle does not lead to the conclusion that "from another" takes the perspective of Ocasio as its reference point, as opposed to the conspiratorial group.

For example, suppose a politician and a lobbyist conspire to have the lobbyist tell his clients to pay the politician bribes in exchange for official acts. The lobbyist cannot obtain those bribes under color of official right and so could not be charged with a substantive Hobbs Act extortion violation. But the conspiracy would still violate the Hobbs Act, see *Evans*, 504 U. S., at 268, because the conspiratorial group obtained property "from another," *i. e.*, from the clients who are outside the conspiracy that exists between the lobbyist and the politician. Now suppose the lobbyist instead agrees

to pay the bribe himself. We would be back to the question at the heart of this case.

The Court's incapable-of-committing-the-substantive-offense principle therefore cannot do the work the Court thinks it does. It is entirely consistent to say obtaining property "from another" in violation of the Hobbs Act requires the conspirators to agree to obtain property from someone outside the conspiracy, and to say that every conspirator who enters into that agreement need not be capable of committing the substantive offense himself.

Finally, the Court raises policy concerns: It mentions that it would be odd to immunize the ostensible victims of a conspiracy to commit extortion—here, Mejia and Moreno—if they play just as active a role in the conspiracy as other members. *Ante*, at 299.

While perhaps odd, that concern does not warrant the Court's contortion of conspiracy law where there are other criminal statutes—like federal antibribery laws and state laws—that reach similar conduct. See, *e. g.*, 18 U. S. C. § 666 (criminalizing bribery of state, local, or tribal officials in specified circumstances); Md. Crim. Law Code Ann. § 9–201 (2012) (criminalizing bribery of public employee).[3] Of course, the Government could have attempted to convict Ocasio for conspiracy on these facts without relying on the Court's odd theory—for example, by proving that Ocasio conspired with other Baltimore police officers to extort property from the brothers.

And, in its effort to make sure Ocasio, Moreno, and Mejia get their just deserts, the Court's atextual interpretation of the Hobbs Act exposes innocent victims of extortion to charges that they "conspired" with their extorter whenever

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[3] Moreover, any oddity in the Hobbs Act's failure to punish the bribe payors for conspiring with the bribe takers may be partly explained by this Court's decision to hold that extortion under the Hobbs Act reaches a public official who accepts a bribe in the first place. See *ante*, at 301–302 (THOMAS, J., dissenting).

they agree to pay a bribe. The Court says not to worry, it will limit the scope of a conspiracy to exclude potential defendants whose participation in the extortion amounts to no more than "mere acquiescence," analogizing to *Gebardi*. *Ante*, at 298.

But *Gebardi* grounded its "mere acquiescence" standard in the text of the Mann Act. See *supra*, at 312. Here, without any textual hook in the Hobbs Act, the Court rests on no more than intuitions drawn from basic examples. If a restaurant owner threatened with closure by a health official reluctantly pays a bribe, the Court says that the owner is not guilty of conspiracy. *Ante*, at 298. According to the Court, he "'consented'" to extortion, but his mere acquiescence to an "official demand" did not create a conspiratorial agreement. *Ibid.* By contrast, the Court says, if a nightclub owner pursues a liquor license by asking his manager to bribe a public official, he is clearly guilty of conspiracy. *Ante*, at 299. He agreed with the public official that the official would obtain property "'from another,'" *i. e.*, from him, in exchange for a license. *Ibid.*

These examples raise more questions than answers. When does mere "consent" tip over into conspiracy? Does it depend on whose idea it was? Whether the bribe was floated as an "official demand" or a suggestion? How happy the citizen is to pay off the public official? How much money is involved? Whether the citizen gained a benefit (a liquor license) or avoided a loss (closing the restaurant)? How many times the citizen paid the bribes? Whether he ever resisted paying or called the police? The Court does not say. It leaves it for federal prosecutors to answer those questions in the first instance, raising the specter of potentially charging everybody with conspiracy and seeing what sticks and who flips.

* * *

When three people agree to obtain property "from another," the everyday understanding of their agreement is

that they intend to obtain property from someone outside of their conspiracy. The Court reaches the opposite conclusion, based entirely on an assumption that the Hobbs Act's use of "from another" takes as its reference point the vantage of Ocasio alone, rather than the group endeavor that constitutes conspiracy. The Court offers no explanation—grounded in either the text of the statute or so-called "age-old principles of conspiracy law"—for why that assumption is correct.

Conspiracy has long been criticized as vague and elastic, fitting whatever a prosecutor needs in a given case. See, *e. g., Krulewitch* v. *United States*, 336 U. S. 440, 445–457 (1949) (Jackson, J., concurring). This Court has warned that "we will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecutions." *Grunewald* v. *United States*, 353 U. S. 391, 404 (1957). Today, in reaching an unnatural outcome predicated on an unsupported assumption, the Court says never mind.

I respectfully dissent.

Syllabus

SHERIFF ET AL. *v.* GILLIE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 15–338. Argued March 29, 2016—Decided May 16, 2016

The Fair Debt Collection Practices Act (FDCPA or Act) aims to eliminate "abusive debt collection practices," 15 U. S. C. § 1692(a)–(d), by, as relevant here, barring "false, deceptive, or misleading representation[s] . . . in connection with the collection of any debt," § 1692e. Governing "debt collectors," the Act excludes from the definition of that term "any officer . . . of . . . any State to the extent that collecting . . . any debt is in the performance of his official duties." § 1692a(6)(C).

Under Ohio law, overdue debts owed to state-owned agencies and instrumentalities are certified to the State's Attorney General for collection or disposition. Carrying out this responsibility, the Attorney General appoints, as independent contractors, private attorneys, naming them "special counsel" to act on the Attorney General's behalf. The Attorney General requires special counsel to use the Attorney General's letterhead in communicating with debtors. Among the special counsel appointed by the Attorney General in 2012 were petitioners Mark Sheriff and Eric Jones. Consistent with the Attorney General's direction, Sheriff's law firm and Jones sent debt collection letters on the Attorney General's letterhead to respondents Hazel Meadows and Pamela Gillie, respectively. The signature block of each letter contained the name and address of the signatory as well as the designation "special" or "outside" counsel to the State Attorney General. Each letter also identified the sender as a debt collector seeking payment for debts to a state institution. Meadows and Gillie filed a putative class action in Federal District Court, alleging that defendants had, by using the Attorney General's letterhead, employed deceptive and misleading means to attempt to collect consumer debts, in violation of the FDCPA. The Ohio Attorney General intervened, seeking a declaratory judgment that special counsel's use of the Attorney General's letterhead is neither false nor misleading, and urging that special counsel be deemed officers of the State exempted from the Act. The District Court granted summary judgment for defendants, holding that special counsel are "officers" of the State and, in any event, their use of the Attorney General's letterhead is not false or misleading. The Sixth Circuit vacated that judgment, concluding that special counsel, as independent contractors, are not entitled to the FDCPA's state-officer exemption. The appeals court remanded for trial the question whether use of the Attorney General's

letterhead would mislead a debtor into believing that it is the Attorney General who is collecting the debt.

Held: Assuming, *arguendo*, that special counsel do not rank as "state officers" within the meaning of the Act, petitioners' use of the Attorney General's letterhead, nevertheless, does not offend § 1692e.

Special counsel's use of the Attorney General's letterhead at the Attorney General's direction does not offend § 1692e's general prohibition against "false . . . or misleading representation[s]." The letterhead identifies the principal—Ohio's Attorney General—and the signature block names the agent—a private lawyer hired as outside counsel to the Attorney General. The character of the relationship between special counsel and the Attorney General bolsters the Court's determination. Special counsel work closely with attorneys in the Attorney General's Office, providing legal services on the Attorney General's behalf in furtherance of the Attorney General's debt collection responsibilities for the State. A debtor's impression that a letter from special counsel is a letter from the Attorney General's Office is thus scarcely inaccurate.

Special counsel's use of the Attorney General's letterhead is also consistent with § 1692e(9)'s specific prohibition against "falsely represent-[ing]" that a communication is "authorized, issued, or approved" by a State. Because the Attorney General authorized—indeed required—special counsel to use his letterhead, special counsel create no false impression in doing just that. Nor did special counsel use an untrue name in their letters, in violation of § 1692e(14). Special counsel do not employ a false name when they use the Attorney General's letterhead at his instruction, for special counsel act as the Attorney General's agents in debt-related matters. The Court sees no reason, furthermore, to construe the FDCPA in a manner that would interfere with the Attorney General's chosen method of fulfilling his statutory obligation to collect the State's debts.

The Sixth Circuit raises the specter of consumer confusion and the risk of intimidation from special counsel's use of the Attorney General's letterhead, but its exposition is unconvincing. Pp. 324–329.

785 F. 3d 1091, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.

Eric E. Murphy, State Solicitor of Ohio, argued the cause for petitioners. With him on the briefs were *Michael DeWine*, Attorney General, *Michael J. Hendershot*, Chief Deputy Solicitor, *Hannah C. Wilson*, Deputy Solicitor, *Michael L. Close*, and *Mark Landes*.

E. Joshua Rosenkranz argued the cause for respondents. With him on the brief for respondents Pamela Gillie et al. were *Rachel Wainer Apter*, *Thomas M. Bondy*, and *James E. Nobile*. *Boyd W. Gentry* filed a brief for respondents Eric Jones et al.

Sarah E. Harrington argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Solicitor General Verrilli*, *Deputy Solicitor General Stewart*, *Nandan M. Joshi*, and *Lawrence Demille-Wagman*.*

JUSTICE GINSBURG delivered the opinion of the Court.

Ohio law authorizes the State's Attorney General to retain, as independent contractors, "special counsel" to act on the Attorney General's behalf in collecting certain debts owed to Ohio or an instrumentality of the State. Ohio Rev. Code Ann. § 109.08 (Lexis 2014). As required by the Attorney General, special counsel use the Attorney General's letterhead in communicating with debtors. App. 93. The Fair Debt Collection Practices Act, 91 Stat. 874, 15 U. S. C. § 1692 *et seq.* (FDCPA or Act), aims to eliminate "abusive debt collection practices." § 1692(a)–(d). To that end, the Act imposes various procedural and substantive obligations on debt

*A brief of *amici curiae* urging reversal was filed for the State of Michigan et al. by *Bill Schuette*, Attorney General of Michigan, *Aaron D. Lindstrom*, Solicitor General, and *Ann M. Sherman*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Leslie Rutledge* of Arkansas, *Mark Brnovich* of Arizona, *Douglas S. Chin* of Hawaii, *Lawrence Wasden* of Idaho, *Derek Schmidt* of Kansas, *Jeff Landry* of Louisiana, *Jim Hood* of Mississippi, *Wayne Stenehjem* of North Dakota, *E. Scott Pruitt* of Oklahoma, and *Herbert Slatery III* of Tennessee.

Briefs of *amici curiae* urging affirmance were filed for AARP by *Julie Nepveu* and *William Alvarado Rivera*; for the NHS Consumer Law Center by *Steven G. Bradbury;* and for the National Consumer Law Center et al. by *Deepak Gupta*, *Jonathan E. Taylor*, and *Richard J. Rubin*.

Sarah M. Shalf filed a brief for 5 Consumer Law Professors as *amici curiae*.

collectors. See, *e. g.*, § 1692d (prohibiting harassing, oppressive, or abusive conduct); § 1692e (barring "false, deceptive, or misleading representation[s] . . . in connection with the collection of any debt"); § 1692g(a) (setting out requirements for the contents of initial notices to consumers). The FDCPA excludes from the definition of "debt collector" "any officer or employee of the United States or any State to the extent that collecting . . . any debt is in the performance of his official duties." § 1692a(6)(C).

This case involves litigation between debtors to Ohio institutions and special counsel who sought to collect money owed to the institutions. The petition raises two questions: (1) Do special counsel appointed by Ohio's Attorney General qualify as "state officers" exempt from the FDCPA's governance? (2) Is special counsel's use of the Attorney General's letterhead a false or misleading representation proscribed by § 1692e?

Assuming, *arguendo*, that special counsel do not rank as "state officers," we hold, nevertheless, that their use of the Attorney General's letterhead does not offend § 1692e. Not fairly described as "false" or "misleading," use of the letterhead accurately conveys that special counsel, in seeking to collect debts owed to the State, do so on behalf of, and as instructed by, the Attorney General.

I

Responding to reports of abusive practices by third-party collectors of consumer debts, Congress enacted the FDCPA "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." § 1692(e). Primarily governing "debt collector[s]," the Act defines that term to include "any person . . . in any business the principal purpose of which is the collection of any debts,

or who regularly collects or attempts to collect . . . debts owed or due or asserted to be owed or due another." § 1692a(6). Excluded from the definition is "any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties." § 1692a(6)(C).

Among other proscriptions, the FDCPA prohibits debt collectors from employing "false, deceptive, or misleading" practices. § 1692e. "Without limiting" this general ban, § 1692e enumerates 16 categories of conduct that qualify as false or misleading. Two of those categories are pertinent to our review: "[t]he use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of . . . any State, or which creates a false impression as to its source, authorization, or approval," § 1692e(9); and "[t]he use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization," § 1692e(14). A debt collector who violates the Act is liable for both actual and statutory damages. § 1692k(a).

This case concerns the debt collection practices of those charged with collecting overdue debts owed to Ohio-owned agencies and instrumentalities. Among such debts are past-due tuition owed to public universities and unpaid medical bills from state-run hospitals. Under Ohio law, overdue debts are certified to the State's Attorney General, who is responsible for collecting, settling, or otherwise disposing of them. Ohio Rev. Code Ann. § 131.02(A), (C), (F). Carrying out this responsibility, the Attorney General may appoint private attorneys as "special counsel to represent the state" in collecting certified claims. § 109.08.

Special counsel enter into year-long retention agreements "on an independent contractor basis" to "provide legal services on behalf of the Attorney General to one or more State Clients." App. 143–144. The Attorney General's Office as-

signs individual claims to special counsel, who are paid a set percentage of the funds they collect for the State. § 109.08; *id.*, at 144–145, 149–152. With "the prior approval of the Attorney General," special counsel may litigate and settle claims on behalf of the State. *Id.*, at 149. Special counsel may continue to represent private clients so long as doing so does not create a conflict of interest with their work for the Attorney General. Among the special counsel appointed by the Attorney General in 2012 were Mark Sheriff, a partner at the law firm of Wiles, Boyle, Burkholder, and Bringardner Co. LPA (Wiles firm), and Eric Jones, of the Law Offices of Eric A. Jones, LLC.

When special counsel contact debtors on behalf of the State, the Attorney General requires them to use his letterhead. *Id.*, at 93. Consistent with this requirement, Sarah Sheriff, an employee of the Wiles firm, sent respondent Hazel Meadows a debt collection letter on the Ohio Attorney General's letterhead. The letter reads:

> "Sir/Madam: Per your request, this is a letter with the current balance owed for your University of Akron loan that has been placed with the Ohio Attorney General. Feel free to contact me at [telephone number] should you have any further questions." *Gillie* v. *Law Office of Eric A. Jones, LLC*, 785 F. 3d 1091, 1119 (CA6 2015) (appendix to dissenting opinion of Sutton, J.).

The amount Meadows owed is listed in the letter's subject line. *Ibid.* After the body of the letter, Sheriff's signature appears, followed by the firm's name, its address, and the designation "Special Counsel to the Attorney General for the State of Ohio." *Ibid.*[1] The letter concludes with a notice that it is "an attempt to collect a debt" and that the senders "are debt collectors." *Ibid.*

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[1] As noted above, Mark Sheriff, not Sarah Sheriff, was appointed special counsel.

Respondent Pamela Gillie received a letter, also on the Ohio Attorney General's letterhead, in relation to a debt she owed to a state-run hospital:

> "Dear Sir/Madam, You have chosen to ignore repeated attempts to resolv[e] the referenced . . . medical claim. If you cannot make immediate full payment call DENISE HALL at Eric A. Jones, L.L.C., [phone number] at my office to make arrangements to pay this debt." *Id.*, at 1118.

That text is followed by a bolded, all-caps notice that the letter is "a communication from a debt collector." *Ibid.* Signed by Eric A. Jones, "Outside Counsel for the Attorney General's Office," the letter includes Jones's telephone and fax numbers. *Ibid.* A tear-away portion at the bottom of the page for return of payment is addressed to Jones's law office. *Ibid.*

After receiving these letters, Meadows and Gillie filed a putative class action in the United States District Court for the Southern District of Ohio, asserting that Mark Sheriff, Sarah Sheriff, Jones, and their law firms had violated the FDCPA. By sending debt collection notices on the Attorney General's letterhead rather than the letterhead of their private firms, Meadows and Gillie alleged, defendants had employed deceptive and misleading means to attempt to collect consumer debts. The Ohio Attorney General intervened as a defendant and counterclaimant, seeking a declaratory judgment that special counsel's use of his letterhead, as authorized by Ohio law,[2] is neither false nor misleading. Further, the Attorney General urged, special counsel should

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[2] Ohio Rev. Code Ann. § 109.08 (Lexis 2014) requires the Attorney General to provide special counsel with his "official letterhead stationery" for the collection of tax debts. The Attorney General has interpreted this provision as mandating the use of his letterhead for tax claims, but permitting its use for the collection of other debts. Whether this is a correct interpretation of Ohio law is not before us.

be deemed officers of the State and therefore outside the FDCPA's compass.

The District Court granted summary judgment for defendants, concluding that special counsel are "officers" of the State of Ohio and, in any event, their use of the Attorney General's letterhead is not false or misleading. *Gillie* v. *Law Office of Eric A. Jones, LLC*, 37 F. Supp. 3d 928 (2014).

The Court of Appeals for the Sixth Circuit vacated the District Court's judgment. Because special counsel are independent contractors, the court determined, they are not entitled to the FDCPA's state-officer exemption. 785 F. 3d, at 1097–1098. Turning to the deceptive and misleading practices charge, the Court of Appeals concluded that there is a genuine issue of material fact as to whether an unsophisticated consumer would be misled "into believing it is the Attorney General who is collecting on the account." *Id.*, at 1106. The court therefore remanded the case for trial on this issue. *Id.*, at 1110.

Judge Sutton dissented from both holdings. In his view, "deputizing . . . private lawyers to act as assistant attorneys general makes them 'officers' of the State for . . . collection purposes." *Ibid.* He further concluded that special counsel's use of the Attorney General's letterhead "accurately describes the relevant legal realities—that the law firm acts as an agent of the Attorney General and stands in [his] shoes . . . in collecting money owed to the State." *Id.*, at 1110–1111. The Sixth Circuit denied en banc rehearing. We granted certiorari, 577 U. S. 1045 (2015), and now reverse.[3]

II

As they did below, petitioners maintain that, as special counsel appointed by the Attorney General, they are "offi-

[3] We granted the petition for certiorari filed by Mark Sheriff, Sarah Sheriff, the Wiles firm, and the Ohio Attorney General. Jones and the Law Offices of Eric A. Jones, LLC, filed a separate petition for certiorari as well as a separate brief in this case in support of petitioners. We refer to defendants collectively as "petitioners."

cers" exempt from the FDCPA's governance, and that, in any case, the debt collection letters they sent to respondents comply with the Act. We pretermit the question whether, as petitioners contend and Judge Sutton would have held, special counsel qualify as state officers. For purposes of this decision, we assume, *arguendo*, that special counsel are not "officers" within the meaning of the Act and, therefore, rank simply as "debt collectors" within the FDCPA's compass. We conclude, nevertheless, that petitioners complied with the Act, as their use of the Attorney General's letterhead accurately conveys that special counsel act on behalf of the Attorney General.

Special counsel's use of the Attorney General's letterhead at the Attorney General's direction does not offend § 1692e's general prohibition against "false . . . or misleading representation[s]." The letterhead identifies the principal—Ohio's Attorney General—and the signature block names the agent—a private lawyer hired as outside counsel to the Attorney General. It would not transgress § 1692e, respondents acknowledge, if, in lieu of using the Attorney General's letterhead, special counsel's communications opened with a boldface statement: "We write to you as special counsel to the [A]ttorney [G]eneral who has authorized us to collect a debt you owe to [the State or an instrumentality thereof]." Tr. of Oral Arg. 31 (internal quotation marks omitted). If that representation is accurate, *i. e.*, not "false . . . or misleading," it would make scant sense to rank as unlawful use of a letterhead conveying the very same message, particularly in view of the inclusion of special counsel's separate contact information and the conspicuous notation that the letter is sent by a debt collector.[4]

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[4] Although respondents argued below that Sarah Sheriff's inaccurate use of the "special counsel" designation also violates the FDCPA, they have not pursued that argument before this Court. In any case, the letter merely conveyed the debtor's remaining balance, without any suggestion of followup action. Sarah Sheriff's misstatement of her title thus qualifies as an immaterial, harmless mistake.

Our conclusion is bolstered by the character of the relationship between special counsel and the Attorney General. As earlier recounted, special counsel "provide legal services on behalf of the Attorney General to one or more State Clients" in furtherance of the Attorney General's responsibilities as debt collector for state-owned entities and instrumentalities. App. 143–144. In performing this function, special counsel work closely with attorneys in the Attorney General's Office. For example, Assistant Attorneys General "frequently assist Special Counsel in drafting pleadings, and sometimes join cases as co-counsel to assist Special Counsel with particularly sensitive or complex cases." *Id.*, at 102. Special counsel and Assistant Attorneys General even stand in one another's stead, as needed, to cover proceedings in ongoing litigation. *Ibid.* Given special counsel's alliance with attorneys within the Attorney General's Office, a debtor's impression that a letter from special counsel is a letter from the Attorney General's Office is scarcely inaccurate.[5]

On safe ground with respect to § 1692e's general proscription against false and misleading representations, special counsel's use of the Attorney General's letterhead is consistent too with § 1692e(9)'s specific prohibition against "falsely represent[ing]" that a communication is "authorized, issued, or approved" by a State. In enacting this provision, Congress sought to prevent debt collectors from "misrepresenting" that they are "government official[s]." S. Rep. No. 95–382, p. 8 (1977). Here, the Attorney General authorized—indeed required—special counsel to use his letterhead in sending debt collection communications. Special counsel create no false impression in doing just what they have been instructed to do. Instead, their use of the Attorney General's letterhead conveys on whose authority special counsel writes to the debtor. As a whole, the communication alerts the debtor to both the basis for the payment obligation and the

[5] We address here only "special counsel." The considerations relevant to that category may not carry over to other debt-collector relationships.

official responsible for enforcement of debts owed to the State, while the signature block conveys who the Attorney General has engaged to collect the debt.

Nor did special counsel, in sending letters on the Attorney General's letterhead, use a name other than their "true name," in violation of § 1692e(14). Although the FDCPA does not say "what a 'true name' is, its import is straightforward: A debt collector may not lie about his institutional affiliation." 785 F. 3d, at 1115 (Sutton, J., dissenting). Special counsel do not employ a false name when using the Attorney General's letterhead at his instruction, for special counsel, as the Attorney General's agents, act for him in debt-related matters. Far from misrepresenting special counsel's identity, letters sent by special counsel accurately identify the office primarily responsible for collection of the debt (the Attorney General), special counsel's affiliation with that office, and the address (special counsel's law firm) to which payment should be sent.[6]

We further note a federalism concern. "Ohio's enforcement of its civil code—by collecting money owed to it—[is] a core sovereign function." *Gillie* v. *Law Office of Eric A. Jones, LLC*, No. 14–3836 (CA6, July 14, 2015), App. to Pet. for Cert. 10a (Sutton, J., dissenting from denial of rehearing en banc). Ohio's Attorney General has chosen to appoint special counsel to assist him in fulfilling his obligation to collect the State's debts, and he has instructed his appointees to use his letterhead when acting on his behalf. There is no cause, in this case, to construe federal law in a manner that interferes with "States' arrangements for conducting their

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[6] Because we conclude that the letters sent by petitioners were truthful, we need not consider the parties' arguments as to whether a false or misleading statement must be material to violate the FDCPA, or whether a potentially false or misleading statement should be viewed from the perspective of "the least sophisticated consumer," Brief for Respondent Gillie et al. 57, or "[t]he average consumer who has defaulted on a debt," Brief for Petitioners 41.

own governments." *Nixon* v. *Missouri Municipal League*, 541 U. S. 125, 140 (2004) (citing *Gregory* v. *Ashcroft*, 501 U. S. 452, 460 (1991)).

The Sixth Circuit's contrary exposition is unconvincing. Use of the Attorney General's letterhead, the Court of Appeals emphasized, has led to confusion among debtors, as the Attorney General has received phone calls inquiring whether letters sent by special counsel are authentic. 785 F. 3d, at 1107. But the Sixth Circuit overlooked that the Attorney General's prompt and invariable answer to those inquiries was "yes." To the extent that consumers may be concerned that the letters are a "scam," the solution is for special counsel to say more, not less, about their role as agents of the Attorney General. Special counsel's use of the Attorney General's letterhead, furthermore, encourages consumers to use official channels to ensure the legitimacy of the letters, assuaging the very concern the Sixth Circuit identified.

In addition to the specter of consumer confusion, the Sixth Circuit stressed the risk of intimidation—that the Attorney General's letterhead would "place pressure on those individuals receiving the letters" to pay their state debts. *Id.*, at 1105. There are two bases for this concern, neither of which is persuasive. First, invocation of the Attorney General's *imprimatur* could lead debtors to prioritize their debt to the State over other, private debts out of a belief that the consequences of failing to pay a state debt would be more severe. This impression is not false; the State does have enforcement powers beyond those afforded private creditors. A debtor's tax refund, for example, "may be applied in satisfaction" of her debt, regardless of whether the State has obtained a judgment, Ohio Rev. Code Ann. § 5747.12 (Lexis 2013), and a debt owed to the State takes priority over most private debts in state probate proceedings, § 2117.25(A) (Lexis Supp. 2015). "The special consequences of state debts explain why the Act bars debt collectors *unaffiliated* with a State from using the State's name to scare debtors into paying. When

the State itself is doing the demanding, however, nothing about the resulting fear misleads." 785 F. 3d, at 1116 (Sutton, J., dissenting). In other words, § 1692e bars debt collectors from deceiving or misleading consumers; it does not protect consumers from fearing the actual consequences of their debts.

Second, debtors might worry that the letters imply that the Attorney General, as the State's top law enforcement official, intends to take punitive action against them. "But neither of the milquetoast letters [received by respondents] threatens criminal prosecution, civil penalties, or any action whatsoever." *Id.*, at 1116–1117. Use of the Attorney General's letterhead merely clarifies that the debt is owed to the State, and the Attorney General is the State's debt collector. The FDCPA is not sensibly read to require special counsel to obscure that reality.[7]

* * *

For the reasons stated, the judgment of the Court of Appeals for the Sixth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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[7] Having determined that use of the Attorney General's letterhead inaccurately suggested that the letters were from the Attorney General's Office, the Sixth Circuit remanded to the District Court for trial on whether this practice was "materially false, deceptive and misleading." *Gillie* v. *Law Office of Eric A. Jones, LLC*, 785 F. 3d 1091, 1109–1110 (2015). But all of the relevant facts are undisputed, and the application of the FDCPA to those facts is a question of law. The District Court therefore properly granted summary judgment for defendants.

Syllabus

SPOKEO, INC. *v.* ROBINS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13–1339. Argued November 2, 2015—Decided May 16, 2016

The Fair Credit Reporting Act of 1970 (FCRA) requires consumer reporting agencies to "follow reasonable procedures to assure maximum possible accuracy of" consumer reports, 15 U. S. C. § 1681e(b), and imposes liability on "[a]ny person who willfully fails to comply with any requirement [of the Act] with respect to any" individual, § 1681n(a).

Petitioner Spokeo, Inc., an alleged consumer reporting agency, operates a "people search engine," which searches a wide spectrum of databases to gather and provide personal information about individuals to a variety of users, including employers wanting to evaluate prospective employees. After respondent Thomas Robins discovered that his Spokeo-generated profile contained inaccurate information, he filed a federal class-action complaint against Spokeo, alleging that the company willfully failed to comply with the FCRA's requirements.

The District Court dismissed Robins' complaint, holding that he had not properly pleaded injury in fact as required by Article III. The Ninth Circuit reversed. Based on Robins' allegation that "Spokeo violated *his* statutory rights" and the fact that Robins' "personal interests in the handling of his credit information are *individualized*," the court held that Robins had adequately alleged an injury in fact.

Held: Because the Ninth Circuit failed to consider both aspects of the injury-in-fact requirement, its Article III standing analysis was incomplete. Pp. 337–343.

(a) A plaintiff invoking federal jurisdiction bears the burden of establishing the "irreducible constitutional minimum" of standing by demonstrating (1) an injury in fact, (2) fairly traceable to the challenged conduct of the defendant, and (3) likely to be redressed by a favorable judicial decision. *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561. Pp. 337–338.

(b) As relevant here, the injury-in-fact requirement requires a plaintiff to show that he or she suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan*, *supra*, at 560. Pp. 338–343.

(1) The Ninth Circuit's injury-in-fact analysis elided the independent "concreteness" requirement. Both observations it made concerned only "particularization," *i. e.*, the requirement that an injury "affect the

plaintiff in a personal and individual way," *Lujan*, *supra*, at 560, n. 1, but an injury in fact must be both concrete *and* particularized, see, *e. g.*, *Susan B. Anthony List* v. *Driehaus*, 573 U. S. 149, 158. Concreteness is quite different from particularization and requires an injury to be "*de facto*," that is, to actually exist. Pp. 339–340.

(2) The Ninth Circuit also failed to address whether the alleged procedural violations entail a degree of risk sufficient to meet the concreteness requirement. A "concrete" injury need not be a "tangible" injury. See, *e. g.*, *Pleasant Grove City* v. *Summum*, 555 U. S. 460. To determine whether an intangible harm constitutes injury in fact, both history and the judgment of Congress are instructive. Congress is well positioned to identify intangible harms that meet minimum Article III requirements, but a plaintiff does not automatically satisfy the injury-in-fact requirement whenever a statute grants a right and purports to authorize a suit to vindicate it. Article III standing requires a concrete injury even in the context of a statutory violation. This does not mean, however, that the risk of real harm cannot satisfy that requirement. See, *e. g.*, *Clapper* v. *Amnesty Int'l USA*, 568 U. S. 398. The violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact; in such a case, a plaintiff need not allege any *additional* harm beyond the one identified by Congress, see *Federal Election Comm'n* v. *Akins*, 524 U. S. 11, 20–25. This Court takes no position on the correctness of the Ninth Circuit's ultimate conclusion, but these general principles demonstrate two things: that Congress plainly sought to curb the dissemination of false information by adopting procedures designed to decrease that risk and that Robins cannot satisfy the demands of Article III by alleging a bare procedural violation. Pp. 340–343.

742 F. 3d 409, vacated and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, BREYER, and KAGAN, JJ., joined. THOMAS, J., filed a concurring opinion, *post*, p. 343. GINSBURG, J., filed a dissenting opinion, in which SOTOMAYOR, J., joined, *post*, p. 349.

Andrew J. Pincus argued the cause for petitioner. With him on the briefs were *Archis A. Parasharami*, *Stephen C. N. Lilley*, *Daniel E. Jones*, *Thomas P. Wolf*, *John Nadolenco*, and *Donald M. Falk*.

William S. Consovoy argued the cause for respondent. With him on the brief were *J. Michael Connolly*, *Patrick*

Strawbridge, *Jay Edelson*, *Ryan D. Andrews*, *Roger Perlstadt*, and *Michael H. Park*.

Deputy Solicitor General Stewart argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Verrilli*, *Anthony A. Yang*, *Meredith Fuchs*, and *Nandan M. Joshi*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Alabama et al. by *Luther Strange*, Attorney General of Alabama, *Andrew L. Brasher*, Solicitor General, and *Brett J. Talley*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Cynthia Coffman* of Colorado, *Bill Schuette* of Michigan, *Douglas J. Peterson* of Nebraska, *Herbert H. Slatery III* of Tennessee, *Patrick Morrisey* of West Virginia, *Brad D. Schimel* of Wisconsin, and *Peter K. Michael* of Wyoming; for ACA International by *Brian Melendez*; for the American Bankers Association et al. by *Robert A. Long, Jr.*, and *David M. Zionts*; for the Chamber of Commerce of the United States of America et al. by *Roy T. Englert, Jr.*, *Ariel N. Lavinbuk*, *Eric A. White*, *Mary-Christine Sungaila*, *Elizabeth Milito*, and *Kate Comerford Todd*; for the Coalition for Sensible Public Records Access et al. by *Joseph W. Jacquot*, *Jay N. Varon*, *Michael D. Leffel*, and *Christi A. Lawson*; for the Consumer Data Industry Association by *Anne P. Fortney*; for DRI–The Voice of the Defense Bar by *Mary Massaron*, *Hilary A. Ballentine*, and *John Parker Sweeney*; for eBay Inc. et al. by *Patrick J. Carome* and *Felicia H. Ellsworth*; for Experian Information Solutions, Inc., by *Meir Feder* and *Daniel J. McLoon*; for the National Association of Home Builders by *Thomas J. Ward*; for the National Association of Professional Background Screeners et al. by *Christopher A. Mohr*; for the New England Legal Foundation et al. by *Benjamin G. Robbins* and *Martin J. Newhouse*; for the Pacific Legal Foundation by *Deborah J. La Fetra*; for the Retail Litigation Center, Inc., by *Evan A. Young* and *Deborah R. White*; for Time Inc. et al. by *Laura R. Handman*; for Trans Union LLC by *Stephen J. Newman* and *Julia B. Strickland*; and for the Washington Legal Foundation by *Cory L. Andrews*.

Briefs of *amici curiae* urging affirmance were filed for the Commonwealth of Massachusetts et al. by *Maura Healey*, Attorney General of Massachusetts, and *Sara Cable* and *Francesca L. Miceli*, Assistant Attorneys General, and by the Attorneys General for their respective jurisdictions as follows: *George Jepsen* of Connecticut, *Matthew P. Denn* of Delaware, *Karl A. Racine* of the District of Columbia, *Douglas S. Chin* of Hawaii, *Lisa Madigan* of Illinois, *Janet T. Mills* of Maine, *Brian E. Frosh* of Maryland, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Hector H. Balderas* of New Mexico, *Eric T. Schneiderman* of New York, *Ellen F.*

JUSTICE ALITO delivered the opinion of the Court.

This case presents the question whether respondent Robins has standing to maintain an action in federal court against petitioner Spokeo under the Fair Credit Reporting Act of 1970 (FCRA or Act), 84 Stat. 1127, as amended, 15 U. S. C. § 1681 *et seq.*

Spokeo operates a "people search engine." If an individual visits Spokeo's Web site and inputs a person's name, a phone number, or an e-mail address, Spokeo conducts a computerized search in a wide variety of databases and provides information about the subject of the search. Spokeo performed such a search for information about Robins, and some of the information it gathered and then disseminated was incorrect. When Robins learned of these inaccuracies, he filed a complaint on his own behalf and on behalf of a class of similarly situated individuals.

The District Court dismissed Robins' complaint for lack of standing, but a panel of the Ninth Circuit reversed. The Ninth Circuit noted, first, that Robins had alleged that "Spokeo violated *his* statutory rights, not just the statutory

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Rosenblum of Oregon, and *Robert W. Ferguson* of Washington; for the American Association for Justice by *Jeffrey R. White* and *Larry A. Tawwater*; for the Center for Democracy & Technology et al. by *Marcia Hofmann*; for the Center for Digital Democracy by *Angela J. Campbell* and *Andrew Jay Schwartzman*; for the Constitutional Accountability Center by *Douglas T. Kendall*, *Elizabeth B. Wydra*, *David H. Gans*, and *Brianne J. Gorod*; for the Electronic Privacy Information Center (EPIC) et al. by *Marc Rotenberg*; for Information Privacy Law Scholars by *Michael T. Kirkpatrick*; for the Lawyers' Committee for Civil Rights Under Law et al. by *Stephen M. Dane* and *Sasha Samberg-Champion*; for the Natural Resources Defense Council et al. by *Michael E. Wall*; for the Pension Rights Center by *Karen L. Handorf*, *Michelle C. Yau*, *Monya M. Bunch*, *Karen W. Ferguson*, *Lynn Lincoln Sarko*, and *Ron Kilgard*; for Public Citizen, Inc., et al. by *Kathryn L. Einspanier*, *Scott L. Nelson*, and *Allison M. Zieve*; for Public Justice, P. C., et al. by *Leah M. Nicholls*, *Stuart T. Rossman*, *Chi Chi Wu*, *Jocelyn Larkin*, and *Robert Schug*; for Public Knowledge by *Charles Duan*; for Public Law Professors by *F. Andrew Hessick*; and for Restitution and Remedies Scholars by *Douglas Laycock*.

rights of other people," and, second, that "Robins's personal interests in the handling of his credit information are individualized rather than collective." 742 F. 3d 409, 413 (2014). Based on these two observations, the Ninth Circuit held that Robins had adequately alleged injury in fact, a requirement for standing under Article III of the Constitution. *Id.*, at 413–414.

This analysis was incomplete. As we have explained in our prior opinions, the injury-in-fact requirement requires a plaintiff to allege an injury that is both "concrete *and* particularized." *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 180–181 (2000) (emphasis added). The Ninth Circuit's analysis focused on the second characteristic (particularity), but it overlooked the first (concreteness). We therefore vacate the decision below and remand for the Ninth Circuit to consider *both* aspects of the injury-in-fact requirement.

I

The FCRA seeks to ensure "fair and accurate credit reporting." § 1681(a)(1). To achieve this end, the Act regulates the creation and the use of "consumer report[s]"[1] by "consumer reporting agenc[ies]"[2] for certain specified pur-

[1] The Act defines the term "consumer report" as:

"any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—

"(A) credit or insurance to be used primarily for personal, family, or household purposes;

"(B) employment purposes; or

"(C) any other purpose authorized under section 1681b of this title." 15 U. S. C. § 1681a(d)(1).

[2] "The term 'consumer reporting agency' means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of

poses, including credit transactions, insurance, licensing, consumer-initiated business transactions, and employment. See §§ 1681a(d)(1)(A)–(C), 1681b. Enacted long before the advent of the Internet, the FCRA applies to companies that regularly disseminate information bearing on an individual's "credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living." § 1681a(d)(1).

The FCRA imposes a host of requirements concerning the creation and use of consumer reports. As relevant here, the Act requires consumer reporting agencies to "follow reasonable procedures to assure maximum possible accuracy of" consumer reports, § 1681e(b); to notify providers and users of consumer information of their responsibilities under the Act, § 1681e(d); to limit the circumstances in which such agencies provide consumer reports "for employment purposes," § 1681b(b)(1); and to post toll-free numbers for consumers to request reports, § 1681j(a).

The Act also provides that "[a]ny person who willfully fails to comply with any requirement [of the Act] with respect to any [individual[3]] is liable to that [individual]" for, among other things, either "actual damages" or statutory damages of $100 to $1,000 per violation, costs of the action and attorney's fees, and possibly punitive damages. § 1681n(a).

Spokeo is alleged to qualify as a "consumer reporting agency" under the FCRA.[4] It operates a Web site that allows users to search for information about other individuals by name, e-mail address, or phone number. In response to an inquiry submitted online, Spokeo searches a wide spectrum of databases and gathers and provides information such

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furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." § 1681a(f).

[3] This statutory provision uses the term "consumer," but that term is defined to mean "an individual." § 1681a(c).

[4] For purposes of this opinion, we assume that Spokeo is a consumer reporting agency.

as the individual's address, phone number, marital status, approximate age, occupation, hobbies, finances, shopping habits, and musical preferences. App. 7, 10–11. According to Robins, Spokeo markets its services to a variety of users, including not only "employers who want to evaluate prospective employees" but also "those who want to investigate prospective romantic partners or seek other personal information." Brief for Respondent 7. Persons wishing to perform a Spokeo search need not disclose their identities, and much information is available for free.

At some point in time, someone (Robins' complaint does not specify who) made a Spokeo search request for information about Robins, and Spokeo trawled its sources and generated a profile. By some means not detailed in Robins' complaint, he became aware of the contents of that profile and discovered that it contained inaccurate information. His profile, he asserts, states that he is married, has children, is in his fifties, has a job, is relatively affluent, and holds a graduate degree. App. 14. According to Robins' complaint, all of this information is incorrect.

Robins filed a class-action complaint in the United States District Court for the Central District of California, claiming, among other things, that Spokeo willfully failed to comply with the FCRA requirements enumerated above.

The District Court initially denied Spokeo's motion to dismiss the complaint for lack of jurisdiction, but later reconsidered and dismissed the complaint with prejudice. App. to Pet. for Cert. 23a. The court found that Robins had not "properly pled" an injury in fact, as required by Article III. *Ibid.*

The Court of Appeals for the Ninth Circuit reversed. Relying on Circuit precedent,[5] the court began by stating that

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[5] See *Edwards* v. *First American Corp.*, 610 F. 3d 514 (CA9 2010), cert. granted *sub nom. First American Financial Corp.* v. *Edwards*, 564 U. S. 1018 (2011), cert. dism'd as improvidently granted, 567 U. S. 756 (2012) (*per curiam*).

"the violation of a statutory right is usually a sufficient injury in fact to confer standing." 742 F. 3d, at 412. The court recognized that "the Constitution limits the power of Congress to confer standing." *Id.*, at 413. But the court held that those limits were honored in this case because Robins alleged that "Spokeo violated *his* statutory rights, not just the statutory rights of other people," and because his "personal interests in the handling of his credit information are individualized rather than collective." *Ibid.* (emphasis in original). The court thus concluded that Robins' "alleged violations of [his] statutory rights [were] sufficient to satisfy the injury-in-fact requirement of Article III." *Id.*, at 413–414.

We granted certiorari. 575 U. S. 982 (2015).

II

A

The Constitution confers limited authority on each branch of the Federal Government. It vests Congress with enumerated "legislative Powers," Art. I, § 1; it confers upon the President "[t]he executive Power," Art. II, § 1, cl. 1; and it endows the federal courts with "[t]he judicial Power of the United States," Art. III, § 1. In order to remain faithful to this tripartite structure, the power of the Federal Judiciary may not be permitted to intrude upon the powers given to the other branches. See *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 341 (2006); *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 559–560 (1992).

Although the Constitution does not fully explain what is meant by "[t]he judicial Power of the United States," Art. III, § 1, it does specify that this power extends only to "Cases" and "Controversies," Art. III, § 2. And "'[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.'" *Raines* v. *Byrd*, 521 U. S. 811, 818 (1997).

Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy. The doctrine developed in our case law to ensure that federal courts do not exceed their authority as it has been traditionally understood. See *id.*, at 820. The doctrine limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong. See *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 473 (1982); *Warth* v. *Seldin*, 422 U. S. 490, 498–499 (1975). In this way, "[t]he law of Article III standing . . . serves to prevent the judicial process from being used to usurp the powers of the political branches," *Clapper* v. *Amnesty Int'l USA*, 568 U. S. 398, 408 (2013); *Lujan*, *supra*, at 576–577, and confines the federal courts to a properly judicial role, see *Warth*, *supra*, at 498.

Our cases have established that the "irreducible constitutional minimum" of standing consists of three elements. *Lujan*, 504 U. S., at 560. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Id.*, at 560–561; *Friends of the Earth, Inc.*, 528 U. S., at 180–181. The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements. *FW/PBS, Inc.* v. *Dallas*, 493 U. S. 215, 231 (1990). Where, as here, a case is at the pleading stage, the plaintiff must "clearly . . . allege facts demonstrating" each element. *Warth*, *supra*, at 518.[6]

B

This case primarily concerns injury in fact, the "[f]irst and foremost" of standing's three elements. *Steel Co.* v. *Citizens*

[6] "That a suit may be a class action . . . adds nothing to the question of standing, for even named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong.'" *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 40, n. 20 (1976) (quoting *Warth*, 422 U. S., at 502).

for Better Environment, 523 U. S. 83, 103 (1998). Injury in fact is a constitutional requirement, and "[i]t is settled that Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." *Raines*, *supra*, at 820, n. 3; see *Summers* v. *Earth Island Institute*, 555 U. S. 488, 497 (2009); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S. 91, 100 (1979) ("In no event . . . may Congress abrogate the Art. III minima").

To establish injury in fact, a plaintiff must show that he or she suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U. S., at 560 (internal quotation marks omitted). We discuss the particularization and concreteness requirements below.

1

For an injury to be "particularized," it "must affect the plaintiff in a personal and individual way." *Ibid.*, n. 1; see also, *e. g.*, *Cuno*, *supra*, at 342 ("'plaintiff must allege personal injury'"); *Whitmore* v. *Arkansas*, 495 U. S. 149, 155 (1990) ("'distinct'"); *Allen* v. *Wright*, 468 U. S. 737, 751 (1984) ("personal"); *Valley Forge*, *supra*, at 472 (standing requires that the plaintiff "'personally has suffered some actual or threatened injury'"); *United States* v. *Richardson*, 418 U. S. 166, 177 (1974) (not "undifferentiated"); *Public Citizen, Inc.* v. *National Hwy. Traffic Safety Admin.*, 489 F. 3d 1279, 1292–1293 (CADC 2007) (collecting cases).[7]

Particularization is necessary to establish injury in fact, but it is not sufficient. An injury in fact must also be "concrete." Under the Ninth Circuit's analysis, however, that independent requirement was elided. As previously noted,

[7] The fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance. The victims' injuries from a mass tort, for example, are widely shared, to be sure, but each individual suffers a particularized harm.

the Ninth Circuit concluded that Robins' complaint alleges "'concrete, *de facto*'" injuries for essentially two reasons. 742 F. 3d, at 413. First, the court noted that Robins "alleges that Spokeo violated *his* statutory rights, not just the statutory rights of other people." *Ibid.* Second, the court wrote that "Robins's personal interests in the handling of his credit information are *individualized rather than collective*." *Ibid.* (emphasis added). Both of these observations concern particularization, not concreteness. We have made it clear time and time again that an injury in fact must be both concrete *and* particularized. See, *e. g.*, *Susan B. Anthony List* v. *Driehaus*, 573 U. S. 149, 158 (2014); *Summers*, *supra*, at 493; *Sprint Communications Co.* v. *APCC Services, Inc.*, 554 U. S. 269, 274 (2008); *Massachusetts* v. *EPA*, 549 U. S. 497, 517 (2007).

A "concrete" injury must be "*de facto*"; that is, it must actually exist. See Black's Law Dictionary 506 (10th ed. 2014). When we have used the adjective "concrete," we have meant to convey the usual meaning of the term—"real," and not "abstract." 1 Webster's Third New International Dictionary 472 (1971); Random House Dictionary of the English Language 305 (1966). Concreteness, therefore, is quite different from particularization.

2

"Concrete" is not, however, necessarily synonymous with "tangible." Although tangible injuries are perhaps easier to recognize, we have confirmed in many of our previous cases that intangible injuries can nevertheless be concrete. See, *e. g.*, *Pleasant Grove City* v. *Summum*, 555 U. S. 460 (2009) (free speech); *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520 (1993) (free exercise).

In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles. Because the doctrine of standing derives from the case-or-controversy requirement, and because that

requirement in turn is grounded in historical practice, it is instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts. See *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U. S. 765, 775–777 (2000). In addition, because Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is also instructive and important. Thus, we said in *Lujan* that Congress may "elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law." 504 U. S., at 578. Similarly, JUSTICE KENNEDY's concurrence in that case explained that "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before." *Id.*, at 580 (opinion concurring in part and concurring in judgment).

Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right. Article III standing requires a concrete injury even in the context of a statutory violation. For that reason, Robins could not, for example, allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III. See *Summers*, *supra*, at 496 ("[D]eprivation of a procedural right without some concrete interest that is affected by the deprivation . . . is insufficient to create Article III standing"); see also *Lujan*, *supra*, at 572.

This does not mean, however, that the risk of real harm cannot satisfy the requirement of concreteness. See, *e. g.*, *Clapper* v. *Amnesty Int'l USA*, 568 U. S. 398. For example, the law has long permitted recovery by certain tort victims even if their harms may be difficult to prove or measure. See, *e. g.*, Restatement (First) of Torts §§ 569 (libel), 570

(slander *per se*) (1938). Just as the common law permitted suit in such instances, the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any *additional* harm beyond the one Congress has identified. See *Federal Election Comm'n* v. *Akins*, 524 U. S. 11, 20–25 (1998) (confirming that a group of voters' "inability to obtain information" that Congress had decided to make public is a sufficient injury in fact to satisfy Article III); *Public Citizen* v. *Department of Justice*, 491 U. S. 440, 449 (1989) (holding that two advocacy organizations' failure to obtain information subject to disclosure under the Federal Advisory Committee Act "constitutes a sufficiently distinct injury to provide standing to sue").

In the context of this particular case, these general principles tell us two things: On the one hand, Congress plainly sought to curb the dissemination of false information by adopting procedures designed to decrease that risk. On the other hand, Robins cannot satisfy the demands of Article III by alleging a bare procedural violation. A violation of one of the FCRA's procedural requirements may result in no harm. For example, even if a consumer reporting agency fails to provide the required notice to a user of the agency's consumer information, that information regardless may be entirely accurate. In addition, not all inaccuracies cause harm or present any material risk of harm. An example that comes readily to mind is an incorrect zip code. It is difficult to imagine how the dissemination of an incorrect zip code, without more, could work any concrete harm.[8]

Because the Ninth Circuit failed to fully appreciate the distinction between concreteness and particularization, its standing analysis was incomplete. It did not address the question framed by our discussion, namely, whether the par-

[8] We express no view about any other types of false information that may merit similar treatment. We leave that issue for the Ninth Circuit to consider on remand.

ticular procedural violations alleged in this case entail a degree of risk sufficient to meet the concreteness requirement. We take no position as to whether the Ninth Circuit's ultimate conclusion—that Robins adequately alleged an injury in fact—was correct.

* * *

The judgment of the Court of Appeals is vacated, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, concurring.

The Court vacates and remands to have the Court of Appeals determine "whether the particular procedural violations alleged in this case entail a degree of risk sufficient to meet the concreteness requirement." *Ante,* at 342 and this page. In defining what constitutes a concrete injury, the Court explains that "concrete" means "'real,'" and "not 'abstract,'" but is not "necessarily synonymous with 'tangible.'" *Ante*, at 340.

I join the Court's opinion. I write separately to explain how, in my view, the injury-in-fact requirement applies to different types of rights. The judicial power of common-law courts was historically limited depending on the nature of the plaintiff's suit. Common-law courts more readily entertained suits from private plaintiffs who alleged a violation of their own rights, in contrast to private plaintiffs who asserted claims vindicating public rights. Those limitations persist in modern standing doctrine.

I

A

Standing doctrine limits the "judicial power" to "'cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.'" *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U. S.

765, 774 (2000) (quoting *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 102 (1998)). To understand the limits that standing imposes on "the judicial Power," therefore, we must "refer directly to the traditional, fundamental limitations upon the powers of common-law courts." *Honig* v. *Doe*, 484 U. S. 305, 340 (1988) (Scalia, J., dissenting). These limitations preserve separation of powers by preventing the Judiciary's entanglement in disputes that are primarily political in nature. This concern is generally absent when a private plaintiff seeks to enforce only his personal rights against another private party.

Common-law courts imposed different limitations on a plaintiff's right to bring suit depending on the type of right the plaintiff sought to vindicate. Historically, common-law courts possessed broad power to adjudicate suits involving the alleged violation of private rights, even when plaintiffs alleged only the violation of those rights and nothing more. "Private rights" are rights "belonging to individuals, considered as individuals." 3 W. Blackstone, Commentaries *2 (hereinafter Blackstone). "Private rights" have traditionally included rights of personal security (including security of reputation), property rights, and contract rights. See 1 *id.*, at *130–*139; Woolhander & Nelson, Does History Defeat Standing Doctrine? 102 Mich. L. Rev. 689, 693 (2004). In a suit for the violation of a private right, courts historically presumed that the plaintiff suffered a *de facto* injury merely from having his personal, legal rights invaded. Thus, when one man placed his foot on another's property, the property owner needed to show nothing more to establish a traditional case or controversy. See *Entick* v. *Carrington*, 2 Wils. K. B. 275, 291, 95 Eng. Rep. 807, 817 (1765). Many traditional remedies for private-rights causes of action—such as for trespass, infringement of intellectual property, and unjust enrichment—are not contingent on a plaintiff's allegation of damages beyond the violation of his private legal right. See Brief for Restitution and Remedies Scholars as *Amici Cu-*

riae 6–18; see also *Webb* v. *Portland Mfg. Co.*, 29 F. Cas. 506, 508 (No. 17,322) (Me. 1838) (stating that a legal injury "imports damage in the nature of it" (internal quotation marks omitted)).

Common-law courts, however, have required a further showing of injury for violations of "public rights"—rights that involve duties owed "to the whole community, considered as a community, in its social aggregate capacity." 4 Blackstone *5. Such rights include "free navigation of waterways, passage on public highways, and general compliance with regulatory law." Woolhander & Nelson, 102 Mich. L. Rev., at 693. Generally, only the government had the authority to vindicate a harm borne by the public at large, such as the violation of the criminal laws. See *id.*, at 695–700. Even in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them "some extraordinary damage, beyond the rest of the [community]." 3 Blackstone *220 (discussing nuisance); see also *Commonwealth* v. *Webb*, 27 Va. 726, 729 (Gen. Ct. 1828).* An action to redress a public nuisance, for example, was historically considered an action to vindicate the violation of a public right at common law, lest "every subject in the kingdom" be able to "harass the offender with separate actions." 3 Blackstone *219; see also 4 *id.*, at *167. But if the plaintiff could allege "special damage" as the result of a nuisance, the suit could proceed. The existence of special, individualized damage had the effect of creating a private action for compensatory relief to an otherwise public-rights claim. See 3 *id.*, at *220. Similarly, a plaintiff had to allege individual damage in disputes over the use of public lands. *E. g.*, *Robert Marys's Case*, 9 Co. Rep. 111b, 112b–113a, 77 Eng. Rep. 895, 897–899 (K. B. 1613) (com-

*The well-established exception for *qui tam* actions allows private plaintiffs to sue in the government's name for the violation of a public right. See *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U. S. 765, 773–774 (2000).

moner must establish not only *injuria* [legal injury] but also *damnum* [damage] to challenge another's overgrazing on the commons).

B

These differences between legal claims brought by private plaintiffs for the violation of public and private rights underlie modern standing doctrine and explain the Court's description of the injury-in-fact requirement. "Injury in fact" is the first of three "irreducible" requirements for Article III standing. *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560 (1992). The injury-in-fact requirement often stymies a private plaintiff's attempt to vindicate the infringement of *public* rights. The Court has said time and again that, when a plaintiff seeks to vindicate a public right, the plaintiff must allege that he has suffered a "concrete" injury particular to himself. See *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U. S. 208, 221–223 (1974) (explaining this where plaintiffs sought to enforce the Incompatibility Clause, Art. I, § 6, cl. 2, against Members of Congress holding reserve commissions in the Armed Forces); see also *Lujan*, *supra*, at 572–573 (evaluating standing where plaintiffs sought to enforce the Endangered Species Act); *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 183–184 (2000) (Clean Water Act). This requirement applies with special force when a plaintiff files suit to require an executive agency to "follow the law"; at that point, the citizen must prove that he "has sustained or is immediately in danger of sustaining a direct injury as the result of that [challenged] action and it is not sufficient that he has merely a general interest common to all members of the public." *Ex parte Levitt*, 302 U. S. 633, 634 (1937) (*per curiam*). Thus, in a case where private plaintiffs sought to compel the U. S. Forest Service to follow certain procedures when it regulated "small fire-rehabilitation and timber-salvage projects," we held that "deprivation of a procedural right without some concrete interest that is affected by the

deprivation . . . is insufficient to create Article III standing," even if "accorded by Congress." *Summers* v. *Earth Island Institute*, 555 U. S. 488, 490, 496–497 (2009).

But the concrete-harm requirement does not apply as rigorously when a private plaintiff seeks to vindicate his own private rights. Our contemporary decisions have not required a plaintiff to assert an actual injury beyond the violation of his personal legal rights to satisfy the "injury-in-fact" requirement. See, *e. g.*, *Carey* v. *Piphus*, 435 U. S. 247, 266 (1978) (holding that nominal damages are appropriate when a plaintiff's constitutional rights have been infringed but he cannot show further injury).

The separation-of-powers concerns underlying our public-rights decisions are not implicated when private individuals sue to redress violations of their own private rights. But, when they are implicated, standing doctrine keeps courts out of political disputes by denying private litigants the right to test the abstract legality of government action. See *Schlesinger*, *supra*, at 222. And by limiting Congress' ability to delegate law enforcement authority to private plaintiffs and the courts, standing doctrine preserves executive discretion. See *Lujan*, *supra*, at 577 ("'To permit Congress to convert the undifferentiated public interest in executive officers' compliance with the law into an 'individual right' vindicable in the courts is to permit Congress to transfer from the President to the courts the Chief Executive's most important constitutional duty, to 'take Care that the Laws be faithfully executed' "). But where one private party has alleged that another private party violated his private rights, there is generally no danger that the private party's suit is an impermissible attempt to police the activity of the political branches or, more broadly, that the Legislative Branch has impermissibly delegated law enforcement authority from the Executive to a private individual. See Hessick, Standing, Injury in Fact, and Private Rights, 93 Cornell L. Rev. 275, 317–321 (2008).

C

When Congress creates new private causes of action to vindicate private or public rights, these Article III principles circumscribe federal courts' power to adjudicate a suit alleging the violation of those new legal rights. Congress can create new private rights and authorize private plaintiffs to sue based simply on the violation of those private rights. See *Warth* v. *Seldin*, 422 U. S. 490, 500 (1975). A plaintiff seeking to vindicate a statutorily created private right need not allege actual harm beyond the invasion of that private right. See *Havens Realty Corp.* v. *Coleman*, 455 U. S. 363, 373–374 (1982) (recognizing standing for a violation of the Fair Housing Act); *Tennessee Elec. Power Co.* v. *TVA*, 306 U. S. 118, 137–138 (1939) (recognizing that standing can exist where "the right invaded is a legal right,—one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege"). A plaintiff seeking to vindicate a public right embodied in a federal statute, however, must demonstrate that the violation of that public right has caused him a concrete, individual harm distinct from the general population. See *Lujan*, *supra*, at 578 (noting that, whatever the scope of Congress' power to create new legal rights, "it is clear that in suits against the Government, at least, the concrete injury requirement must remain"). Thus, Congress cannot authorize private plaintiffs to enforce *public* rights in their own names, absent some showing that the plaintiff has suffered a concrete harm particular to him.

II

Given these principles, I agree with the Court's decision to vacate and remand. The Fair Credit Reporting Act creates a series of regulatory duties. Robins has no standing to sue Spokeo, in his own name, for violations of the duties that Spokeo owes to the public collectively, absent some

showing that he has suffered concrete and particular harm. See *supra*, at 346–347. These consumer protection requirements include, for example, the requirement to "post a toll-free telephone number on [Spokeo's] website through which consumers can request free annual file disclosures." App. 23, First Amended Complaint ¶74; see 15 U. S. C. § 1681j; 16 CFR § 610.3(a)(1) (2010).

But a remand is required because one claim in Robins' complaint rests on a statutory provision that could arguably establish a private cause of action to vindicate the violation of a privately held right. Section 1681e(b) requires Spokeo to "follow reasonable procedures to assure maximum possible accuracy of the information *concerning the individual about whom the report relates.*" § 1681e(b) (emphasis added). If Congress has created a private duty owed personally to Robins to protect *his* information, then the violation of the legal duty suffices for Article III injury in fact. If that provision, however, vests any and all consumers with the power to police the "reasonable procedures" of Spokeo, without more, then Robins has no standing to sue for its violation absent an allegation that he has suffered individualized harm. On remand, the Court of Appeals can consider the nature of this claim.

JUSTICE GINSBURG, with whom JUSTICE SOTOMAYOR joins, dissenting.

In the Fair Credit Reporting Act of 1970 (FCRA or Act), 15 U. S. C. § 1681 *et seq.*, Congress required consumer reporting agencies, whenever preparing a consumer report, to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." § 1681e(b). To promote adherence to the Act's procedural requirements, Congress granted adversely affected consumers a right to sue noncomplying reporting agencies. § 1681n (willful noncompliance); § 1681*o*

(negligent noncompliance).[1] Thomas Robins instituted suit against Spokeo, Inc., alleging that Spokeo was a reporting agency governed by the FCRA, and that Spokeo maintains on its Web site an inaccurate consumer report about Robins. App. 13.

In particular, Robins alleged that Spokeo posted "a picture . . . purport[ing] to be an image of Robins [that] was not in fact [of him]," and incorrectly reported that Robins "was in his 50s, . . . married, . . . employed in a professional or technical field, and . . . has children." *Id.*, at 14. Robins further alleged that Spokeo's profile of him continues to misrepresent "that he has a graduate degree, that his economic health is 'Very Strong[,]' and that his wealth level [is in] the 'Top 10%.'" *Ibid.* Spokeo displayed that erroneous information, Robins asserts, when he was "out of work" and "actively seeking employment." *Ibid.* Because of the misinformation, Robins stated, he encountered "[imminent and ongoing] actual harm to [his] employment prospects." *Ibid.*[2] As Robins elaborated on brief, Spokeo's report made him appear overqualified for jobs he might have gained, expectant of a higher salary than employers would be willing to pay, and less mobile because of family responsibilities. See Brief for Respondent 44.

I agree with much of the Court's opinion. Robins, the Court holds, meets the particularity requirement for standing under Article III. See *ante*, at 339–340, 342–343 (remanding only for concreteness inquiry). The Court acknowledges that Congress has the authority to confer rights

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[1] Congress added the right of action for willful violations in 1996 as part of the Consumer Credit Reporting Reform Act, 110 Stat. 3009–426.

[2] Because this case remains at the pleading stage, the court of first instance must assume the truth of Robins' factual allegations. In particular, that court must assume, subject to later proof, that Spokeo is a consumer reporting agency under 15 U. S. C. § 1681a(f) and that, in preparing consumer reports, Spokeo does not employ reasonable procedures to ensure maximum possible accuracy, in violation of the FCRA.

and delineate claims for relief where none existed before. *Ante*, at 341; see *Federal Election Comm'n* v. *Akins*, 524 U. S. 11, 19–20 (1998) (holding that inability to procure information to which Congress has created a right in the Federal Election Campaign Act of 1971 qualifies as concrete injury satisfying Article III's standing requirement); *Public Citizen* v. *Department of Justice*, 491 U. S. 440, 449 (1989) (holding that plaintiff advocacy organizations' inability to obtain information that Congress made subject to disclosure under the Federal Advisory Committee Act "constitutes a sufficiently distinct injury to provide standing to sue"); *Havens Realty Corp.* v. *Coleman*, 455 U. S. 363, 373 (1982) (identifying, as Article III injury, violation of plaintiff's right, secured by the Fair Housing Act, to "truthful information concerning the availability of housing").[3] Congress' connection of procedural requirements to the prevention of a substantive harm, the Court appears to agree, is "instructive and important." *Ante*, at 341; see *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 580 (1992) (KENNEDY, J., concurring in part and concurring in judgment) ("As Government programs and policies become more complex and far reaching, we must be sensitive to the articulation of new rights of action . . . ."); Brief for Restitution and Remedies Scholars as *Amici Curiae* 3 ("Congress cannot authorize individual plaintiffs to enforce generalized rights that belong to the whole public. But Congress can create new individual rights, and it can enact effective remedies for those rights."). See generally Sunstein, Informational Regulation and Informational Standing: *Akins* and Beyond, 147 U. Pa. L. Rev. 613 (1999).

I part ways with the Court, however, on the necessity of a remand to determine whether Robins' particularized in-

[3] Just as the right to truthful information at stake in *Havens Realty Corp.* v. *Coleman*, 455 U. S. 363 (1982), was closely tied to the Fair Housing Act's goal of eradicating racial discrimination in housing, so the right here at stake is closely tied to the FCRA's goal of protecting consumers against dissemination of inaccurate credit information about them.

jury was "concrete." See *ante*, at 342. Judged by what we have said about "concreteness," Robins' allegations carry him across the threshold. The Court's opinion observes that time and again, our decisions have coupled the words "concrete *and* particularized." *Ante*, at 340 (citing as examples, *Susan B. Anthony List* v. *Driehaus*, 573 U. S. 149, 158 (2014); *Summers* v. *Earth Island Institute*, 555 U. S. 488, 493 (2009); *Sprint Communications Co.* v. *APCC Services, Inc.*, 554 U. S. 269, 274 (2008); *Massachusetts* v. *EPA*, 549 U. S. 497, 517 (2007)). True, but true too, in the four cases cited by the Court, and many others, opinions do not discuss the separate offices of the terms "concrete" and "particularized."

Inspection of the Court's decisions suggests that the particularity requirement bars complaints raising generalized grievances, seeking relief that no more benefits the plaintiff than it does the public at large. See, *e. g.*, *Lujan*, 504 U. S., at 573–574 (a plaintiff "seeking relief that no more directly and tangibly benefits him than it does the public at large does not state an Article III case or controversy" (punctuation omitted)); *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 125 (1940) (plaintiffs lack standing because they failed to show injury to "a particular right of their own, as distinguished from the public's interest in the administration of the law"). Robins' claim does not present a question of that character. He seeks redress, not for harm to the citizenry, but for Spokeo's spread of misinformation specifically about him.

Concreteness as a discrete requirement for standing, the Court's decisions indicate, refers to the reality of an injury, harm that is real, not abstract, but not necessarily tangible. See *ante*, at 340; *ante*, at 343 (THOMAS, J., concurring). Illustrative opinions include *Akins*, 524 U. S., at 20 ("[C]ourts will not pass upon abstract, intellectual problems, but adjudicate concrete, living contests between adversaries." (internal quotation marks and alterations omitted)); *Diamond* v. *Charles*, 476 U. S. 54, 67 (1986) (plaintiff's "abstract concern does not substitute for the concrete injury required by Art[i-

cle] III" (internal quotation marks and ellipsis omitted)); *Los Angeles* v. *Lyons*, 461 U. S. 95, 101 (1983) ("Plaintiffs must demonstrate a personal stake in the outcome . . . . Abstract injury is not enough." (internal quotation marks omitted)); *Babbitt* v. *Farm Workers*, 442 U. S. 289, 297–298 (1979) ("The difference between an abstract question and a 'case or controversy' is one of degree, of course, and is not discernable by any precise test. The basic inquiry is whether the conflicting contentions of the parties present a real, substantial controversy between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract." (citation, some internal quotation marks, and ellipsis omitted)); *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 40 (1976) ("organization's abstract concern . . . does not substitute for the concrete injury required by Art. III"); *California Bankers Assn.* v. *Shultz*, 416 U. S. 21, 69 (1974) ("There must be . . . concrete adverseness"; "[a]bstract injury is not enough." (internal quotation marks omitted)); *Railway Mail Assn.* v. *Corsi*, 326 U. S. 88, 93 (1945) (controversy must be "definite and concrete, not hypothetical or abstract"); *Coleman* v. *Miller*, 307 U. S. 433, 460 (1939) (opinion of Frankfurter, J.) ("[I]t [is] not for courts to pass upon . . . abstract, intellectual problems but only . . . concrete, living contest[s] between adversaries call[ing] for the arbitrament of law.").

Robins would not qualify, the Court observes, if he alleged a "bare" procedural violation, *ante*, at 342, one that results in no harm, for example, "an incorrect zip code," *ibid.* Far from an incorrect zip code, Robins complains of misinformation about his education, family situation, and economic status, inaccurate representations that could affect his fortune in the job market. See Brief for Center for Democracy & Technology et al. as *Amici Curiae* 13 (Spokeo's inaccuracies bore on Robins' "ability to find employment by creating the erroneous impression that he was overqualified for the work he was seeking, that he might be unwilling to relocate for a

job due to family commitments, or that his salary demands would exceed what prospective employers were prepared to offer him."); Brief for Restitution and Remedies Scholars as *Amici Curiae* 35 ("An applicant can lose [a] job for being over-qualified; a suitor can lose a woman if she reads that he is married."). The FCRA's procedural requirements aimed to prevent such harm. See 115 Cong. Rec. 2410–2415 (1969). I therefore see no utility in returning this case to the Ninth Circuit to underscore what Robins' complaint already conveys concretely: Spokeo's misinformation "cause[s] actual harm to [his] employment prospects." App. 14.

* * *

For the reasons stated, I would affirm the Ninth Circuit's judgment.

Syllabus

HUSKY INTERNATIONAL ELECTRONICS, INC. *v.* RITZ

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 15–145. Argued March 1, 2016—Decided May 16, 2016

Chrysalis Manufacturing Corp. incurred a debt to petitioner Husky International Electronics, Inc., of nearly $164,000. Respondent Daniel Lee Ritz, Jr., Chrysalis' director and part owner at the time, drained Chrysalis of assets available to pay the debt by transferring large sums of money to other entities Ritz controlled. Husky sued Ritz to recover on the debt. Ritz then filed for Chapter 7 bankruptcy, prompting Husky to file a complaint in Ritz' bankruptcy case, seeking to hold him personally liable and contending that the debt was not dischargeable because Ritz' intercompany-transfer scheme constituted "actual fraud" under the Bankruptcy Code's discharge exceptions. 11 U. S. C. § 523(a)(2)(A).

The District Court held that Ritz was personally liable under state law but also held that the debt was not "obtained by . . . actual fraud" under § 523(a)(2)(A) and thus could be discharged in bankruptcy. The Fifth Circuit affirmed, holding that a misrepresentation from a debtor to a creditor is a necessary element of "actual fraud" and was lacking in this case, because Ritz made no false representations to Husky regarding the transfer of Chrysalis' assets.

Held: The term "actual fraud" in § 523(a)(2)(A) encompasses fraudulent conveyance schemes, even when those schemes do not involve a false representation. Pp. 359–366.

(a) It is sensible to presume that when Congress amended the Bankruptcy Code in 1978 and added to debts obtained by "false pretenses or false representations" an additional bankruptcy discharge exception for debts obtained by "actual fraud," it did not intend the term "actual fraud" to mean the same thing as the already-existing term "false representations." See *United States* v. *Quality Stores, Inc.*, 572 U. S. 141, 148. Even stronger evidence that "actual fraud" encompasses the kind of conduct alleged to have occurred here is found in the phrase's historical meaning. At common law, "actual fraud" meant fraud committed with wrongful intent, *Neal* v. *Clark*, 95 U. S. 704, 709. And the term "fraud" has, since the beginnings of bankruptcy practice, been used to describe asset transfers that, like Ritz' scheme, impair a creditor's ability to collect a debt.

Syllabus

One of the first bankruptcy Acts, the Fraudulent Conveyances Act of 1571, 13 Eliz., ch. 5, identified as "fraud" conveyances made with "[i]ntent to delay hynder or defraude [c]reditors." The degree to which that statute remains embedded in fraud-related laws today, see, *e. g.*, *BFP* v. *Resolution Trust Corporation*, 511 U. S. 531, 540, clarifies that the common-law term "actual fraud" is broad enough to incorporate fraudulent conveyances. The common law also indicates that fraudulent conveyances do not require a misrepresentation from a debtor to a creditor, see *id.*, at 541, as they lie not in dishonestly inducing a creditor to extend a debt but in the acts of concealment and hindrance. Pp. 359–362.

(b) Interpreting "actual fraud" in § 523(a)(2)(A) to encompass fraudulent conveyances would not, as Ritz contends, render duplicative two of § 523's other discharge exceptions, §§ 523(a)(4), (a)(6), given that "actual fraud" captures much conduct not covered by those other provisions. Nor does this interpretation create a redundancy in § 727(a)(2), which is meaningfully different from § 523(a)(2)(A). It is also not incompatible with § 523(a)(2)(A)'s "obtained by" requirement. Even though the transferor of a fraudulent conveyance does not obtain assets or debts through the fraudulent conveyance, the transferee—who, with the requisite intent, also commits fraud—does. At minimum, those debts would not be dischargeable under § 523(a)(2)(A). Finally, reading the phrase "actual fraud" to restrict, rather than expand, the discharge exception's reach would untenably require reading the disjunctive "or" in the phrase "false pretenses, a false representation, or actual fraud" to mean "by." Pp. 362–366.

787 F. 3d 312, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, ALITO, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 366.

Shay Dvoretzky argued the cause for petitioner. With him on the briefs were *Emily J. Kennedy* and *Jeffrey L. Dorrell.*

Sarah E. Harrington argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Stewart*, *Michael S. Raab*, and *Michael Shih.*

Erin E. Murphy argued the cause for respondent. With her on the brief were *Stephen V. Potenza* and *William D. Weber.**

JUSTICE SOTOMAYOR delivered the opinion of the Court.

The Bankruptcy Code prohibits debtors from discharging debts "obtained by . . . false pretenses, a false representation, or actual fraud." 11 U. S. C. § 523(a)(2)(A). The Fifth Circuit held that a debt is "obtained by . . . actual fraud" only if the debtor's fraud involves a false representation to a creditor. That ruling deepened an existing split among the Circuits over whether "actual fraud" requires a false representation or whether it encompasses other traditional forms of fraud that can be accomplished without a false representation, such as a fraudulent conveyance of property made to evade payment to creditors. We granted certiorari to resolve that split, 577 U. S. 971 (2015), and now reverse.

I

Husky International Electronics, Inc., is a Colorado-based supplier of components used in electronic devices. Between 2003 and 2007, Husky sold its products to Chrysalis Manufacturing Corp., and Chrysalis incurred a debt to Husky of $163,999.38. During the same period, respondent Daniel Lee Ritz, Jr., served as a director of Chrysalis and owned at least 30% of Chrysalis' common stock.

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*Briefs of *amici curiae* urging reversal were filed for Bankruptcy Law Professors by *Jerrold J. Ganzfried*, *Barbra Parlin*, *John J. Monaghan*, *Kathleen St. John*, *Robert J. Labate*, and *Richard A. Bixter, Jr.*; and for the National Association of Bankruptcy Trustees by *Robert Radasevich*, *Nicholas M. Miller*, *Steven F. Pflaum*, and *Kevin G. Schneider*.

Briefs of *amici curiae* urging affirmance were filed for the National Association of Consumer Bankruptcy Attorneys by *David R. Kuney* and *Tara Twomey*; for Richard Aaron et al. by *Richard Lieb* and *John Collen*; and for G. Eric Brunstad, Jr., by *Mr. Brunstad*, *pro se*, and *Kate M. O'Keeffe*.

All parties agree that between 2006 and 2007, Ritz drained Chrysalis of assets it could have used to pay its debts to creditors like Husky by transferring large sums of Chrysalis' funds to other entities Ritz controlled. For instance—and Ritz' actions were by no means limited to these examples—Ritz transferred $52,600 to CapNet Risk Management, Inc., a company he owned in full; $121,831 to CapNet Securities Corp., a company in which he owned an 85% interest; and $99,386.90 to Dynalyst Manufacturing Corp., a company in which he owned a 25% interest.

In May 2009, Husky filed a lawsuit against Ritz seeking to hold him personally responsible for Chrysalis' $163,999.38 debt. Husky argued that Ritz' intercompany-transfer scheme was "actual fraud" for purposes of a Texas law that allows creditors to hold shareholders responsible for corporate debt. See Tex. Bus. Orgs. Code Ann. § 21.223(b) (West 2012). In December 2009, Ritz filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Southern District of Texas. Husky then initiated an adversarial proceeding in Ritz' bankruptcy case again seeking to hold Ritz personally liable for Chrysalis' debt. Husky also contended that Ritz could not discharge that debt in bankruptcy because the same intercompany-transfer scheme constituted "actual fraud" under 11 U. S. C. § 523(a)(2)(A)'s exemption to discharge.[1]

The District Court held that Ritz was personally liable for the debt under Texas law, but that the debt was not "obtained by . . . actual fraud" under § 523(a)(2)(A) and could be discharged in his bankruptcy.

The Fifth Circuit affirmed. It did not address whether Ritz was responsible for Chrysalis' debt under Texas law be-

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[1] Husky also alleged that Ritz' debt should be exempted from discharge under two other exceptions, see 11 U. S. C. § 523(a)(4) (excepting debts for fraud "while acting in a fiduciary capacity"); § 523(a)(6) (excepting debts for "willful and malicious injury"), but does not press those claims in this petition.

cause it agreed with the District Court that Ritz did not commit "actual fraud" under § 523(a)(2)(A). Before the Fifth Circuit, Husky argued that Ritz' asset-transfer scheme was effectuated through a series of fraudulent conveyances—or transfers intended to obstruct the collection of debt. And, Husky said, such transfers are a recognizable form of "actual fraud." The Fifth Circuit disagreed, holding that a necessary element of "actual fraud" is a misrepresentation from the debtor to the creditor, as when a person applying for credit adds an extra zero to her income or falsifies her employment history. *In re Ritz*, 787 F. 3d 312, 316 (2015). In transferring Chrysalis' assets, Ritz may have hindered Husky's ability to recover its debt, but the Fifth Circuit found that he did not make any false representations to Husky regarding those assets or the transfers and therefore did not commit "actual fraud."

We reverse. The term "actual fraud" in § 523(a)(2)(A) encompasses forms of fraud, like fraudulent conveyance schemes, that can be effected without a false representation.

II

A

Before 1978, the Bankruptcy Code prohibited debtors from discharging debts obtained by "false pretenses or false representations." § 35(a)(2) (1976 ed.). In the Bankruptcy Reform Act of 1978, Congress added "actual fraud" to that list. 92 Stat. 2590. The prohibition now reads: "A discharge under [Chapters 7, 11, 12, or 13] of this title does not discharge an individual debtor from any debt . . . for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud." § 523(a)(2)(A) (2012 ed.).

When "'Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.'" *United States* v. *Quality Stores, Inc.*, 572 U. S. 141, 148

(2014). It is therefore sensible to start with the presumption that Congress did not intend "actual fraud" to mean the same thing as "a false representation," as the Fifth Circuit's holding suggests. But the historical meaning of "actual fraud" provides even stronger evidence that the phrase has long encompassed the kind of conduct alleged to have occurred here: a transfer scheme designed to hinder the collection of debt.

This Court has historically construed the terms in § 523(a)(2)(A) to contain the "elements that the common law has defined them to include." *Field* v. *Mans*, 516 U. S. 59, 69 (1995). "Actual fraud" has two parts: actual and fraud. The word "actual" has a simple meaning in the context of common-law fraud: It denotes any fraud that "involv[es] moral turpitude or intentional wrong." *Neal* v. *Clark*, 95 U. S. 704, 709 (1878). "Actual" fraud stands in contrast to "implied" fraud or fraud "in law," which describe acts of deception that "may exist without the imputation of bad faith or immorality." *Ibid.* Thus, anything that counts as "fraud" and is done with wrongful intent is "actual fraud."

Although "fraud" connotes deception or trickery generally, the term is difficult to define more precisely. See 1 J. Story, Commentaries on Equity Jurisprudence § 189, p. 221 (6th ed. 1853) (Story) ("Fraud . . . being so various in its nature, and so extensive in its application to human concerns, it would be difficult to enumerate all the instances in which Courts of Equity will grant relief under this head"). There is no need to adopt a definition for all times and all circumstances here because, from the beginning of English bankruptcy practice, courts and legislatures have used the term "fraud" to describe a debtor's transfer of assets that, like Ritz' scheme, impairs a creditor's ability to collect the debt.

One of the first bankruptcy acts, the Statute of 13 Elizabeth, has long been relied upon as a restatement of the law of so-called fraudulent conveyances (also known as "fraudulent transfers" or "fraudulent alienations"). See generally G.

Glenn, The Law of Fraudulent Conveyances 89–92 (1931). That statute, also called the Fraudulent Conveyances Act of 1571, identified as fraud "faigned covenous and fraudulent Feoffmentes Gyftes Gr[a]untes Alienations [and] Conveyaunces" made with "Intent to delaye hynder or defraude Creditors." 13 Eliz., ch. 5. In modern terms, Parliament made it fraudulent to hide assets from creditors by giving them to one's family, friends, or associates. The principles of the Statute of 13 Elizabeth—and even some of its language—continue to be in wide use today. See *BFP* v. *Resolution Trust Corporation*, 511 U. S. 531, 540 (1994) ("The modern law of fraudulent transfers had its origin in the Statute of 13 Elizabeth"); *id.*, at 541 ("Every American bankruptcy law has incorporated a fraudulent transfer provision"); Story § 353, at 393 ("[T]he statute of 13 Elizabeth . . . has been universally adopted in America, as the basis of our jurisprudence on the same subject"); *Boston Trading Group, Inc.* v. *Burnazos*, 835 F. 2d 1504, 1505–1506 (CA1 1987) (Breyer, J.) ("Mass. Gen. Laws ch. 109A, §§ 1–13 . . . is a uniform state law that codifies both common and statutory law stretching back at least to 1571 and the Statute of Elizabeth"). The degree to which this statute remains embedded in laws related to fraud today clarifies that the common-law term "actual fraud" is broad enough to incorporate a fraudulent conveyance.

Equally important, the common law also indicates that fraudulent conveyances, although a "fraud," do not require a misrepresentation from a debtor to a creditor. As a basic point, fraudulent conveyances are not an inducement-based fraud. Fraudulent conveyances typically involve "a transfer to a close relative, a secret transfer, a transfer of title without transfer of possession, or grossly inadequate consideration." *BFP*, 511 U. S., at 540–541 (citing *Twyne's Case*, 3 Co. Rep. 80b, 76 Eng. Rep. 809 (K. B. 1601); O. Bump, Fraudulent Conveyances: A Treatise Upon Conveyances Made by Debtors To Defraud Creditors 31–60 (3d ed. 1882)). In such

cases, the fraudulent conduct is not in dishonestly inducing a creditor to extend a debt. It is in the acts of concealment and hindrance. In the fraudulent conveyance context, therefore, the opportunities for a false representation from the debtor to the creditor are limited. The debtor may have the opportunity to put forward a false representation if the creditor inquires into the whereabouts of the debtor's assets, but that could hardly be considered a defining feature of this kind of fraud.

Relatedly, under the Statute of 13 Elizabeth and the laws that followed, both the debtor and the recipient of the conveyed assets were liable for fraud even though the recipient of a fraudulent conveyance of course made no representation, true or false, to the debtor's creditor. The famous *Twyne's Case*, which this Court relied upon in *BFP*, illustrates this point. See *Twyne's Case*, 76 Eng. Rep., at 823 (convicting Twyne of fraud under the Statute of 13 Elizabeth, even though he was the recipient of a debtor's conveyance). That principle underlies the now-common understanding that a "conveyance which hinders, delays or defrauds creditors shall be void as against [the recipient] unless . . . th[at] party . . . received it in good faith and for consideration." Glenn, Law of Fraudulent Conveyances § 233, at 312. That principle also underscores the point that a false representation has never been a required element of "actual fraud," and we decline to adopt it as one today.

B

Ritz concedes that fraudulent conveyances are a form of "actual fraud,"[2] but contends that 11 U. S. C. § 523(a)(2)(A)'s particular use of the phrase means something else. Ritz' strained reading of the provision finds little support.

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[2] See Tr. of Oral Arg. 30 (JUSTICE KAGAN: "[Y]ou're not contesting that fraudulent conveyance is a form of actual fraud; is that right?" Ms. Murphy: "[Y]es, that's right"); *id.*, at 27 (Ms. Murphy: "[T]o be clear, we don't dispute that fraudulent conveyance is a form of actual fraud").

First, Ritz contends that interpreting "actual fraud" in § 523(a)(2)(A) to encompass fraudulent conveyances would render duplicative two other exceptions to discharge in § 523. Section 523(a)(4) exempts from discharge "any debt . . . for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." And § 523(a)(6) exempts "any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity."

Ritz makes the unremarkable point that the traditional definition of "actual fraud" will cover some of the same conduct as those exceptions: for example, a trustee who fraudulently conveys away his trust's assets. But Ritz' interpretation does not avoid duplication, nor does our interpretation fail to preserve a meaningful difference between § 523(a)(2)(A) and §§ 523(a)(4), (a)(6). Just as a fiduciary who engages in a fraudulent conveyance may find his debt exempted from discharge under either § 523(a)(2)(A) or § 523(a)(4), so too would a fiduciary who engages in one of the fraudulent misrepresentations that form the core of Ritz' preferred interpretation of § 523(a)(2)(A). The same is true for § 523(a)(6). The debtors who commit fraudulent conveyances *and* the debtors who make false representations under § 523(a)(2)(A) could likewise also inflict "willful and malicious injury" under § 523(a)(6). There is, in short, overlap, but that overlap appears inevitable.

And, of course, our interpretation of "actual fraud" in § 523(a)(2)(A) also preserves meaningful distinctions between that provision and §§ 523(a)(4), (a)(6). Section 523(a)(4), for instance, covers only debts for fraud while acting as a fiduciary, whereas § 523(a)(2)(A) has no similar limitation. Nothing in our interpretation alters that distinction. And § 523(a)(6) covers debts "for willful and malicious injury," whether or not that injury is the result of fraud, see *Kawaauhau* v. *Geiger*, 523 U. S. 57, 61 (1998) (discussing injuries resulting from "'intentional torts'"), whereas § 523(a)(2)(A) covers only fraudulent acts. Nothing in our interpre-

tation alters that distinction either. Thus, given the clear differences between these provisions, we see no reason to craft an artificial definition of "actual fraud" merely to avoid narrow redundancies in § 523 that appear unavoidable.

Ritz also says that our interpretation creates redundancy with a separate section of the Bankruptcy Code, § 727(a)(2), which prevents a debtor from discharging all of his debts if, within the year preceding the bankruptcy petition, he "transferred, removed, destroyed, mutilated, or concealed" property "with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property." Although the two provisions could cover some of the same conduct, they are meaningfully different. Section 727(a)(2) is broader than § 523(a)(2)(A) in scope—preventing an offending debtor from discharging all debt in bankruptcy. But it is narrower than § 523(a)(2)(A) in timing—applying only if the debtor fraudulently conveys assets in the year preceding the bankruptcy filing. In short, while § 727(a)(2) is a blunt remedy for actions that hinder the entire bankruptcy process, § 523(a)(2)(A) is a tailored remedy for behavior connected to specific debts.

Ritz' next point of resistance rests on § 523(a)(2)(A)'s requirement that the relevant debt be "for money, property, services, or . . . credit . . . *obtained by* . . . actual fraud." (Emphasis added.) The argument, which the dissent also emphasizes, has two parts: First, it posits that fraudulent conveyances (unlike other forms of actual fraud) cannot be used to "obtai[n]" debt because they function instead to hide valuables that a debtor already possesses. Brief for Respondent 20, 31. There is, the dissent says, no debt at the end of a fraudulent conveyance that could be said to " 'resul[t] from' " or be " 'traceable to' " the fraud. *Post*, at 368 (opinion of THOMAS, J.) (quoting *Field*, 516 U. S., at 61, 64). Second, it urges that "actual fraud" not be interpreted to encompass forms of fraud that are incompatible with the provision's "obtained by" requirement.

It is of course true that the transferor does not "obtai[n]" debts in a fraudulent conveyance. But the recipient of the transfer—who, with the requisite intent, also commits fraud—can "obtai[n]" assets "by" his or her participation in the fraud. See, *e. g.*, *McClellan* v. *Cantrell*, 217 F. 3d 890 (CA 7 2000); see also *supra*, at 362. If that recipient later files for bankruptcy, any debts "traceable to" the fraudulent conveyance, see *Field*, 516 U. S., at 61; *post*, at 368, will be nondischargeable under § 523(a)(2)(A). Thus, at least sometimes a debt "obtained by" a fraudulent conveyance scheme could be nondischargeable under § 523(a)(2)(A). Such circumstances may be rare because a person who receives fraudulently conveyed assets is not necessarily (or even likely to be) a debtor on the verge of bankruptcy,[3] but they make clear that fraudulent conveyances are not wholly incompatible with the "obtained by" requirement.

The dissent presses further still, contending that the phrase "obtained by . . . actual fraud" requires not only that the relevant debts "'resul[t] from'" or be "'traceable to'" fraud but also that they "result from fraud *at the inception of a credit transaction*." *Post*, at 368 (emphasis added). Nothing in the text of § 523(a)(2)(A) supports that additional requirement. The dissent bases its conclusion on this Court's opinion in *Field*, in which the Court noted that certain forms of bankruptcy fraud require a degree of direct reliance by a creditor on an action taken by a debtor. But *Field* discussed such "reliance" only in setting forth the requirements of the form of fraud alleged in that case—namely, fraud perpetrated through a misrepresentation to a creditor. See 516 U. S., at 61. The Court was not establishing a "reli-

[3] Ritz' situation may be unusual in this regard because Husky contends that Ritz was both the transferor and the transferee in his fraudulent conveyance scheme, having transferred Chrysalis assets to other companies he controlled. We take no position on that contention here and leave it to the Fifth Circuit to decide on remand whether the debt to Husky was "obtained by" Ritz' asset-transfer scheme.

ance" requirement for frauds that are not premised on such a misrepresentation.

Finally, Ritz argues that Congress added the phrase "actual fraud" to § 523(a)(2)(A) not to expand the exception's reach, but to restrict it. In Ritz' view, "actual fraud" was inserted as the last item in a disjunctive list—"false pretenses, a false representation, *or* actual fraud"—in order to make clear that the "false pretenses" and "false representation[s]" covered by the provision needed to be intentional. Brief for Respondent 29–31. Ritz asks us, in other words, to ignore what he believes is Congress' "imprudent use of the word 'or,'" *id.*, at 32, and read the final item in the list to modify and limit the others. In essence, he asks us to change the word "or" to "by." That is an argument that defeats itself. We can think of no other example, nor could petitioner point to any at oral argument, in which this Court has attempted such an unusual statutory modification.

* * *

Because we must give the phrase "actual fraud" in § 523(a)(2)(A) the meaning it has long held, we interpret "actual fraud" to encompass fraudulent conveyance schemes, even when those schemes do not involve a false representation. We therefore reverse the judgment of the Fifth Circuit and remand the case for further proceedings consistent with this opinion.

So ordered.

JUSTICE THOMAS, dissenting.

The Bankruptcy Code exempts from discharge "any debt . . . for money, property, [or] services . . . *to the extent obtained by* . . . false pretenses, a false representation, or actual fraud." 11 U. S. C. § 523(a)(2)(A) (emphasis added). The Court holds that "actual fraud" encompasses fraudulent transfer schemes effectuated without any false representation to a creditor and concludes that a debt for goods may

"sometimes" be "obtained by" a fraudulent transfer scheme. *Ante*, at 359, 365. Because § 523(a)(2)(A) does not apply so expansively, I respectfully dissent.

I

In my view, "actual fraud" within the meaning of § 523(a)(2) does not encompass fraudulent transfer schemes. There are two types of fraudulent transfer schemes: "transfers made with actual intent to hinder, delay, or defraud creditors, referred to as actual fraudulent transfers," and "transfers made for less than reasonably equivalent [value] when a debtor was in financial trouble, [which is] referred to as constructive fraudulent transfers." 2 Bankruptcy Law Manual § 9A:29, p. 333 (5th ed. 2015). I do not quibble with the majority's conclusion that the *common-law* definition of "actual fraud" included fraudulent transfers. *Ante*, at 360–362. And I agree that, generally, we should give a common-law term of art its established common-law meaning. *Ante*, at 360. Nevertheless, the "general rule that a common-law term of art should be given its established common-law meaning" gives way "where that meaning does not fit." *United States* v. *Castleman*, 572 U. S. 157, 163 (2014) (internal quotation marks omitted). Ultimately, "[s]tatutory language must be read in context and a phrase gathers meaning from the words around it." *Jones* v. *United States*, 527 U. S. 373, 389 (1999) (internal quotation marks omitted). In my view, context dictates that "actual fraud" ordinarily does not include fraudulent transfers because "that meaning does not fit" with the rest of § 523(a)(2). *Castleman*, *supra*, at 163 (internal quotation marks omitted).

Section 523(a)(2) covers only situations in which "money, property, [or] services" are "obtained by . . . actual fraud" and result in a debt. See *Cohen* v. *de la Cruz*, 523 U. S. 213, 218 (1998). The statutory phrase "obtained by" is an important limitation on the reach of the provision. Section 523(a)(2)(A) applies only when the fraudulent conduct occurs

at the *inception of the debt*, *i. e.*, when the debtor commits a fraudulent act to induce the creditor to part with his money, property, services, or credit. The logical conclusion then is that "actual fraud"—as it is used in the statute—covers only those situations in which some sort of fraudulent conduct caused the creditor to enter into a transaction with the debtor. A fraudulent transfer generally does not fit that mold, unless, perhaps, the fraudulent transferor and the fraudulent transferee conspired to fraudulently drain the assets of the creditor. But the fraudulent transfer here, like all but the rarest fraudulent transfers, did not trick the creditor into selling his goods to the buyer, Chrysalis Manufacturing Corporation. It follows that the goods that resulted in the debt here were not "obtained by" actual fraud. § 523(a)(2)(A).

A

I reach this conclusion based on the plain meaning of the phrase "obtained by," which has an "inherent" "element of causation," and refers to those debts "resulting from" or "traceable to" fraud. *Field* v. *Mans*, 516 U. S. 59, 61, 64, 66 (1995). As I have stated, "in order for a creditor to establish that a debt is not dischargeable, he must demonstrate that there is a causal nexus between the fraud and the debt." *Archer* v. *Warner*, 538 U. S. 314, 325 (2003) (dissenting opinion) (relying on *Field*, *supra*, at 61, 64, and *Cohen*, *supra*, at 218). There is also "[n]o . . . doub[t] that some degree of reliance is required to satisfy th[is] element of causation." *Field*, 516 U. S., at 66. The upshot of the phrase "obtained by" is that § 523(a)(2) covers only those debts that result from fraud at the inception of a credit transaction. Such a debt caused by fraud necessarily "*follows* a transfer of value or extension of credit induced by falsity or fraud." *Ibid.* (emphasis added).

Bankruptcy treatises confirm that "[t]he phrase 'to the extent obtained by' is properly read as meaning 'obtained from' the creditor." 3 W. Norton & W. Norton, Bankruptcy Law

and Practice § 57:15, p. 57–35 (3d ed. 2015). The "term 'by' refers to the manner in which such money, property, or services is obtained and the creditor defrauded." *Ibid.* According to Collier on Bankruptcy, to invoke § 523(a)(2)(A) based on "actual fraud," a creditor "must establish" that he "justifiably relied" on the debtor's "representation," which the debtor "knew to be false" and made "with the intent and purpose of deceiving the" creditor and that the creditor "sustained a loss or damage as the proximate consequence." 4 Collier on Bankruptcy ¶523.08[1][e], p. 523–47 (A. Resnick & H. Sommer eds., 16th ed. 2015). Norton Bankruptcy Law and Practice is in accord: Section 523(a)(2)(A) requires a "misrepresentation," "knowledge of falsity," "intent to defraud," "justifiable reliance," and "resulting damage." 3 Norton, *supra*, § 57:15, at 57–33 to 57–34.

B

Applying those principles here, Husky cannot invoke § 523(a)(2)(A) to except the debt owed to it from discharge because, ordinarily, it would be nonsensical to say that a fraudulent transfer created the debt at issue. As the majority notes, the debt at issue did not originate from any transaction between Ritz and Husky. *Ante*, at 357–358. Instead, Husky sold goods to Chrysalis, a company that Ritz financially controlled. *Ante*, at 357. In turn, Chrysalis—not Ritz—incurred a debt to Husky of $163,999.38 for the goods. *Ibid.* As the Bankruptcy Court found, there is no evidence that Ritz made "any oral or written representations to Husky inducing Husky to enter into a contract with Chrysalis." *In re Ritz*, 459 B. R. 623, 628 (SD Tex. 2011). In fact, the only communication between Ritz and Husky occurred after Husky and Chrysalis entered into the contract and after Husky had shipped the goods to Chrysalis. *Ibid.* The Bankruptcy Court also found that there was no evidence that Ritz transferred the funds to avoid Chrysalis' obligations to pay the debt it owed to Husky—an unsecured creditor. *Id.*,

at 635. Because Husky does not contend that Ritz fraudulently induced it to sell goods to Chrysalis and cannot show that the constructive fraudulent conveyance had anything to do with its decision to contract with Chrysalis, Husky has not established that § 523(a)(2)(A) covers any debt owed to it.

II

The majority reaches the opposite conclusion and holds that § 523(a)(2) may prevent an individual debtor from obtaining a discharge even if (1) the debtor makes no false representation to the creditor, (2) the creditor does not rely on any of the debtor's actions or inactions, and (3) there was no actual fraudulent conveyance at the inception of the credit transaction between the creditor and the debtor. *Ante*, at 361–362, 365. It does so by giving new meaning to the phrase "obtained by" in cases involving fraudulent transfers, disregarding our case law, and second-guessing Congress' choices. *Ante*, at 365.

The majority admits that a transferor "does not 'obtai[n]' debts in a fraudulent conveyance," but contends that "the recipient of the transfer—who, with the requisite intent, also commits fraud—can 'obtain' assets 'by' his or her participation in the fraud." *Ibid.* (brackets omitted). "If that recipient later files for bankruptcy, any debts traceable to the fraudulent conveyance," the majority states, "will be nondischargeable under § 523(a)(2)(A)." *Ibid.* (internal quotation marks omitted). The majority thus holds that "at least sometimes a debt 'obtained by' a fraudulent conveyance scheme could be nondischargeable under § 523(a)(2)(A)." *Ibid.* But § 523(a)(2)(A) does not exempt from discharge any debts "traceable to the fraudulent conveyance." Instead, § 523(a)(2)(A) exempts from discharge "any debt for" goods that are "obtained by" actual fraud. And, as explained, it is extremely rare that a creditor will use an actual fraudulent transfer scheme to induce a creditor to depart with property, services, money, or credit. See *supra*, at 367–369.

In reaching its conclusion, the majority also disregards this Court's precedents interpreting § 523(a)(2)(A), presumably because those cases did not involve fraudulent transfers. The majority cites *Field* only for the elemental proposition that this Court "has historically construed the terms in § 523(a)(2)(A) to contain the 'elements that the common law has defined them to include.'" *Ante*, at 360 (quoting 516 U. S., at 69). The majority omits *Field*'s conclusion that one of the elements of "actual fraud" in § 523(a)(2)(A) is "*reliance*" on some sort of false statement, misrepresentation, or omission. *Id.*, at 70 (emphasis added). To be sure, like the rest of our cases interpreting § 523(a)(2)(A), *Field* involves a false statement. But that factual distinction is immaterial. Cases like *Field*—which interpret the phrase "obtained by"—are as relevant in cases that involve false statements and misrepresentations as they are in a case like this one. After all, "obtained by" modifies false pretenses, false representations, and actual fraud in § 523(a)(2)(A). And in no case has this Court suggested—never mind held—that § 523(a)(2)(A) may apply to circumstances in which there was no false statement, misrepresentation, or omission when the debt was first obtained.

The majority ostensibly creates a new definition of "obtained by" because it thinks that this move is necessary to avoid rendering "actual fraud" superfluous. See *ante*, at 359–360, 363–364. Not so. Actual fraud is broader than false pretenses or false representations, and "consists of any deceit, artifice, trick, or design involving direct and active operation of the mind, used to circumvent and cheat another." 4 Collier on Bankruptcy ¶523.08[1][e], at 523–46. "Unlike false pretenses or false representation, actual fraud, within the meaning of the dischargeability exception, can focus on a promise of future performance made with intent not to perform." 2F Bankruptcy Service § 27:211, p. 59 (Supp. Jan. 2016). In this way, "the actual fraud" exception "permit[s] the courts to except from discharge debts incurred without intent to

repay, or by use of other false implied representations, without the need to stretch the false pretenses and false representations language." Zaretsky, The Fraud Exception to Discharge Under the New Bankruptcy Code, 53 Am. Bankruptcy L. J. 253, 257 (1979). Some courts, for example, have held that "a debtor commits actual fraud within the meaning of § 523(a)(2)(A) when he incurs credit card debt with no actual, subjective intent to repay it," but has not made an affirmatively false representation or engaged in false pretense. *In re Morrow*, 488 B. R. 471, 479–480 (Bkrtcy. Ct. ND Ga. 2012); see also, *e. g.*, *In re Alam*, 314 B. R. 834, 841 (Bkrtcy. Ct. ND Ga. 2004). Defining actual fraud this way does not render that term superfluous and—unlike the majority's definition—does not render "obtained by" a nullity.

Regardless, even if there is some overlap between the definitions of "false pretenses," "false representations," and "actual fraud," "[r]edundancies across statutes are not unusual events in drafting." *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253 (1992). "[T]he canon against surplusage assists only where a competing interpretation gives effect to every clause and word of a statute." *Marx* v. *General Revenue Corp.*, 568 U. S. 371, 385 (2013) (internal quotation marks omitted). "But, in this case, no interpretation of [§ 523(a)(2)(A)] gives effect to every word." *Ibid.* Under either my reading or the majority's reading, "actual fraud" is broader than and subsumes "false pretenses" and "false representations." Accordingly, that "actual fraud" may introduce some redundancy in the statute is not dispositive.

At bottom, the majority's attempt to broaden § 523(a)(2)(A) to cover fraudulent transfers impermissibly second-guesses Congress' choices. When Congress wants to stop a debtor from discharging a debt that he has concealed through a fraudulent transfer scheme, it ordinarily says so. See § 727(a)(2) (stating that a court shall grant the debtor a discharge unless the debtor engages in an actual fraudulent transfer scheme within a certain time of filing a bankruptcy

petition). If Congress wanted § 523(a)(2)(A) to cover fraudulent transfer situations, "it would have spoken more clearly to that effect." *Staples* v. *United States*, 511 U. S. 600, 620 (1994). Ultimately, "it is not for us to substitute our view of policy for the legislation which has been passed by Congress." *Florida Dept. of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U. S. 33, 52 (2008) (ellipsis and internal quotation marks omitted).

* * *

The majority today departs from the plain language of § 523(a)(2)(A), as interpreted by our precedents. Because I find no support for the Court's conclusion in the text of the Bankruptcy Code, I respectfully dissent.

Syllabus

MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. *v.* MANNING ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 14–1132. Argued December 1, 2015—Decided May 16, 2016

Respondent Greg Manning held over two million shares of stock in Escala Group, Inc. He claims that he lost most of his investment when the share price plummeted after petitioners, Merrill Lynch and other financial institutions (collectively, Merrill Lynch), devalued Escala through "naked short sales" of its stock. Unlike a typical short sale, where a person borrows stock from a broker, sells it to a buyer on the open market, and later purchases the same number of shares to return to the broker, the seller in a "naked" short sale does not borrow the stock he puts on the market, and so never delivers the promised shares to the buyer. This practice, which can injure shareholders by driving down a stock's price, is regulated by the Securities and Exchange Commission's Regulation SHO, which prohibits short sellers from intentionally failing to deliver securities, thereby curbing market manipulation.

Manning and other former Escala shareholders (collectively, Manning) filed suit in New Jersey state court, alleging that Merrill Lynch's actions violated New Jersey law. Though Manning chose not to bring any claims under federal securities laws or rules, his complaint referred explicitly to Regulation SHO, cataloging past accusations against Merrill Lynch for flouting its requirements and suggesting that the transactions at issue had again violated the regulation. Merrill Lynch removed the case to Federal District Court, asserting federal jurisdiction on two grounds. First, it invoked the general federal question statute, 28 U. S. C. § 1331, which grants district courts jurisdiction of "all civil actions arising under" federal law. It also invoked § 27 of the Securities Exchange Act of 1934 (Exchange Act), which grants federal district courts exclusive jurisdiction "of all suits in equity and actions at law brought to enforce any liability or duty created by [the Exchange Act] or the rules or regulations thereunder." 15 U. S. C. § 78aa(a). Manning moved to remand the case to state court, arguing that neither statute gave the federal court authority to adjudicate his state-law claims. The District Court denied his motion, but the Third Circuit reversed. The court first decided that § 1331 did not confer jurisdiction, because Manning's claims all arose under state law and did not necessarily raise any federal issues. Nor was the District Court the appropriate forum under § 27 of the Exchange Act, which, the court held, covers only those

cases that would satisfy § 1331's "arising under" test for general federal jurisdiction.

Held: The jurisdictional test established by § 27 is the same as § 1331's test for deciding if a case "arises under" a federal law. Pp. 380–393.

(a) Section 27's text more readily supports this meaning than it does the parties' two alternatives. Merrill Lynch argues that § 27's plain language requires an expansive rule: Any suit that either explicitly or implicitly asserts a breach of an Exchange Act duty is "brought to enforce" that duty even if the plaintiff seeks relief solely under state law. Under the natural reading of that text, however, § 27 confers federal jurisdiction when an action is commenced in order to give effect to an Exchange Act requirement. The "brought to enforce" language thus stops short of embracing any complaint that happens to mention a duty established by the Exchange Act. Meanwhile, Manning's far more restrictive interpretation—that a suit is "brought to enforce" only if it is brought directly under that statute—veers too far in the opposite direction. Instead, § 27's language is best read to capture both suits brought under the Exchange Act and the rare suit in which a state-law claim rises and falls on the plaintiff's ability to prove the violation of a federal duty. An existing jurisdictional test well captures both of these classes of suits "brought to enforce" such a duty: 28 U. S. C. § 1331's provision of federal jurisdiction of all civil actions "arising under" federal law. Federal jurisdiction most often attaches when federal law creates the cause of action asserted, but it may also attach when the state-law claim "necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance" of federal and state power. *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Mfg.*, 545 U. S. 308, 314. Pp. 380–385.

(b) This Court's precedents interpreting the term "brought to enforce" have likewise interpreted § 27's jurisdictional grant as coextensive with the Court's construction of § 1331's "arising under" standard. See *Pan American Petroleum Corp.* v. *Superior Court of Del. for New Castle Cty.*, 366 U. S. 656; *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U. S. 367. Pp. 385–389.

(c) Construing § 27, consistent with both text and precedent, to cover suits that arise under the Exchange Act serves the goals the Court has consistently underscored in interpreting jurisdictional statutes. It gives due deference to the important role of state courts. And it promotes "administrative simplicity[, which] is a major virtue in a jurisdictional statute." *Hertz Corp.* v. *Friend*, 559 U. S. 77, 94. Both judges and litigants are familiar with the "arising under" standard and how it works, and that test generally provides ready answers to jurisdictional questions. Pp. 389–393.

772 F. 3d 158, affirmed.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, and ALITO, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, in which SOTOMAYOR, J., joined, *post*, p. 393.

Jonathan D. Hacker argued the cause for petitioners. With him on the briefs were *Walter Dellinger*, *Deanna M. Rice*, *Andrew J. Frackman*, *Abby F. Rudzin*, *Anton Metlitsky*, *Brad M. Elias*, *Thomas R. Curtin*, *David G. Cabrales*, *W. Scott Hastings*, *Stephen J. Senderowitz*, *Steven L. Merouse*, *Kurt A. Kappes*, *David E. Sellinger*, *Michael G. Shannon*, *Andrew B. Clubok*, *Susan E. Engel*, *Beth A. Williams*, *Jeffrey M. Gould*, and *William H. Trousdale*.

Peter K. Stris argued the cause for respondents. With him on the brief were *Brendan S. Maher*, *Daniel L. Geyser*, *Radha A. Pathak*, *Shaun P. Martin*, *John A. Schepisi*, and *Gregory M. Dexter*.*

JUSTICE KAGAN delivered the opinion of the Court.

Section 27 of the Securities Exchange Act of 1934 (Exchange Act), 48 Stat. 992, as amended, 15 U. S. C. § 78a *et seq.*, grants federal district courts exclusive jurisdiction "of all suits in equity and actions at law brought to enforce any

*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America by *Matthew T. Martens*, *John Byrnes*, and *Kate Comerford Todd*; for the Interstate Natural Gas Association of America by *David W. Elrod* and *Worthy Walker*; for NASDAQ, Inc., et al. by *Douglas R. Cox*, *Scott P. Martin*, *Douglas W. Henkin*, and *Evan A. Young*; for the Natural Gas Supply Association et al. by *Melvin A. Brosterman*, *David J. Kahne*, *Daniel R. Simon*, and *Alan Z. Yudkowsky*; and for the Securities Industry and Financial Markets Association by *Brent J. McIntosh*, *Jeffrey B. Wall*, *Robert J. Giuffra, Jr.*, *Richard C. Pepperman II*, and *Kevin Carroll*.

Briefs of *amici curiae* urging affirmance were filed for AARP by *Barbara Jones* and *Laurie McCann*; for the North American Securities Administrators Association by *David T. Goldberg* and *Daniel R. Ortiz*; and for Public Citizen, Inc., by *Scott L. Nelson* and *Allison M. Zieve*.

liability or duty created by [the Exchange Act] or the rules or regulations thereunder." § 78aa(a). We hold today that the jurisdictional test established by that provision is the same as the one used to decide if a case "arises under" a federal law. See 28 U. S. C. § 1331.

I

Respondent Greg Manning held more than two million shares of stock in Escala Group, Inc., a company traded on the NASDAQ. Between 2006 and 2007, Escala's share price plummeted and Manning lost most of his investment. Manning blames petitioners, Merrill Lynch and several other financial institutions (collectively, Merrill Lynch), for devaluing Escala during that period through "naked short sales" of its stock.

A typical short sale of a security is one made by a borrower, rather than an owner, of stock. In such a transaction, a person borrows stock from a broker, sells it to a buyer on the open market, and later purchases the same number of shares to return to the broker. The short seller's hope is that the stock price will decline between the time he sells the borrowed shares and the time he buys replacements to pay back his loan. If that happens, the seller gets to pocket the difference (minus associated transaction costs).

In a "naked" short sale, by contrast, the seller has not borrowed (or otherwise obtained) the stock he puts on the market, and so never delivers the promised shares to the buyer. See "Naked" Short Selling Antifraud Rule, Securities and Exchange Commission (SEC or Commission) Release No. 34–58774, 73 Fed. Reg. 61666 (2008). That practice (beyond its effect on individual purchasers) can serve "as a tool to drive down a company's stock price"—which, of course, injures shareholders like Manning. *Id.*, at 61670. The SEC regulates such short sales at the federal level: The Commission's Regulation SHO, issued under the Exchange Act, prohibits short sellers from intentionally failing to deliver secu-

rities and thereby curbs market manipulation. See 17 CFR §§ 242.203–242.204 (2015).

In this lawsuit, Manning (joined by six other former Escala shareholders) alleges that Merrill Lynch facilitated and engaged in naked short sales of Escala stock, in violation of New Jersey law. His complaint asserts that Merrill Lynch participated in "short sales at times when [it] neither possessed, nor had any intention of obtaining[,] sufficient stock" to deliver to buyers. App. to Pet. for Cert. 57a, Amended Complaint ¶39. That conduct, Manning charges, contravened provisions of the New Jersey Racketeer Influenced and Corrupt Organizations Act (RICO), New Jersey Criminal Code, and New Jersey Uniform Securities Law; it also, he adds, ran afoul of the New Jersey common law of negligence, unjust enrichment, and interference with contractual relations. See *id.*, at 82a–101a, ¶¶88–161. Manning chose not to bring any claims under federal securities laws or rules. His complaint, however, referred explicitly to Regulation SHO, both describing the purposes of that rule and cataloging past accusations against Merrill Lynch for flouting its requirements. See *id.*, at 51a–54a, ¶¶28–30; 75a–82a, ¶¶81–87. And the complaint couched its description of the short selling at issue here in terms suggesting that Merrill Lynch had again violated that regulation, in addition to infringing New Jersey law. See *id.*, at 57a–59a, ¶¶39–43.

Manning brought his complaint in New Jersey state court, but Merrill Lynch removed the case to Federal District Court. See 28 U. S. C. § 1441 (allowing removal of any civil action of which federal district courts have original jurisdiction). Merrill Lynch asserted federal jurisdiction on two grounds. First, it invoked the general federal question statute, § 1331, which grants district courts jurisdiction of "all civil actions arising under" federal law. Second, it maintained that the suit belonged in federal court by virtue of § 27 of the Exchange Act. That provision, in relevant part, grants district courts exclusive jurisdiction of "all suits in

equity and actions at law brought to enforce any liability or duty created by [the Exchange Act] or the rules and regulations thereunder." 15 U. S. C. § 78aa(a). Manning moved to remand the case to state court, arguing that neither statute gave the federal court authority to adjudicate his collection of state-law claims. The District Court denied his motion. See No. 12–4466 (D NJ, Mar. 18, 2013), App. to Pet. for Cert. 24a–38a.

The Court of Appeals for the Third Circuit reversed, ordering a remand of the case to state court. See 772 F. 3d 158 (2014). The Third Circuit first decided that the federal question statute, 28 U. S. C. § 1331, did not confer jurisdiction of the suit, because all Manning's claims were "brought under state law" and none "necessarily raised" a federal issue. 772 F. 3d, at 161, 163. Nor, the court held, did § 27 of the Exchange Act make the district court the appropriate forum. Relying on this Court's construction of a nearly identical jurisdictional provision, the Court of Appeals found that § 27 covers only those cases involving the Exchange Act that would satisfy the "arising under" test of the federal question statute. See *id.*, at 166–167 (citing *Pan American Petroleum Corp.* v. *Superior Court of Del. for New Castle Cty.*, 366 U. S. 656 (1961)). Because the District Court lacked jurisdiction of Manning's suit under § 1331, so too it was not the exclusive forum under § 27.

Merrill Lynch sought this Court's review solely as to whether § 27 commits Manning's case to federal court. See Pet. for Cert. i. Because of a Circuit split about that provision's meaning,[1] we granted certiorari. 576 U. S. 1083 (2015). We now affirm.

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[1] Compare 772 F. 3d 158 (CA3 2014) (case below) with *Barbara* v. *New York Stock Exchange, Inc.*, 99 F. 3d 49, 55 (CA2 1996) (construing § 27 more narrowly), *Sparta Surgical Corp.* v. *National Assn. of Securities Dealers, Inc.*, 159 F. 3d 1209, 1211–1212 (CA9 1998) (construing § 27 more broadly), and *Hawkins* v. *National Assn. of Securities Dealers, Inc.*, 149 F. 3d 330, 331–332 (CA5 1998) (*per curiam*) (same).

II

Like the Third Circuit, we read § 27 as conferring exclusive federal jurisdiction of the same suits as "aris[e] under" the Exchange Act pursuant to the general federal question statute. See 28 U. S. C. § 1331. The text of § 27 more readily supports that meaning than it does either of the parties' two alternatives. This Court's precedents interpreting identical statutory language positively compel that conclusion. And the construction fits with our practice of reading jurisdictional laws, so long as consistent with their language, to respect the traditional role of state courts in our federal system and to establish clear and administrable rules.

A

Section 27, as noted earlier, provides federal district courts with exclusive jurisdiction "of all suits in equity and actions at law brought to enforce any liability or duty created by [the Exchange Act] or the rules and regulations thereunder." 15 U. S. C. § 78aa(a); see *supra*, at 378–379.[2] Much the same wording appears in nine other federal jurisdictional provisions—mostly enacted, like § 27, as part of New Deal-era regulatory statutes.[3]

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[2] Section 27 also grants federal courts exclusive jurisdiction of "violations of [the Exchange Act] or the rules and regulations thereunder." 15 U. S. C. § 78aa(a). Manning argues that the "violations" language applies only to criminal proceedings and SEC enforcement actions. See Brief for Respondents 28. Merrill Lynch, although not conceding that much, believes the "violations" clause irrelevant here because, in private suits for damages, it goes no further than the "brought to enforce" language quoted in the text. See Reply Brief 1, n. 1. Given that both parties have thus taken the "violations" language off the table, we do not address its meaning.

[3] See Securities Act of 1933, 15 U. S. C. § 77v(a); Federal Power Act of 1935, 16 U. S. C. § 825p; Connally Hot Oil Act of 1935, 15 U. S. C. § 715i(c); Natural Gas Act of 1938, 15 U. S. C. § 717u; Trust Indenture Act of 1939, 15 U. S. C. § 77vvv(b); Investment Company Act of 1940, 15 U. S. C. § 80a–43; Investment Advisers Act of 1940, 15 U. S. C. § 80b–14(a); International

Merrill Lynch argues that the "plain, unambiguous language" of § 27 requires an expansive understanding of its scope. Brief for Petitioners 23. Whenever (says Merrill Lynch) a plaintiff's complaint either explicitly or implicitly "assert[s]" that "the defendant breached an Exchange Act duty," then the suit is "brought to enforce" that duty and a federal court has exclusive jurisdiction. *Id.*, at 22; Reply Brief 10–11; see Tr. of Oral Arg. 7–8 (confirming that such allegations need not be express). That is so, Merrill Lynch contends, even if the plaintiff, as in this case, brings only state-law claims in his complaint—that is, seeks relief solely under state law. See Reply Brief 3–6. And it is so, Merrill Lynch continues, even if the plaintiff can prevail on those claims without proving that the alleged breach of an Exchange Act duty—here, the violation of Regulation SHO—actually occurred. See *id.*, at 7–13; Tr. of Oral Arg. 3 ("[T]he words 'brought to enforce' [do not focus] on what the court would necessarily have to decide").

But a natural reading of § 27's text does not extend so far. "Brought" in this context means "commenced," Black's Law Dictionary 254 (3d ed. 1933); "to" is a word "expressing purpose [or] consequence," The Concise Oxford Dictionary 1288 (1931); and "enforce" means "give force [or] effect to," 1 Webster's New International Dictionary of the English Language 725 (1927). So § 27 confers federal jurisdiction when an action is commenced in order to give effect to an Exchange Act requirement. That language, in emphasizing what the suit is designed to accomplish, stops short of embracing any complaint that happens to mention a duty established by the Exchange Act. Consider, for example, a simple state-law action for breach of contract, in which the plaintiff alleges, for atmospheric reasons, that the defendant's conduct also violated the Exchange Act—or still less, that the defendant is a bad actor who infringed that statute

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Wheat Agreement Act of 1949, 7 U. S. C. § 1642(e); Interstate Land Sales Full Disclosure Act of 1968, 15 U. S. C. § 1719.

on another occasion. On Merrill Lynch's view, § 27 would cover that suit; indeed, Merrill Lynch points to just such incidental assertions as the basis for federal jurisdiction here. See Brief for Petitioners 20–21; *supra*, at 378. But that hypothetical suit is "brought to enforce" state contract law, not the Exchange Act—because the plaintiff can get all the relief he seeks just by showing the breach of an agreement, without proving any violation of federal securities law. The suit, that is, can achieve all it is supposed to even if issues involving the Exchange Act never come up.

Critiquing Merrill Lynch's position on similar grounds, Manning proposes a far more restrictive interpretation of § 27's language—one going beyond what he needs to prevail. See Brief for Respondents 27–33. According to Manning, a suit is "brought to enforce" the Exchange Act's duties or liabilities only if it is brought directly under that statute—that is, only if the claims it asserts (and not just the duties it means to vindicate) are created by the Exchange Act. On that view, everything depends (as Justice Holmes famously said in another jurisdictional context) on which law "creates the cause of action." *American Well Works Co.* v. *Layne & Bowler Co.*, 241 U. S. 257, 260 (1916). If a complaint asserts a right of action deriving from the Exchange Act (or an associated regulation), the suit must proceed in federal court. But if, as here, the complaint brings only state-created claims, then the case belongs in a state forum. And that is so, Manning claims, even if—contrary to what the Third Circuit held below—the success of the state claim necessarily hinges on proving that the defendant breached an Exchange Act duty. See Brief for Respondents 31.

Manning's view of the text's requirements, although better than Merrill Lynch's, veers too far in the opposite direction. There is no doubt, as Manning says, that a suit asserting an Exchange Act cause of action fits within § 27's scope: Bringing such a suit is the prototypical way of enforcing an Exchange Act duty. But it is not the only way. On rare occa-

sions, as just suggested, a suit raising a state-law claim rises or falls on the plaintiff's ability to prove the violation of a federal duty. See, *e. g., Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Mfg.*, 545 U. S. 308, 314–315 (2005); *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180, 201 (1921). If in that manner, a state-law action necessarily depends on a showing that the defendant breached the Exchange Act, then that suit could also fall within § 27's compass. Suppose, for example, that a state statute simply makes illegal "any violation of the Exchange Act involving naked short selling." A plaintiff seeking relief under that state law must undertake to prove, as the cornerstone of his suit, that the defendant infringed a requirement of the federal statute. (Indeed, in this hypothetical, that is the plaintiff's *only* project.) Accordingly, his suit, even though asserting a state-created claim, is also "brought to enforce" a duty created by the Exchange Act.

An existing jurisdictional test well captures both classes of suits "brought to enforce" such a duty. As noted earlier, 28 U. S. C. § 1331 provides federal jurisdiction of all civil actions "arising under" federal law. See *supra*, at 378. This Court has found that statutory term satisfied in either of two circumstances. Most directly, and most often, federal jurisdiction attaches when federal law creates the cause of action asserted. That set of cases is what Manning highlights in offering his view of § 27. But even when "a claim finds its origins" in state law, there is "a special and small category of cases in which arising under jurisdiction still lies." *Gunn* v. *Minton*, 568 U. S. 251, 258 (2013) (internal quotation marks omitted). As this Court has explained, a federal court has jurisdiction of a state-law claim if it "necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance" of federal and state power. *Grable*, 545 U. S., at 314; see *Gunn*, 568 U. S., at 258 (framing the same standard as a four-part test).

That description typically fits cases, like those described just above, in which a state-law cause of action is "brought to enforce" a duty created by the Exchange Act because the claim's very success depends on giving effect to a federal requirement. Accordingly, we agree with the court below that § 27's jurisdictional test matches the one we have formulated for § 1331, as applied to cases involving the Exchange Act. If (but only if) such a case meets the "arising under" standard, § 27 commands that it go to federal court.[4]

Merrill Lynch objects that our rule construes "completely different language"—*i. e.*, the phrases "arising under" and

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[4] The concurrence adopts a slightly different approach, placing in federal court Exchange Act claims plus *all* state-law claims necessarily raising an Exchange Act issue. See *post*, at 394–396 (THOMAS, J., concurring in judgment). In other words, the concurrence would not ask, as the "arising under" test does, whether the federal issue embedded in such a state-law claim is also substantial, actually disputed, and capable of resolution in federal court without disrupting the congressionally approved federal-state balance. See *post*, at 398–399; *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Mfg.*, 545 U. S. 308, 314 (2005). But this Court has not construed any jurisdictional statute, whether using the words "brought to enforce" or "arising under" (or for that matter, any other), to draw the concurrence's line. For as long as we have contemplated exercising federal jurisdiction over state-law claims necessarily raising federal issues, we have inquired as well into whether those issues are "really and substantially" disputed. See, *e. g.*, *Hopkins* v. *Walker*, 244 U. S. 486, 489 (1917); *Shulthis* v. *McDougal*, 225 U. S. 561, 569 (1912). And similarly, we have long emphasized the need in such circumstances to make "sensitive judgments about congressional intent, judicial power, and the federal system." *Merrell Dow Pharmaceuticals Inc.* v. *Thompson*, 478 U. S. 804, 810 (1986). At this late juncture, we see no virtue in trying to pull apart these interconnected strands of necessity and substantiality-plus. Indeed, doing so here—and thus creating a gap between our "brought to enforce" and "arising under" standards—would conflict with this Court's precedent and undermine important goals of interpreting jurisdictional statutes. See *infra*, at 385–389 (discussing our prior decisions equating the two tests), 389–393 (highlighting the need to respect state courts and the benefits of using a single, time-tested standard).

"brought to enforce" in § 1331 and § 27, respectively—"to mean exactly the same thing." Reply Brief 7. We cannot deny that point. But we think it far less odd than Merrill Lynch does. After all, the test for § 1331 jurisdiction is not grounded in that provision's particular phrasing. This Court has long read the words "arising under" in Article III to extend quite broadly, "to all cases in which a federal question is 'an ingredient' of the action." *Merrell Dow Pharmaceuticals Inc.* v. *Thompson*, 478 U. S. 804, 807 (1986) (quoting *Osborn* v. *Bank of United States*, 9 Wheat. 738, 823 (1824)). In the statutory context, however, we opted to give those same words a narrower scope "in the light of [§ 1331's] history[,] the demands of reason and coherence, and the dictates of sound judicial policy." *Romero* v. *International Terminal Operating Co.*, 358 U. S. 354, 379 (1959). Because the resulting test does not turn on § 1331's text, there is nothing remarkable in its fitting as, or even more, neatly a differently worded statutory provision.

Nor can Merrill Lynch claim that Congress's use of the new "brought to enforce" language in § 27 shows an intent to depart from a settled (even if linguistically ungrounded) test for statutory "arising under" jurisdiction. That is because no such well-defined test then existed. As we recently noted, our caselaw construing § 1331 was for many decades—including when the Exchange Act passed—highly "unruly." *Gunn*, 568 U. S., at 258 (referring to the "canvas" of our old opinions as "look[ing] like one that Jackson Pollock got to first"). Against that muddled backdrop, it is impossible to infer that Congress, in enacting § 27, wished to depart from what we now understand as the "arising under" standard.

B

This Court has reached the same conclusion before. In two unrelated decisions, we addressed the "brought to enforce" language at issue here. See *Pan American*, 366 U. S.

656; *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U. S. 367 (1996). Each time, we viewed that phrase as coextensive with our construction of "arising under."

Pan American involved § 22 of the Natural Gas Act (NGA), 15 U. S. C. § 717u—an exclusive jurisdiction provision containing language materially indistinguishable from § 27's.[5] The case began in state court when a natural gas purchaser sued a producer for breach of a contract setting sale prices. Prior to the alleged breach, the producer had filed those contractual rates with the Federal Power Commission, as the NGA required. Relying on that submission (which the complaint did not mention), the producer claimed that the buyer's suit was "brought to enforce" a liability deriving from the NGA—*i. e.*, a filed rate—and so must proceed in federal court. See 366 U. S., at 662. This Court rejected the argument.

Our decision explained that § 22's use of the term "brought to enforce," rather than "arising under," made no difference to the jurisdictional analysis. The inquiry, we wrote, was "not affected by want" of the language contained in the federal question statute. *Id.*, at 665, n. 2. The "limitation[s]" associated with "arising under" jurisdiction, we continued, were "clearly implied" in § 22's alternative phrasing. *Ibid.* In short, the linguistic distinction between the two jurisdictional provisions did not extend to their meaning.

Pan American thus went on to analyze the jurisdictional issue in the manner set out in our "arising under" precedents. Federal question jurisdiction lies, the Court wrote, only if "it appears from the face of the complaint that determination of the suit depends upon a question of federal law." *Id.*, at 663. That inquiry focuses on "the particular claims a suitor makes" in his complaint—meaning, whether the plain-

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[5] Section 22 grants federal courts exclusive jurisdiction "of all suits in equity and actions at law brought to enforce any liability or duty created by . . . [the NGA] or any rule, regulation, or order thereunder." 52 Stat. 833.

tiff seeks relief under state or federal law. *Id.*, at 662. In addition, the Court suggested, a federal court could adjudicate a suit stating only a state-law claim if it included as "an element, and an essential one," the violation of a federal right. *Id.*, at 663 (quoting *Gully* v. *First Nat. Bank in Meridian*, 299 U. S. 109, 112 (1936)). With those principles of "arising under" jurisdiction laid out, the Court held that § 22 did not enable a federal court to resolve the buyer's case, because he could prevail merely by proving breach of the contract. See 366 U. S., at 663–665. *Pan American* establishes, then, that an action "brought to enforce" a duty or liability created by a federal statute is nothing more (and nothing less) than an action "arising under" that law.

Merrill Lynch reads *Pan American* more narrowly, as holding only that § 22 does not confer federal jurisdiction when a complaint (unlike Manning's) fails to reference federal law at all. See Brief for Petitioners 32–33, 38. But that argument ignores *Pan American*'s express statement of equivalence between § 27's language and the federal question statute's: "Brought to enforce" has the same "limitation[s]" (meaning, the same scope) as "arising under." 366 U. S., at 665, n. 2. And just as important, Merrill Lynch disregards *Pan American*'s analytical structure: The decision proceeds by reviewing this Court's "arising under" precedents, articulating the principles animating that caselaw, and then applying those tenets to the dispute at hand. *Id.*, at 662–665. The Court thus showed (as well as told) that "brought to enforce" jurisdiction mirrors that of "arising under."

As a fallback, Merrill Lynch claims that *Pan American* is irrelevant here because it relied on legislative history distinct to the NGA in finding § 22's "brought to enforce" language coterminous with "arising under." See Brief for Petitioners 38–39. The premise of that argument is true enough: In support of its holding, the Court quoted a Committee Report describing § 22 as conferring federal jurisdiction "over cases arising under the act." 366 U. S., at 665,

n. 2. But we cannot accept the conclusion Merrill Lynch draws from that statement: that courts should give two identically worded statutory provisions, passed less than five years apart, markedly different meanings. Indeed, the result of Merrill Lynch's approach is still odder, for what of the eight other jurisdictional provisions containing "brought to enforce" language? See n. 3, *supra*. Presumably, Merrill Lynch would have courts inspect each of their legislative histories to decide whether to read those statutes as reproducing the "arising under" standard, adopting Merrill Lynch's alternative view, or demanding yet another jurisdictional test. We are hard pressed to imagine a less sensible way of construing the repeated iterations of the phrase "brought to enforce" in the jurisdictional provisions of the Federal Code.

In any event, this Court in *Matsushita* addressed § 27 itself, and once again equated the "brought to enforce" and "arising under" standards. That decision arose from a state-law action against corporate directors for breach of fiduciary duty. The issue was whether the state court handling the suit could approve a settlement releasing, in addition to the state claims actually brought, potential Exchange Act claims that § 27 would have committed to federal court. In deciding that the state court could do so, we described § 27—not once, not twice, but three times—as conferring exclusive jurisdiction of suits "arising under" the Exchange Act. See 516 U. S., at 380 (Section 27 "confers exclusive jurisdiction upon the federal courts for suits *arising under* the [Exchange] Act"); *id.*, at 381 (Section 27 "prohibits state courts from adjudicating claims *arising under* the Exchange Act"); *id.*, at 385 (Section 27 "prohibit[s] state courts from exercising jurisdiction over suits *arising under* the Exchange Act") (emphases added). Over and over, then, the Court took as a given that § 27's jurisdictional test mimicked the one in the general federal question statute.

And still more: The *Matsushita* Court thought clear that the suit as filed—which closely resembled Manning's in its

mix of state and federal law—fell outside §27's grant of exclusive jurisdiction. As just noted, the claims brought in the *Matsushita* complaint sought relief for breach of a state-law duty. But in support of those claims, the plaintiffs charged, much as Manning did here, that the defendants' conduct also violated federal securities laws. See 516 U. S., at 370; *supra*, at 378. We found the presence of that accusation insufficient to trigger §27. "[T]he cause pleaded," we wrote, remained "a state common-law action," 516 U. S., at 382, n. 7: Notwithstanding the potential federal issue, the suit "was not 'brought to enforce' any rights or obligations under the [Exchange] Act," *id.*, at 381. The Court thus rejected the very position Merrill Lynch takes here—*i. e.*, that §27 precludes a state court from adjudicating any case, even if brought under state law, in which the plaintiff asserts an Exchange Act breach.

C

Construing §27, consistent with both text and precedent, to cover suits that arise under the Exchange Act serves the goals we have consistently underscored in interpreting jurisdictional statutes. Our reading, unlike Merrill Lynch's, gives due deference to the important role of state courts in our federal system. And the standard we adopt is more straightforward and administrable than the alternative Merrill Lynch offers.

Out of respect for state courts, this Court has time and again declined to construe federal jurisdictional statutes more expansively than their language, most fairly read, requires. We have reiterated the need to give "[d]ue regard [to] the rightful independence of state governments"—and more particularly, to the power of the States "to provide for the determination of controversies in their courts." *Romero*, 358 U. S., at 380 (quoting *Healy* v. *Ratta*, 292 U. S. 263, 270 (1934)); *Shamrock Oil & Gas Corp.* v. *Sheets*, 313 U. S. 100, 109 (1941). Our decisions, as we once put the point, reflect a "deeply felt and traditional reluctance . . . to expand

the jurisdiction of the federal courts through a broad reading of jurisdictional statutes." *Romero*, 358 U. S., at 379.[6] That interpretive stance serves, among other things, to keep state-law actions like Manning's in state court, and thus to help maintain the constitutional balance between state and federal judiciaries.

Nor does this Court's concern for state court prerogatives disappear, as Merrill Lynch suggests it should, in the face of a statute granting exclusive federal jurisdiction. See Brief for Petitioners 23–27. To the contrary, when a statute mandates, rather than permits, federal jurisdiction—thus depriving state courts of all ability to adjudicate certain claims—our reluctance to endorse "broad reading[s]," *Romero*, 358 U. S., at 379, if anything, grows stronger. And that is especially so when, as here, the construction offered would place in federal court actions bringing only claims created by state law—even if those claims might raise federal issues. To be sure, a grant of exclusive federal jurisdiction, as Merrill Lynch reminds us, indicates that Congress wanted "greater uniformity of construction and more effective and expert application" of federal law than usual. Brief for Petitioners 24 (quoting *Matsushita*, 516 U. S., at 383). But "greater" and "more" do not mean "total," and the critical question remains how far such a grant extends. In resolving that issue, we will not lightly read the statute to alter the usual constitutional balance, as it would by sending actions with all state-law claims to federal court just because a complaint references a federal duty.

Our precedents construing other exclusive grants of federal jurisdiction illustrate those principles. In *Pan American*, for example, we denied that a state court's resolution of

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[6] The *Romero* Court continued: "A reluctance which must be even more forcefully felt when the expansion is proposed, for the first time, eighty-three years after the jurisdiction has been conferred." 358 U. S., at 379. The Exchange Act was passed a mere 82 years ago, but we believe the point still stands.

state-law claims potentially implicating the NGA's meaning would "jeopardize the uniform system of regulation" that the statute established. 366 U. S., at 665. We reasoned that this Court's ability to review state court decisions of federal questions would sufficiently protect federal interests. And similarly, in *Tafflin* v. *Levitt*, 493 U. S. 455, 464–467 (1990), we permitted state courts to adjudicate civil RICO actions that might raise issues about the scope of federal crimes alleged as predicate acts, even though federal courts have exclusive jurisdiction "of all offenses against the laws of the United States," 18 U. S. C. § 3231. There, we expressed confidence that state courts would look to federal court interpretations of the relevant criminal statutes. Accordingly, we saw "no significant danger of inconsistent application of federal criminal law" and no "incompatibility with federal interests." *Tafflin*, 493 U. S., at 464–465, 467 (internal quotation marks omitted).

So too here, when state courts, in deciding state-law claims, address possible issues of the Exchange Act's meaning. Not even Merrill Lynch thinks those decisions wholly avoidable: It admits that § 27 does nothing to prevent state courts from resolving Exchange Act questions that result from defenses or counterclaims. See Brief for Petitioners 32–33; *Pan American*, 366 U. S., at 664–665. We see little difference, in terms of the uniformity-based policies Merrill Lynch invokes, if those issues instead appear in a complaint like Manning's. And indeed, Congress likely contemplated that some complaints intermingling state and federal questions would be brought in state court: After all, Congress specifically affirmed the capacity of such courts to hear state-law securities actions, which predictably raise issues coinciding, overlapping, or intersecting with those under the Act itself. See 15 U. S. C. § 78bb(a)(2); *Matsushita*, 516 U. S., at 383. So, for example, it is hardly surprising in a suit like this one, alleging short sales in violation of *state* securities law, that a plaintiff might say the defendant previously breached

a *federal* prohibition of similar conduct. See *supra,* at 378 (describing Manning's complaint). And it is less troubling for a state court to consider such an issue than to lose all ability to adjudicate a suit raising only state-law causes of action.

Reading § 27 in line with our § 1331 caselaw also promotes "administrative simplicity[, which] is a major virtue in a jurisdictional statute." *Hertz Corp.* v. *Friend*, 559 U. S. 77, 94 (2010). Both judges and litigants are familiar with the "arising under" standard and how it works. For the most part, that test provides ready answers to jurisdictional questions. And an existing body of precedent gives guidance whenever borderline cases crop up. See *supra*, at 383–384. By contrast, no one has experience with Merrill Lynch's alternative standard, which would spring out of nothing to govern suits involving not only the Exchange Act but up to nine other discrete spheres of federal law. See n. 3, *supra* (listing statutes with "brought to enforce" language); *supra*, at 387–388 (noting Merrill Lynch's backup claim that legislative histories might compel different tests for different statutes). Adopting such an untested approach, and forcing courts to toggle back and forth between it and the "arising under" standard, would undermine consistency and predictability in litigation. That result disserves courts and parties alike.

Making matters worse, Merrill Lynch's rule is simple for plaintiffs to avoid—or else, excruciating for courts to police. Under that rule, a plaintiff electing to bring state-law claims in state court will purge his complaint of any references to federal securities law, so as to escape removal. Such omissions, after all, will do nothing to change the way the plaintiff can present his case at trial; they will merely make the complaint less informative. Recognizing the potential for that kind of avoidance, Merrill Lynch argues that a judge should go behind the face of a complaint to determine whether it is the product of "artful pleading." See Tr. of Oral Arg. 7 (If the plaintiffs "had just literally whited out, deleted the references to Reg[ulation] SHO," the court

should still understand the complaint to allege a breach of that rule; "the fact [that the plaintiffs] didn't cite it wouldn't change the fact"). We have no idea how a court would make that judgment, and get cold comfort from Merrill Lynch's assurance that the question would arise not in this case but in "the next third, fourth, fifth case down the road." *Id.*, at 8. Jurisdictional tests are built for more than a single dispute: That Merrill Lynch's threatens to become either a useless drafting rule or a tortuous inquiry into artful pleading is one more good reason to reject it.

III

Section 27 provides exclusive federal jurisdiction of the same class of cases as "arise under" the Exchange Act for purposes of § 1331. The text of § 27, most naturally read, supports that rule. This Court has adopted the same view in two prior cases. And that reading of the statute promotes the twin goals, important in interpreting jurisdictional grants, of respecting state courts and providing administrable standards.

Our holding requires remanding Manning's suit to state court. The Third Circuit found that the District Court did not have jurisdiction of Manning's suit under § 1331 because all his claims sought relief under state law and none necessarily raised a federal issue. See *supra*, at 379. Merrill Lynch did not challenge that ruling, and we therefore take it as a given. And that means, under our decision today, that the District Court also lacked jurisdiction under § 27. Accordingly, we affirm the judgment below.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE SOTOMAYOR joins, concurring in the judgment.

The Court concludes that respondents' suit belongs in state court because it does not satisfy the multifactor, atextual standard that we have used to assess whether a suit is

one "arising under" federal law, 28 U. S. C. § 1331. *Ante,* at 393. I agree that this suit belongs in state court, but I would rest that conclusion on the statute before us, § 27 of the Securities Exchange Act of 1934, 15 U. S. C. § 78aa. That statute does not use the phrase "arising under" or provide a sound basis for adopting the arising-under standard. It instead provides federal jurisdiction where a suit is "brought to enforce" Exchange Act requirements. § 78aa(a). That language establishes a straightforward test: If a complaint alleges a claim that necessarily depends on a breach of a requirement created by the Act, § 27 confers exclusive federal jurisdiction over that suit. Because the complaint here does not allege such claims—and because no other statute confers federal jurisdiction—this suit should return to state court. Accordingly, I concur in the judgment.

I

A

Section 27 provides that "[t]he district courts . . . shall have exclusive jurisdiction . . . of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder." § 78aa(a).* As the Court explains, under a "natural reading," § 27 "confers federal jurisdiction when an action is commenced in order to give effect to an Exchange Act requirement." *Ante,* at 381; see also Webster's New International Dictionary of the English Language 725 (1927) ("enforce" means "give force to" or "give effect to"). And by providing "exclusive jurisdiction" to federal district courts over certain suits, § 27 strips state courts of jurisdiction over such suits.

Put differently, under § 27 a suit belongs in federal court when the complaint requires a court to enforce an Exchange

*As the Court explains, the parties have not pressed us to construe § 27's language conferring jurisdiction over "violations" of the Exchange Act, its rules, or its regulations. See *ante,* at 380, n. 2. Like the Court, I focus on § 27's "brought to enforce" language.

Act duty or liability. In contrast, a suit belongs in state court when the complaint "assert[s] purely state-law causes of action" that do not require "binding legal determinations of rights and liabilities under the Exchange Act" or "a judgment on the merits of" an Exchange Act breach. *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U. S. 367, 382, 384 (1996). Such a suit is "not 'brought to enforce' any rights or obligations under the Act," and thus does not fall within § 27's scope. *Id.*, at 381. So § 27 does not provide federal jurisdiction over suits brought to enforce liabilities or duties under state law or over every case that happens to involve allegations that the Act was violated. The provision leaves state courts with some authority over suits involving the Act or its regulations.

The statutory context bolsters this understanding. That context confirms that Congress reserved some authority to state courts to adjudicate securities-law matters. Although the Act provides numerous federal "rights and remedies," it also generally preserves "all other rights and remedies that may exist at law or in equity," such as claims that could be litigated in state courts of general jurisdiction. 15 U. S. C. § 78bb(a)(2). That provision shows that "Congress plainly contemplated the possibility of dual litigation in state and federal courts relating to securities transactions." *Matsushita*, *supra*, at 383. A natural reading of § 27's text preserves the dual role for federal and state courts that Congress contemplated, and it confirms that mere allegations of Exchange Act breaches do not alone deprive state courts of jurisdiction.

A natural reading promotes the uniform interpretation of the federal securities laws that Congress sought to ensure when it gave federal courts "exclusive jurisdiction" over federal securities-law suits. § 78aa(a). The textual approach fosters uniformity because it leaves to federal courts—which are presumptively more familiar with the intricate federal securities laws—the task of "adjudicat[ing] . . . Exchange Act

claims." *Matsushita*, 516 U. S., at 383. When state courts decide cases where the complaint pleads only state-law claims and do not resolve the merits of Exchange Act rights or liabilities, they are not "trespass[ing] upon the exclusive territory of the federal courts." *Id.*, at 382.

The statutory text and structure thus support a straightforward test: Section 27 confers federal jurisdiction over a case if the complaint alleges claims that necessarily depend on establishing a breach of an Exchange Act requirement.

B

The Third Circuit was correct to remand this suit to state court. Respondents' complaint does not seek "to enforce any liability or duty created by" the Exchange Act or its regulations. § 78aa(a).

Although respondents' complaint alleges at different places that petitioners violated the Exchange Act or its regulations, the complaint does not bring claims requiring enforcement of the Exchange Act or its regulations. The complaint instead brings 10 state-law causes of action that seek to enforce duties and liabilities created by state law. Count 2 alleges that petitioners violated state law by investing money derived from racketeering. See App. to Pet. for Cert. 91a–93a, Amended Complaint ¶¶114–122 (citing N. J. Stat. Ann. § 2C:41–2a (West 2005)). Counts 3 through 9 allege standard state-law contract and tort claims: unjust enrichment, unlawful interference with economic advantage, tortious interference with contractual relations, unlawful interference with contractual relations, third-party-beneficiary claims, breach of the covenant of good faith and fair dealing, and negligence. See App. to Pet. for Cert. 93a–101a, Amended Complaint ¶¶123–158. Count 10 pleads a free-standing claim for punitive and exemplary damages. See *id.*, at 101a, Amended Complaint ¶¶159–161. None of these claims requires a court to "enforce"—to give effect to—a requirement created by the Act, thus, § 27 does not confer federal jurisdiction over them.

Count 1 presents a closer call, but it too does not trigger federal jurisdiction. That count pleads that petitioners violated a state law that makes it unlawful for a person to participate in a racketeering enterprise. *Id.*, at 82a–90a, Amended Complaint ¶¶88–113 (citing N. J. Stat. Ann. §2C:41–2*c*). The alleged racketeering includes violating the New Jersey Uniform Securities Law (through fraud, deception, and misappropriation), committing "theft by taking" under state law, and committing "theft by deception" under state law. App. to Pet. for Cert. 82a–90a, Amended Complaint ¶¶88–113. Respondents allege that "[t]he SEC has expressly noted that naked short selling involves the omission of a material fact" as part of their state-law securities fraud allegation. *Id.*, at 85a, Amended Complaint ¶100. Vindicating that claim would not require the enforcement of a federal duty or liability. New Jersey law encompasses fraudulent conduct that does not necessarily rest on a violation of federal law or regulation. See, *e. g.*, §49:3–49(e)(1) (West 2001) (fraud and deceit include "[a]ny misrepresentation by word, conduct or in any manner of any material fact, either present or past, and any omission to disclose any such fact"); see App. to Pet. for Cert. 84a–86a (invoking §49:3–49 *et seq.*). So although count 1 refers to the Securities and Exchange Commission's view about naked short selling, that count does not require respondents to establish a violation of federal securities law to prevail on their fraud claim. Because respondents' cause of action in count 1 seeks to enforce duties and liabilities created by state law and does not necessarily depend on the breach of an Exchange Act duty or liability, §27 does not provide federal jurisdiction over that claim.

II

Although the Court acknowledges the "natural reading" of §27, *ante*, at 381, it holds that §27 adopts the jurisdictional test that this Court uses to evaluate federal-question jurisdiction under 28 U. S. C. §1331. See *ante*, at 383–385; see also *ante*, at 385–393. Federal courts have the power to re-

view cases "arising under" federal law, § 1331, including those in which the complaint brings state-law claims that "necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Mfg.*, 545 U. S. 308, 314 (2005). The Court wrongly equates the phrase "arising under" in § 1331 with the phrase "brought to enforce" in § 27, and interprets the latter to require that a case raising state-law claims "mee[t] the 'arising under' standard" for that case to proceed in federal court. *Ante*, at 384; see *ante*, at 383–385. None of the Court's rationales for adopting that rule is persuasive.

A

The Court first argues that "it is impossible to infer that Congress, in enacting § 27, wished to depart from what we now understand as the 'arising under' standard" because there was no "well-defined test" to depart from. *Ante*, at 385. The Court's case law construing § 1331, the Court explains, "was for many decades—including when the Exchange Act passed—highly unruly." *Ibid.* (internal quotation marks omitted).

But when Congress enacts a statute that uses different language from a prior statute, we normally presume that Congress did so to convey a different meaning. See, *e. g.*, *Crawford* v. *Burke*, 195 U. S. 176, 190 (1904) (explaining that "a change in phraseology creates a presumption of a change in intent" and that "Congress would not have used such different language [in two statutes] without thereby intending a change of meaning"). Given what we know about § 1331, that presumption has force here. Our § 1331 case law was, as the Court notes, "highly unruly" when the Exchange Act was enacted in 1934. Given the importance of clarity in jurisdictional statutes, see *Hertz Corp.* v. *Friend*, 559 U. S. 77,

94 (2010), it is quite a stretch to infer that Congress wished to embrace such an unpredictable test.

That is especially true given that § 27 does not use words supporting the convoluted arising-under standard. Section 27 does not ask (for example) whether a federal issue is substantial or whether a ruling on that issue will upset the congressionally approved balance of federal and state power. Indeed, § 1331 *itself* does not even use words supporting the arising-under standard. See *ante*, at 385 (acknowledging that the arising-under standard "does not turn on § 1331's text"). Rather, the Court has refused to give full effect to § 1331's "broa[d] phras[ing]" and has instead "continuously construed and limited" that provision based on extratextual considerations, such as "history," "the demands of reason and coherence," and "sound judicial policy." *Romero* v. *International Terminal Operating Co.*, 358 U. S. 354, 379 (1959). Faced with a plain and focused text like § 27, however, we should not rely on such considerations. And importing factors from our § 1331 arising-under jurisprudence—such as a substantiality requirement and a federal-state balance requirement—risks narrowing the class of cases that Congress meant to cover with § 27's plain text. For these reasons, it is unwise to read into § 27 a decision to adopt the arising-under standard.

B

The Court next relies on two prior decisions—*Pan American Petroleum Corp.* v. *Superior Court of Del. for New Castle Cty.*, 366 U. S. 656 (1961), and *Matsushita*, 516 U. S. 367. See *ante*, at 386–389. Neither case justifies the Court's decision to apply the arising-under standard to § 27.

In *Pan American*, the Court held that Delaware state courts had jurisdiction over state-law contract claims that arose from contracts for the sale of natural gas. 366 U. S., at 662–665. The Court reached that decision even though a provision of the Natural Gas Act provided exclusive federal jurisdiction over suits " 'brought to enforce any liability or

duty created by'" that Act. *Id.*, at 662 (quoting statute). *Pan American* lends some support to the Court's view today. It applied the Court's arising-under precedents and "explained that [the Natural Gas Act's] use of the term 'brought to enforce,' rather than 'arising under,' made no difference to the jurisdictional analysis." *Ante*, at 386; see *Pan American*, *supra*, at 665, n. 2; see also *ante*, at 386–389.

But *Pan American* does not require the Court to engraft the arising-under standard onto § 27. *Pan American* did not carefully analyze the Natural Gas Act's text or assess the contemporary meaning of the central phrase "brought to enforce." Instead, the Court relied on legislative history, reasoning that "authoritative [congressional] Committee Reports" implied a limitation on the Natural Gas Act's jurisdictional text. 366 U. S., at 665, n. 2. That reasoning does not warrant our respect. That is especially true because *Pan American*'s holding is consistent with the Natural Gas Act's "brought to enforce" language. The complaint in that case did not "asser[t]" any "right . . . under the Natural Gas Act" and instead asked the court to adjudicate standard state-law "contract or quasi-contract" claims. *Id.*, at 663, 664. The Court's disposition in *Pan American* rests as comfortably on the statutory text as it does on the arising-under standard.

Matsushita provides even less support for the Court's holding today. In that case the Court held that Delaware courts could issue a judgment approving a settlement releasing securities-law claims even though the settlement released claims that were (by virtue of § 27) "solely within the jurisdiction of the federal courts." 516 U. S., at 375; see *id.*, at 370–372. The Court explained that, "[w]hile § 27 prohibits state courts from adjudicating claims arising under the Exchange Act, it does not prohibit state courts from approving the release of Exchange Act claims in the settlement of suits over which they have properly exercised jurisdiction, *i. e.*, suits arising under state law or under federal law for which there is concurrent jurisdiction." *Id.*, at 381. Be-

cause the complaint in that case "assert[ed] purely state-law causes of action" and the state courts did not issue "a judgment on the merits of the [exclusively federal] claims," § 27 did not deprive state courts of jurisdiction. *Id.*, at 382.

The Court relies on *Matsushita* because in that case we three times "described" § 27 "as conferring exclusive jurisdiction of suits 'arising under' the Exchange Act." *Ante*, at 388 (citing 516 U. S., at 380, 381, 385). But *Matsushita* did not decide whether § 27 adopts the arising-under standard, so its passing use of the phrase "arising under" cannot bear the weight that the Court now places on it. To be sure, *Matsushita* does support the Court's *judgment* today: *Matsushita* emphasized that state courts could adjudicate a suit involving securities-law issues where the complaint "assert[ed] purely state-law causes of action" and did not require the state courts to issue "binding legal determinations of rights and liabilities under the Exchange Act" or "a judgment on the merits of" an Exchange Act breach. *Id.*, at 382, 384. But those statements are more consistent with § 27's text than they are with the arising-under standard. See *supra*, at 394–396 (invoking *Matsushita*).

C

Finally, the Court argues that its interpretation "serves the goals" that our precedents have "consistently underscored in interpreting jurisdictional statutes"—affording proper deference to state courts and promoting administrable jurisdictional rules. *Ante*, at 389; see *ante*, at 389–393. But hewing to § 27's text serves these goals as well as or better than does adopting the arising-under standard.

First, the text-based view preserves state courts' authority to adjudicate numerous securities-law claims and provide relief consistent with the Exchange Act's design. See *supra*, at 394–396. As explained above, that view places all of respondents' state-law causes of action in state court. See *supra*, at 396–397. The text-based view thus "decline[s]

to construe [a] federal jurisdictional statut[e] more expansively than [its] language, most fairly read, requires." *Ante*, at 389.

Second, the textual test is also more administrable than the arising-under standard. The arising-under standard "is anything but clear." *Grable*, 545 U. S., at 321 (THOMAS, J., concurring). The standard involves numerous judgments about matters of degree that are not readily susceptible to bright lines. As noted, to satisfy that standard, a state-law claim must raise a federal issue that is (among other things) "actually disputed," is "substantial," and will not "distur[b]" a congressionally approved federal-state "balance." *Id.*, at 314 (opinion of the Court). The standard "calls for a 'commonsense accommodation of judgment to [the] kaleidoscopic situations' that present a federal issue, in 'a selective process which picks the substantial causes out of the web and lays the other ones aside.'" *Id.*, at 313 (quoting *Gully* v. *First Nat. Bank in Meridian*, 299 U. S. 109, 117–118 (1936)). The arising-under standard may be many things, but it is not one that consistently "provides ready answers" to hard jurisdictional questions. *Ante*, at 392. The text-based view promises better. I would adopt that view and apply it here.

* * *

For these reasons, I concur in the judgment.

Syllabus

ZUBIK ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 14–1418. Argued March 23, 2016—Decided May 16, 2016*

Federal regulations require petitioners, primarily nonprofit organizations, to cover certain contraceptives as part of the health plans they provide to their employees unless they submit a form to their insurer or the Federal Government stating that they object to such coverage on religious grounds. Petitioners allege that the notice requirement substantially burdens the exercise of their religion in violation of the Religious Freedom Restoration Act of 1993. Following oral argument, this Court requested supplemental briefing addressing "whether contraceptive coverage could be provided to petitioners' employees, through petitioners' insurance companies, without any such notice from petitioners." Both petitioners and the Government confirmed the feasibility of such an option.

Held: The judgments below are vacated, and the cases are remanded to their respective Courts of Appeals. On remand, the parties should be afforded an opportunity to arrive at an approach that accommodates petitioners' religious exercise while at the same time ensuring that women covered by petitioners' health plans receive full and equal coverage that includes contraceptive coverage. The Court expresses no view

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*Together with No. 14–1453, *Priests for Life et al.* v. *Department of Health and Human Services et al.*, and No. 14–1505, *Roman Catholic Archbishop of Washington et al.* v. *Burwell, Secretary of Health and Human Services, et al.*, on certiorari to the United States Court of Appeals for the District of Columbia Circuit; No. 15–35, *East Texas Baptist University et al.* v. *Burwell, Secretary of Health and Human Services, et al.*, on certiorari to the United States Court of Appeals for the Fifth Circuit; No. 15–105, *Little Sisters of the Poor Home for the Aged, Denver, Colorado, et al.* v. *Burwell, Secretary of Health and Human Services, et al.*, and No. 15–119, *Southern Nazarene University et al.* v. *Burwell, Secretary of Health and Human Services, et al.*, on certiorari to the United States Court of Appeals for the Tenth Circuit; and No. 15–191, *Geneva College* v. *Burwell, Secretary of Health and Human Services, et al.*, also on certiorari to the United States Court of Appeals for the Third Circuit.

Syllabus

on the merits of the cases. In particular, the Court does not decide whether petitioners' religious exercise has been substantially burdened, whether the Government has a compelling interest, or whether the current regulations are the least restrictive means of serving that interest.

Nos. 14–1418 and 15–191, 778 F. 3d 422; Nos. 14–1453 and 14–1505, 772 F. 3d 229; No. 15–35, 793 F. 3d 449; Nos. 15–105 and 15–119, 794 F. 3d 1151, vacated and remanded.

Paul D. Clement argued the cause for petitioners in Nos. 15–35, 15–105, 15–119, and 15–191. With him on the briefs were *Erin E. Murphy*, *Mark Rienzi*, *Eric C. Rassbach*, *Hannah C. Smith*, *Diana M. Verm*, *Adèle Auxier Keim*, *Daniel H. Blomberg*, *Kenneth R. Wynne*, *David A. Cortman*, *Gregory S. Baylor*, *Jordan W. Lorence*, *Kevin H. Theriot*, *Matthew S. Bowman*, *Rory T. Gray*, *Bradley S. Tupi*, *Carl C. Scherz*, and *Laurence A. Hansen.* *Noel J. Francisco* argued the cause for petitioners in Nos. 14–1418, 14–1453, and 14–1505. With him on the briefs were *David T. Raimer*, *Anthony J. Dick*, *Paul M. Pohl*, *John D. Goetz*, *Leon F. DeJulius, Jr.*, *Ira M. Karoll*, *Robert J. Muise*, and *David Yerushalmi.*

Solicitor General Verrilli argued the cause for respondents in all cases. With him on the brief were *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitors General Gershengorn and Kneedler*, *Brian H. Fletcher*, *Mark B. Stern*, *Alisa B. Klein*, *Megan Barbero*, and *Joshua Salzman.*†

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†Briefs of *amici curiae* urging reversal in all cases were filed for the State of Texas et al. by *Ken Paxton*, Attorney General of Texas, *Scott A. Keller*, Solicitor General, *Charles E. Roy*, First Assistant Attorney General, *J. Campbell Barker*, Deputy Solicitor General, *Michael P. Murphy*, Assistant Solicitor General, and *Michael DeWine*, Attorney General of Ohio, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Mark Brnovich* of Arizona, *Leslie Rutledge* of Arkansas, *Cynthia Coffman* of Colorado, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *Lawrence G. Wasden* of Idaho, *Derek Schmidt* of Kansas, *Bill Schuette* of Michigan, *Timothy C. Fox* of Montana, *Douglas J. Peterson* of Nebraska, *Adam Paul Laxalt* of Nevada, *E. Scott Pruitt* of

PER CURIAM.

Petitioners are primarily nonprofit organizations that provide health insurance to their employees. Federal regulations require petitioners to cover certain contraceptives as

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Oklahoma, *Alan Wilson* of South Carolina, *Marty J. Jackley* of South Dakota, *Sean D. Reyes* of Utah, *Patrick Morrisey* of West Virginia, and *Brad D. Schimel* of Wisconsin; for the American Center for Law and Justice by *Jay Alan Sekulow*, *Stuart J. Roth*, *Walter M. Weber*, *Francis J. Manion*, and *Geoffrey R. Surtees*; for the Anglican Church in North America Jurisdiction of the Armed Forces and Chaplaincy et al. by *Scott W. Gaylord*; for the Association of American Physicians & Surgeons et al. by *Denise M. Burke* and *Mailee R. Smith*; for the Breast Cancer Prevention Institute by *Nikolas T. Nikas*, *Dorinda C. Bordlee*, and *Catherine W. Short*; for CNS International Ministries, Inc., by *Timothy Belz*; for the Carmelite Sisters of the Most Sacred Heart of Los Angeles et al. by *Thomas G. Hungar*; for The Catholic Benefits Association et al. by *L. Martin Nussbaum*, *Eric N. Kniffin*, and *Ian S. Speir*; for the Cato Institute et al. by *Ilya Shapiro*, *Josh Blackman*, *Erin Morrow Hawley*, and *Joshua Hawley*; for the Christian and Missionary Alliance Foundation, Inc., et al. by *Brian D. Boyle*, *Kelly J. Shackelford*, *Jeffrey C. Mateer*, and *Hiram S. Sasser III*; for the Christian Legal Society et al. by *Matthew T. Martens* and *Kimberlee Wood Colby*; for the Church of the Lukumi Babalu Aye, Inc., et al. by *Aaron M. Streett*; for Concerned Women for America by *Steven W. Fitschen*; for Constitutional Law Scholars by *Ryan A. Shores*; for the Council for Christian Colleges and Universities by *Matthew T. Nelson*, *John J. Bursch*, and *Conor B. Dugan*; for the Dominican Sisters of Mary, Mother of the Eucharist, et al. by *Eileen J. O'Connor*, *Carrie Severino*, and *Jonathan Keim*; for the Eagle Forum Education & Legal Defense Fund, Inc., by *Lawrence J. Joseph*; for Eternal Word Television Network by *S. Kyle Duncan*; for the Ethics and Public Policy Center by *Daniel P. Collins*; for Former Justice Department Officials by *Jay P. Lefkowitz*, *Steven J. Menashi*, and *Michael W. McConnell*; for the International Conference of Evangelical Chaplain Endorsers by *Arthur A. Schulcz, Sr.*; for the Justice and Freedom Fund by *James L. Hirsen* and *Deborah J. Dewart*; for the Knights of Columbus by *Messrs. Nussbaum*, *Kniffen*, *Speir*, *John A. Marrella*, and *Beth M. Elfrey*; for Liberty Counsel by *Mathew D. Staver*, *Anita L. Staver*, *Horatio G. Mihet*, and *Mary E. McAlister*; for the National Association of Evangelicals et al. by *Alexander Dushku* and *R. Shawn Gunnarson*; for the National Jewish Commission on Law and Public Affairs by *Nathan Lewin*, *Alyza D. Lewin*, and *Dennis Rapps*; for Orthodox Jewish Rabbis by *Howard N. Slugh*; for Religious Institutions

part of their health plans, unless petitioners submit a form either to their insurer or to the Federal Government, stating that they object on religious grounds to providing contraceptive coverage. Petitioners allege that submitting this notice

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by *Gene C. Schaerr*, *Todd R. McFarland*, and *Dwayne Leslie*; for Residents and Families of Residents at Homes of the Little Sisters of the Poor by *Dwight G. Duncan*; for the School of the Ozarks, Inc., dba College of the Ozarks by *Mark G. Arnold* and *Virginia L. Fry*; for the Southern Baptist Theological Seminary et al. by *Miles E. Coleman*, *Jay T. Thompson*, and *Derek Gaubatz*; for Thirteen Law Professors by *John D. Adams* and *Matthew A. Fitzgerald*; for the Thomas More Law Center by *Erin Elizabeth Mersino*; for the United States Conference of Catholic Bishops et al. by *Anthony R. Picarello, Jr.*, *Jeffrey Hunter Moon*, *Michael F. Moses*, and *Hillary E. Byrnes*; for Women Speak for Themselves by *Helen M. Alvaré*; for David Boyle by *Mr. Boyle, pro se*; for Michael J. New by *David R. Langdon*; for Bart Stupak et al. by *John C. Eastman* and *Anthony T. Caso*; for 50 Catholic Theologians et al. by *D. John Sauer*; and for 207 Members of Congress by *Robert K. Kelner*.

Briefs of *amici curiae* urging affirmance in all cases were filed for the State of California et al. by *Kamala D. Harris*, Attorney General of California, *Edward C. DuMont*, Solicitor General, *Mark Breckler*, Chief Assistant Attorney General, *Angela Sierra*, Senior Assistant Attorney General, *Janill L. Richards*, Principal Deputy Solicitor General, *Nancy A. Beninati*, Supervising Deputy Attorney General, *Gregory D. Brown*, Deputy Solicitor General, *Samuel P. Siegel*, Associate Deputy Solicitor General, and *Lisa C. Ehrlich*, Deputy Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *George Jepsen* of Connecticut, *Matthew P. Denn* of Delaware, *Karl A. Racine* of the District of Columbia, *Douglas S. Chin* of Hawaii, *Lisa Madigan* of Illinois, *Tom Miller* of Iowa, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Lori Swanson* of Minnesota, *Joseph A. Foster* of New Hampshire, *Hector Balderas* of New Mexico, *Eric T. Schneiderman* of New York, *Ellen F. Rosenblum* of Oregon, *Peter F. Kilmartin* of Rhode Island, *William H. Sorrell* of Vermont, *Mark R. Herring* of Virginia, and *Robert W. Ferguson* of Washington; for the American Academy of Pediatrics by *Thomas E. Gorman*, *Asim M. Bhansali*, *Philip J. Tassin*, and *Julie Duncan Garcia*; for the American Civil Liberties Union et al. by *Brigitte Amiri*, *Louise Melling*, *Jennifer Lee*, *Steven R. Shapiro*, *Daniel Mach*, and *Heather L. Weaver*; for the American College of Obstetricians and Gynecologists et al. by *Bruce H. Schneider*, *Sara Needleman Kline*, and *Jennifer L. A. Blasdell*; for the American Jewish Committee et al. by *Marc D. Stern*; for the Anti-Defamation League et al. by *Derek L. Shaffer*,

substantially burdens the exercise of their religion, in violation of the Religious Freedom Restoration Act of 1993, 107 Stat. 1488, 42 U. S. C. § 2000bb *et seq.*

Following oral argument, the Court requested supplemental briefing from the parties addressing "whether contraceptive coverage could be provided to petitioners' employees, through petitioners' insurance companies, without any such notice from petitioners." *Post*, at 901–902. Both petitioners and the Government now confirm that such an option is feasible. Petitioners have clarified that their religious

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Steven M. Freeman, and *Michael Lieberman*; for Baptist Joint Committee for Religious Liberty by *Douglas Laycock*, *K. Hollyn Hollman*, and *Jennifer Hawks*; for the Black Women's Health Imperative by *Mark A. Packman* and *Jenna A. Hudson*; for Catholics for Choice et al. by *Leslie C. Griffin*; for the Center for Inquiry et al. by *Edward Tabash* and *Ronald A. Lindsay*; for Church-State Scholars by *Catherine Weiss* and *Natalie J. Kraner*; for Foreign and International Law Experts by *Marjorie E. Sheldon* and *Aram A. Schvey*; for Former State Attorneys General et al. by *Wesley R. Powell* and *Mary J. Eaton*; for Guttmacher Institute et al. by *Anna-Rose Mathieson*, *Walter Dellinger*, and *Dawn Johnsen*; for the Harvard Law School Center for Health Law and Policy Innovation et al. by *Carmel Shachar* and *Robert Greenwald*; for Health Policy Experts by *Marcy Wilder* and *Sheree Kanner*; for Lambda Legal Defense and Education Fund, Inc., et al. by *Jennifer C. Pizer*, *Jon W. Davidson*, *Camilla B. Taylor*, *Kyle A. Palazzolo*, *Hayley Gorenberg*, and *Omar Gonzalez-Pagan*; for Military Historians by *Elizabeth B. Wydra*, *Brianne J. Gorod*, and *David H. Gans*; for the National Health Law Program et al. by *Jane Perkins*; for the National Latina Institute for Reproductive Health et al. by *Sarah E. Burns*; for the National Women's Law Center et al. by *Charles E. Davidow*, *Marcia D. Greenberger*, *Gretchen Borchelt*, and *Leila Abolfazli*; for the Ovarian Cancer Research Fund Alliance et al. by *Jessica L. Ellsworth*; for Scholars of Religious Liberty by *Martin S. Lederman*, *pro se*, and *Tejinder Singh*; for Norman Dorsen et al. by *Burt Neuborne* and *Mr. Dorsen*, both *pro se*; for Congressman Robert C. "Bobby" Scott by *Marci A. Hamilton*; for 123 Members of the United States Congress by *David A. O'Neil*; and for 240 Students, Faculty, and Staff at Religiously Affiliated Universities by *Richard B. Katskee* and *Gregory M. Lipper*.

Briefs of *amici curiae* were filed in all cases for the American Humanist Association by *Gordon Gamm*; for Compassion & Choices by *Jon B. Eisenberg*, *Lisa Perrochet*, and *Kevin Díaz*; and for the U. S. Justice Foundation et al. by *Herbert W. Titus*.

exercise is not infringed where they "need to do nothing more than contract for a plan that does not include coverage for some or all forms of contraception," even if their employees receive cost-free contraceptive coverage from the same insurance company. Supplemental Brief for Petitioners 4. The Government has confirmed that the challenged procedures "for employers with insured plans could be modified to operate in the manner posited in the Court's order while still ensuring that the affected women receive contraceptive coverage seamlessly, together with the rest of their health coverage." Supplemental Brief for Respondents 14–15.

In light of the positions asserted by the parties in their supplemental briefs, the Court vacates the judgments below and remands to the respective United States Courts of Appeals for the Third, Fifth, Tenth, and D. C. Circuits. Given the gravity of the dispute and the substantial clarification and refinement in the positions of the parties, the parties on remand should be afforded an opportunity to arrive at an approach going forward that accommodates petitioners' religious exercise while at the same time ensuring that women covered by petitioners' health plans "receive full and equal health coverage, including contraceptive coverage." *Id.*, at 1. We anticipate that the Courts of Appeals will allow the parties sufficient time to resolve any outstanding issues between them.

The Court finds the foregoing approach more suitable than addressing the significantly clarified views of the parties in the first instance. Although there may still be areas of disagreement between the parties on issues of implementation, the importance of those areas of potential concern is uncertain, as is the necessity of this Court's involvement at this point to resolve them. This Court has taken similar action in other cases in the past. See, *e. g.*, *Madison County* v. *Oneida Indian Nation of N. Y.*, 562 U. S. 42, 43 (2011) (*per curiam*) (vacating and remanding for the Second Circuit to

"address, in the first instance, whether to revisit its ruling on sovereign immunity in light of [a] new factual development, and—if necessary—proceed to address other questions in the case consistent with its sovereign immunity ruling"); *Kiyemba* v. *Obama*, 559 U. S. 131, 132 (2010) (*per curiam*) (vacating and remanding for the D. C. Circuit to "determine, in the first instance, what further proceedings in that court or in the District Court are necessary and appropriate for the full and prompt disposition of the case in light of the new developments"); *Villarreal* v. *United States*, 572 U. S. 1084, 1085 (2014) (vacating and remanding to the Fifth Circuit "for further consideration in light of the position asserted by the Solicitor General in his brief for the United States").

The Court expresses no view on the merits of the cases. In particular, the Court does not decide whether petitioners' religious exercise has been substantially burdened, whether the Government has a compelling interest, or whether the current regulations are the least restrictive means of serving that interest.

Nothing in this opinion, or in the opinions or orders of the courts below, is to affect the ability of the Government to ensure that women covered by petitioners' health plans "obtain, without cost, the full range of Food and Drug Administration approved contraceptives." *Wheaton College* v. *Burwell*, 573 U. S. 958, 959 (2014). Through this litigation, petitioners have made the Government aware of their view that they meet "the requirements for exemption from the contraceptive coverage requirement on religious grounds." *Ibid.* Nothing in this opinion, or in the opinions or orders of the courts below, "precludes the Government from relying on this notice, to the extent it considers it necessary, to facilitate the provision of full contraceptive coverage" going forward. *Ibid.* Because the Government may rely on this notice, the Government may not impose taxes or penalties on petitioners for failure to provide the relevant notice.

The judgments of the Courts of Appeals are vacated, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, concurring.

I join the Court's *per curiam* opinion because it expresses no view on "the merits of the cases," "whether petitioners' religious exercise has been substantially burdened," or "whether the current regulations are the least restrictive means of serving" a compelling governmental interest. *Ante*, at 409. Lower courts, therefore, should not construe either today's *per curiam* or our order of March 29, 2016, as signals of where this Court stands. We have included similarly explicit disclaimers in previous orders. See, *e. g.*, *Wheaton College* v. *Burwell*, 573 U. S. 958, 959 (2014) ("[T]his order should not be construed as an expression of the Court's views on the merits"). Yet some lower courts have ignored those instructions. See, *e. g.*, *Sharpe Holdings, Inc.* v. *Department of Health and Human Servs.*, 801 F. 3d 927, 944 (CA8 2015) ("[I]n *Wheaton College*, *Little Sisters of the Poor*, and *Zubik*, the Supreme Court approved a method of notice to [Health and Human Services] that is arguably less onerous than [existing regulations] yet permits the government to further its interests. Although the Court's orders were not final rulings on the merits, they at the very least collectively constitute a signal that less restrictive means exist by which the government may further its interests"). On remand in these cases, the Courts of Appeals should not make the same mistake.

I also join the Court's opinion because it allows the lower courts to consider only whether existing or modified regulations could provide seamless contraceptive coverage "'to petitioners' employees, through petitioners' insurance companies, without any . . . notice from petitioners.'" *Ante*,

at 407. The opinion does not, by contrast, endorse the petitioners' position that the existing regulations substantially burden their religious exercise or that contraceptive coverage must be provided through a "separate policy, with a separate enrollment process." Supp. Brief for Petitioners 1; Supp. Reply Brief for Petitioners 5. Such separate contraceptive-only policies do not currently exist, and the Government has laid out a number of legal and practical obstacles to their creation. See Supp. Reply Brief for Respondents 3–4. Requiring standalone contraceptive-only coverage would leave in limbo all of the women now guaranteed seamless preventive-care coverage under the Affordable Care Act. And requiring that women affirmatively opt into such coverage would "impose precisely the kind of barrier to the delivery of preventive services that Congress sought to eliminate." *Id.*, at 6.

Today's opinion does only what it says it does: "afford[s] an opportunity" for the parties and Courts of Appeals to reconsider the parties' arguments in light of petitioners' new articulation of their religious objection and the Government's clarification about what the existing regulations accomplish, how they might be amended, and what such an amendment would sacrifice. *Ante*, at 408. As enlightened by the parties' new submissions, the Courts of Appeals remain free to reach the same conclusion or a different one on each of the questions presented by these cases.

Syllabus

KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION *v.* HINOJOSA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15–833. Decided May 16, 2016

At the time that respondent Hinojosa was incarcerated, he was permitted to accrue good-time credits under California law. After the law was amended, prisoners such as Hinojosa—who had been "validated" as prison-gang associates and placed in a secured housing unit—were left without the ability to earn future good-time credits. Hinojosa filed a state habeas petition, arguing that the new law's application to him violated the Constitution's prohibition of *ex post facto* laws. The Superior Court denied his claim for improper venue. Rather than file a new petition in the correct venue, he turned to the appellate court, which summarily denied his petition. Then, instead of appealing that denial, he sought a writ of habeas corpus in the California Supreme Court, which summarily denied relief without explanation. A petition for federal habeas relief followed. The District Court denied his *ex post facto* claim under the Antiterrorism and Effective Death Penalty Act of 1996's (AEDPA's) deferential-review standard. The Ninth Circuit reversed, looking through the State Supreme Court's summary denial to the last reasoned decision adjudicating Hinojosa's claim—the Superior Court's dismissal for improper venue, see *Ylst* v. *Nunnemaker*, 501 U. S. 797; reasoned that the Superior Court's decision was not entitled to AEDPA deference because it was not a determination on the merits; and granted Hinojosa's petition for habeas relief.

Held: Because the Supreme Court of California's summary denial of Hinojosa's petition was on the merits, the Ninth Circuit should have reviewed his *ex post facto* claim through AEDPA's deferential lens. *Ylst*'s rebuttable "look through" presumption is amply refuted here. Improper venue could not possibly have been a ground for the high court's summary denial of Hinojosa's claim. Thus, it cannot be that the State Supreme Court's denial "rest[ed] upon the same ground" as the Superior Court's. 501 U. S., at 803. Nor is there any indication that the summary denial was without prejudice, thus refuting Hinojosa's speculation that the State Supreme Court exercised its discretion to deny the petition without prejudice because it was not filed first in a proper lower court.

Certiorari granted; 803 F. 3d 412, reversed.

PER CURIAM.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) requires a state prisoner seeking federal habeas relief first to "exhaus[t] the remedies available in the courts of the State." 28 U. S. C. § 2254(b)(1)(A). If the state courts adjudicate the prisoner's federal claim "on the merits," § 2254(d), then AEDPA mandates deferential, rather than *de novo*, review, prohibiting federal courts from granting habeas relief unless the state-court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law," § 2254(d)(1), or "was based on an unreasonable determination of the facts," § 2254(d)(2). The Ninth Circuit in this case decided that the Supreme Court of California's summary denial of a habeas petition was *not* "on the merits," and therefore AEDPA's deferential-review provisions did not apply. We summarily reverse.

Respondent Antonio Hinojosa was serving a 16-year sentence for armed robbery and related crimes when, in 2009, California prison officials "validated" him as a prison-gang associate and placed him in a secured housing unit. At the time of Hinojosa's offense and conviction, California law had permitted prisoners placed in a secured housing unit solely by virtue of their prison-gang affiliations to continue to accrue good-time credits. See Cal. Penal Code Ann. § 2933.6 (West 2000). In 2010, the California Legislature amended the law so that prison-gang associates placed in a secured housing unit could no longer earn future good-time credits, although they would retain any credits already earned. § 2933.6(a) (West Supp. 2016).

Hinojosa filed a state habeas petition, arguing (as relevant here) that applying the new law to him violated the Federal Constitution's prohibition of *ex post facto* laws. See Art. I, § 10, cl. 1; *Weaver* v. *Graham*, 450 U. S. 24 (1981). The Orange County Superior Court denied the claim "on grounds petitioner has not sought review of his claim of error in the proper judicial venue." App. to Pet. for Cert. 44a. The court explained:

> "'Although any superior court has jurisdiction to entertain and adjudicate a petition for writ of habeas corpus, it does not follow that it should do so in all instances.' Challenges to conditions of an inmate's confinement should be entertained by the superior court of county wherein the inmate is confined. (*Griggs v. Superior Court* (1976) 16 Cal. 3d 341, 347.)
>
> "The petition for writ of habeas corpus is DENIED." *Id.*, at 44a–45a.[1]

Rather than file a new petition in the correct venue (Kings County Superior Court), Hinojosa turned to the appellate court, which summarily denied his petition. Instead of appealing that denial, see Cal. Penal Code Ann. § 1506 (West Supp. 2016), Hinojosa sought an original writ of habeas corpus in the Supreme Court of California, see Cal. Const., Art. 6, § 10, which summarily denied relief without explanation.

A petition for federal habeas relief followed. Adopting the Magistrate Judge's findings and recommendation, the District Court denied Hinojosa's *ex post facto* claim under AEDPA's deferential review. A Ninth Circuit panel reversed. *Hinojosa* v. *Davey*, 803 F. 3d 412 (2015). Citing our decision in *Ylst* v. *Nunnemaker*, 501 U. S. 797 (1991), the panel "looked through" the Supreme Court of California's summary denial to the last reasoned decision adjudicating Hinojosa's claim: the Superior Court's dismissal for improper venue. The panel reasoned that the Superior Court's decision "is not a determination 'on the merits' " and that as a result it was "not bound by AEDPA." 803 F. 3d, at 419.

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[1] In *Griggs* v. *Superior Ct. of San Bernardino Cty.*, 16 Cal. 3d 341, 347, 546 P. 2d 727, 731 (1976), the Supreme Court of California stated that "[a]s a general rule," if a prisoner files a habeas petition challenging the conditions of his confinement in a county other than the one in which he is confined, the court should not deny the petition unless it fails to state a prima facie case. In this case, however, there is no hint in the opinion of the Superior Court that it followed this approach, and petitioner does not claim that it did.

Having thus freed itself from AEDPA's strictures, the court granted Hinojosa's petition for habeas relief.

We reverse. In *Ylst*, we said that where "the last reasoned opinion on the claim explicitly imposes a procedural default, we will presume that a later decision rejecting the claim did not silently disregard that bar and consider the merits." 501 U. S., at 803. We adopted this presumption because "silence implies consent, not the opposite—and courts generally behave accordingly, affirming without further discussion when they agree, not when they disagree, with the reasons given below." *Id.*, at 804. But we pointedly refused to make the presumption irrebuttable; "strong evidence can refute it." *Ibid.*

It is amply refuted here. Improper venue could not possibly have been a ground for the high court's summary denial of Hinojosa's claim. There is only one Supreme Court of California—and thus only one venue in which Hinojosa could have sought an original writ of habeas corpus in that court. Under these circumstances, it cannot be that the State Supreme Court's denial "rest[ed] upon the same ground" as the Superior Court's. *Id.*, at 803. It quite obviously rested upon some different ground. *Ylst*'s "look-through" approach is therefore inapplicable.[2]

Hinojosa resists this conclusion, remarking that "a reviewing court has discretion to deny *without prejudice* a habeas corpus petition that was not filed first in a proper lower court." *In re Steele*, 32 Cal. 4th 682, 692, 85 P. 3d 444, 449 (2004) (emphasis added). But there is no indication that the summary denial here was without prejudice, thus refuting Hinojosa's speculation.

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[2] Alternatively, if the Superior Court in fact followed *Griggs*' instructions and silently concluded that the claim did not state a prima facie case for relief, see n. 1, *supra*, the decision of the Supreme Court of California would still be a decision on the merits, and the AEDPA standard of review would still apply.

Containing no statement to the contrary, the Supreme Court of California's summary denial of Hinojosa's petition was therefore on the merits. *Harrington* v. *Richter*, 562 U. S. 86, 99 (2011). Accordingly, the Ninth Circuit should have reviewed Hinojosa's *ex post facto* claim through AEDPA's deferential lens. And although we express no view on the merits of that claim, we note that the Ninth Circuit has already held that state-court denials of claims identical to Hinojosa's are not contrary to clearly established federal law. See *Nevarez* v. *Barnes*, 749 F. 3d 1124 (CA9 2014); see also *In re Efstathiou*, 200 Cal. App. 4th 725, 730–732, 133 Cal. Rptr. 3d 34, 37–40 (2011); *In re Sampson*, 197 Cal. App. 4th 1234, 1240–1244, 130 Cal. Rptr. 3d 39, 43–46 (2011). The panel below recognized as much: "If AEDPA applies here, we are bound by our decision in *Nevarez* and must affirm the district court's denial of Hinojosa's petition." 803 F. 3d, at 418. AEDPA applies here.

The petition for a writ of certiorari and Hinojosa's motion for leave to proceed *in forma pauperis* are granted, and the judgment of the Court of Appeals for the Ninth Circuit is reversed.

It is so ordered.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

When faced with a state-court order that denies a habeas petition without explanation, this Court has long presumed that the order agrees with the "last reasoned state-court opinion" in the case unless there is "*strong* evidence" to the contrary. *Ylst* v. *Nunnemaker*, 501 U. S. 797, 804–805 (1991). In this case, the parties agree that a California Superior Court denied a petition for improper venue because it was filed in the wrong county. The California Supreme Court later denied the same petition for no explained reason. Applying *Ylst*'s commonsense presumption, it is "most improbable" that the California Supreme Court's unexplained

order disagreed with the Superior Court's reasoned order. *Id.*, at 804. We should therefore presume that the California Supreme Court denied Antonio Hinojosa's habeas petition because he filed the first one in the wrong county.

The Court, however, believes there is *strong* evidence to the contrary—for two inexplicable reasons. The first reason—the California Supreme Court could not have denied the petition for "improper venue" because there is only one California Supreme Court, *ante*, at 414—is a straw man, and a poorly constructed one at that. Obviously the California Supreme Court did not deny Hinojosa's petition because he filed it in the wrong State Supreme Court. But it easily could have denied his petition because it agreed with the Superior Court's conclusion that he filed the first petition in the wrong county. See *In re Steele*, 32 Cal. 4th 682, 692, 85 P. 3d 444, 449 (2004). That possibility becomes even more likely in light of California's atypical habeas rules, which treat an original habeas petition to the California Supreme Court as the commonplace method for seeking review of a lower court's order. See *Carey* v. *Saffold*, 536 U. S. 214, 221–222 (2002).* By issuing a silent order after reviewing the lower court's reasoned decision, the California Supreme Court presumably denied Hinojosa's petition on the same ground. Cf. *Ylst*, 501 U. S., at 800 (applying its presumption on an identical posture out of California).

The majority's second reason is even flimsier. The majority suggests that the California Supreme Court's order did not include the words "without prejudice" and therefore could not have agreed with the Superior Court's denial—which the majority assumes was without prejudice. *Ante*,

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*Contrary to the majority's characterization, Hinojosa did not file his petition "[i]nstead of appealing" the lower court's denial, *ante*, at 414—his petition was itself his appeal. See *Carey*, 536 U. S., at 225 (calling an original habeas petition and the alternative "petition for hearing" "*interchangeable*" methods of appeal, "with neither option bringing adverse consequences to the petitioner").

at 415–416. But as the majority quotes, the Superior Court simply "'DENIED'" the petition; neither it nor the California Supreme Court "DENIED" it "without prejudice." *Ante*, at 414, 415. It is mindboggling how one opinion necessarily disagrees with another opinion merely because it omits language that the other opinion also lacks.

I would hold, as the Ninth Circuit did, that the California Supreme Court presumably agreed with the reasoning of the Superior Court. See *Ylst*, 501 U. S., at 804. At the very least, I would not hold that there is such "*strong* evidence" to the contrary that we should summarily reverse the Ninth Circuit's interpretation of the California Supreme Court's order—and, in the process, reverse the Ninth Circuit's separate conclusion that Hinojosa's incarceration had been unconstitutionally extended.

Syllabus

CRST VAN EXPEDITED, INC. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 14–1375. Argued March 28, 2016—Decided May 19, 2016

Petitioner CRST, a trucking company using a system under which two employees share driving duties on a single truck, requires its drivers to graduate from the company's training program before becoming a certified driver. In 2005, new driver Monika Starke filed a charge with the Equal Employment Opportunity Commission (Commission), alleging that she was sexually harassed by two male trainers during the road-trip portion of her training. Following the procedures set out in Title VII of the Civil Rights Act of 1964, see 42 U. S. C. §2000e–5(b), the Commission informed CRST about the charge and investigated the allegation, ultimately informing CRST that it had found reasonable cause to believe that CRST subjected Starke and "a class of employees and prospective employees to sexual harassment" and offering to conciliate. In 2007, having determined that conciliation had failed, the Commission, in its own name, filed suit against CRST under §706 of Title VII. During discovery, the Commission identified over 250 allegedly aggrieved women. The District Court, however, dismissed all of the claims, including those on behalf of 67 women, which, the court found, were barred on the ground that the Commission had not adequately investigated or attempted to conciliate its claims on their behalf before filing suit. The District Court then dismissed the suit, held that CRST is a prevailing party, and invited CRST to apply for attorney's fees. CRST filed a motion for attorney's fees. The District Court awarded the company over $4 million in fees. The Eighth Circuit reversed the dismissal of only two claims—on behalf of Starke and one other employee—but that led it to vacate, without prejudice, the attorney's fees award. On remand, the Commission settled the claim on behalf of Starke and withdrew the other. CRST again sought attorney's fees, and the District Court again awarded it more than $4 million, finding that CRST had prevailed on the claims for over 150 of the allegedly aggrieved women, including the 67 claims dismissed because of the Commission's failure to satisfy its presuit requirements. The Eighth Circuit reversed and remanded once more. It held that a Title VII defendant can be a "prevailing party" only by obtaining a "ruling on the merits," and that the District Court's dismissal of the claims was not a ruling on the merits.

Syllabus

Held: A favorable ruling on the merits is not a necessary predicate to find that a defendant is a prevailing party. Pp. 431–436.

(a) Common sense undermines the notion that a defendant cannot "prevail" unless the relevant disposition is on the merits. A plaintiff seeks a material alteration in the legal relationship between the parties. But a defendant seeks to prevent an alteration in the plaintiff's favor, and that objective is fulfilled whenever the plaintiff's challenge is rebuffed, irrespective of the precise reason for the court's decision, *i. e.*, even if the court's final judgment rejects the plaintiff's claim for a nonmerits reason. There is no indication that Congress intended that defendants should be eligible to recover attorney's fees only when courts dispose of claims on the merits. Title VII's fee-shifting statute allows prevailing defendants to recover whenever the plaintiff's "claim was frivolous, unreasonable, or groundless." *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412, 422. Congress thus must have intended that a defendant could recover fees expended in frivolous, unreasonable, or groundless litigation when the case is resolved in the defendant's favor, whether on the merits or not. *Christiansburg* itself involved a defendant's request for attorney's fees in a case where the District Court had rejected the plaintiff's claim for a nonmerits reason. Various Courts of Appeals likewise have applied the *Christiansburg* standard when claims were dismissed for nonmerits reasons. Pp. 431–434.

(b) The Court declines to decide the argument, raised by the Commission for the first time during the merits stage of this case, whether a defendant must obtain a preclusive judgment in order to prevail. The Commission's failure to articulate its preclusion theory earlier has resulted in inadequate briefing on the issue, and the parties dispute whether the District Court's judgment was in fact preclusive. The Commission also submits that the Court should affirm on the alternative ground that, even if CRST is a prevailing party, the Commission's position that it had satisfied its presuit obligations was not frivolous, unreasonable, or groundless. These matters are left for the Eighth Circuit to consider in the first instance. It is not this Court's usual practice to adjudicate either legal or predicate factual questions in the first instance, see *Adarand Constructors, Inc.* v. *Mineta*, 534 U. S. 103, 110, and that is the proper course here, given the extensive record in this case and the Commission's change of position between the certiorari and merits stages. Pp. 434–435.

774 F. 3d 1169, vacated and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion, *post*, p. 436.

Paul M. Smith argued the cause for petitioner. With him on the briefs were *Jessica Ring Amunson*, *John H. Mathias, Jr.*, and *James T. Malysiak*.

Brian H. Fletcher argued the cause for respondent. With him on the brief were *Solicitor General Verrilli*, *Deputy Solicitor General Gershengorn*, *P. David Lopez*, *Jennifer S. Goldstein*, *Gail S. Coleman*, and *Susan R. Oxford*.*

JUSTICE KENNEDY delivered the opinion of the Court.

This case involves the interpretation of a statutory provision allowing district courts to award attorney's fees to defendants in employment discrimination actions. Under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.*, which prohibits discrimination in employment, a district court may award attorney's fees to "the prevailing party." § 2000e–5(k). The Court of Appeals for the Eighth Circuit held that a Title VII defendant prevails only by obtaining a "ruling on the merits." 774 F. 3d 1169, 1179 (2014); *Marquart* v. *Lodge 837, Machinists and Aerospace Workers*, 26 F. 3d 842, 851–852 (1994). This Court disagrees with that conclusion. The Court now holds that a favorable ruling on the merits is not a necessary predicate to find that a defendant has prevailed.

I

Title VII of the Civil Rights Act of 1964 authorizes an award of attorney's fees in certain circumstances. The statute provides that

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*Briefs of *amici curiae* urging reversal were filed for Bass Pro Shops Outdoor World, LLC, et al. by *Michael W. Johnston*, *Rebecca Cole Moore*, *Daryl L. Joseffer*, and *James P. Sullivan*; for the Chamber of Commerce of the United States of America et al. by *Eric S. Dreiband*, *Kenton J. Skarin*, *Richard Pianka*, *Kate Comerford Todd*, and *Warren Postman*; and for the Equal Employment Advisory Council et al. by *Rae T. Vann*, *Karen R. Harned*, and *Elizabeth Milito*.

Mahesha P. Subbaraman filed a brief for Americans for Forfeiture Reform as *amicus curiae*.

> "[i]n any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the [Equal Employment Opportunity] Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person." § 2000e–5(k).

Before deciding whether an award of attorney's fees is appropriate in a given case, then, a court must determine whether the party seeking fees has prevailed in the litigation. *Texas State Teachers Assn.* v. *Garland Independent School Dist.*, 489 U. S. 782, 789 (1989); *Hensley* v. *Eckerhart*, 461 U. S. 424, 433 (1983).

Congress has included the term "prevailing party" in various fee-shifting statutes, and it has been the Court's approach to interpret the term in a consistent manner. See *Buckhannon Board & Care Home, Inc.* v. *West Virginia Dept. of Health and Human Resources*, 532 U. S. 598, 602–603, and n. 4 (2001). The Court has said that the "touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties." *Texas State Teachers Assn.*, *supra*, at 792–793. This change must be marked by "judicial *imprimatur*." *Buckhannon*, 532 U. S., at 605. The Court has explained that, when a plaintiff secures an "enforceable judgmen[t] on the merits" or a "court-ordered consent decre[e]," that plaintiff is the prevailing party because he has received a "judicially sanctioned change in the legal relationship of the parties." *Id.*, at 604–605. The Court, however, has not set forth in detail how courts should determine whether a defendant has prevailed.

Although the Court has not articulated a precise test for when a defendant is a prevailing party, in the Title VII context it has addressed how defendants should be treated under the second part of the inquiry—whether the district court should exercise its discretion to award fees to the prevailing party. When a defendant is the prevailing party on

a civil rights claim, the Court has held, district courts may award attorney's fees if the plaintiff's "claim was frivolous, unreasonable, or groundless," or if "the plaintiff continued to litigate after it clearly became so." *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412, 422 (1978); see also *id.*, at 421.

The Court of Appeals' determination of the first part of the fee-shifting inquiry—whether petitioner is a prevailing party—presents the central issue in this case. Before addressing this question, however, a discussion of the facts and complex procedural history is warranted.

II

Petitioner CRST is a trucking company that employs a team driving system under which two employees share driving duties on a single truck. CRST requires its drivers to graduate from the company's training program before becoming a certified driver. Part of that training is a 28-day over-the-road trip with a veteran driver. In 2005, a new driver named Monika Starke filed a charge of discrimination with the Equal Employment Opportunity Commission (Commission) alleging that two male trainers sexually harassed her during her over-the-road training trip.

The Commission's receipt of a charge of an unlawful workplace practice starts Title VII's "detailed, multi-step procedure through which the Commission enforces the statute's prohibition on employment discrimination." *Mach Mining, LLC* v. *EEOC*, 575 U. S. 480, 483 (2015). Under § 706 of Title VII, the Commission first must inform the employer about the charge and the details of the allegations. 42 U. S. C. § 2000e–5(b). The Commission next must investigate the allegation. *Ibid.* If the agency "determines after such investigation that there is not reasonable cause to believe that the charge is true," it shall dismiss the charge and notify the parties. *Ibid.* At that point, the Commission is no longer involved, and the aggrieved individual may sue the

employer in his or her own name. § 2000e–5(f)(1). If, on the other hand, the Commission determines that there is reasonable cause to believe that a Title VII violation did occur, it "shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." § 2000e–5(b). Only if the agency's attempt at conciliation fails may it file a court action in its own name on behalf of the aggrieved person who brought the charge. § 2000e–5(f)(1).

Following these procedures, the Commission notified CRST of Starke's charge and requested information regarding Starke's allegations. In response CRST denied any wrongdoing. During the investigation, the Commission discovered that four other women had filed formal charges against the company with the Commission. The Commission then sent CRST several followup requests. It asked if CRST had received other allegations of harassment, demanded contact information for any women who were instructed by the trainers Starke accused of harassment, and sought "detailed contact information for" CRST's dispatchers and female drivers. 679 F. 3d 657, 667 (CA8 2012).

Over a year and a half after Starke filed her charge, the Commission sent CRST a letter of determination informing the company that the Commission had found reasonable cause to believe that CRST subjected Starke and "a class of employees and prospective employees to sexual harassment" and offering to conciliate. App. 811. Counsel for the Commission and for CRST discussed conciliation, but were unable to reach an agreement, and the Commission promptly notified the company that, in the agency's view, the conciliation efforts had failed.

In September 2007 the Commission, in its own name, filed suit against CRST under § 706 of Title VII. It alleged that CRST subjected Starke and "[o]ther similarly situated . . . employees of CRST . . . to sexual harassment and a sexually hostile and offensive work environment" in violation of

§§ 703(a) and 704(a) of Title VII, 42 U. S. C. §§ 2000e–2 and 2000e–3. App. 794–795. The Commission is allowed to "seek specific relief for a group of aggrieved individuals [under § 706] without first obtaining class certification pursuant to" Federal Rule of Civil Procedure 23, because that Rule "is not applicable to" a § 706 enforcement action. *General Telephone Co. of Northwest* v. *EEOC*, 446 U. S. 318, 323, 333–334 (1980). The Commission sought to enjoin CRST from engaging in discriminatory employment practices and to obtain an order requiring CRST to take proactive steps to remedy and prevent sex-based discrimination in the workplace. The Commission also sought damages and costs.

During discovery, the Commission identified over 250 allegedly aggrieved women—far more than the Commission had forecast. CRST filed a motion for an order to show cause, alleging that the Commission "did not have a good-faith basis" for seeking relief on behalf of all the women. 2009 WL 2524402, *10 (ND Iowa, Aug. 13, 2009). The District Court did not strike any allegedly aggrieved persons at that time, although it did note its concern "that CRST still might unfairly face a 'moving target' of prospective plaintiffs as discovery winds down and trial approaches." *Ibid.* (alteration and some internal quotation marks omitted).

The District Court proceeded to dispose of the Commission's claims in a series of orders responsive to various motions filed by CRST. Section 707 of Title VII authorizes the Commission to bring a claim "that any person or group of persons is engaged in a pattern or practice" of illegal sex-based discrimination. See 42 U. S. C. § 2000e–6. In the early stage of this litigation the Commission "made clear to the [district] court and CRST that it believe[d] CRST had engaged in 'a pattern or practice' of tolerating sexual harassment." Order in No. 07–CV–95 (ND Iowa), Doc. 197, p. 25. CRST sought summary judgment on the Commission's perceived pattern-or-practice claim. The District Court granted the motion. The court explained that, although

courts have allowed the Commission to use a pattern-or-practice theory when litigating a § 706 claim, the Commission did not plead a violation of § 707 or use the phrase "pattern or practice" in its complaint. *Id.*, at 24–25. Instead, the "[Commission's] Complaint reads as if the [Commission] were asserting a prototypical § 706 action." *Ibid.* But, the court noted, CRST did not argue that the Commission failed to state a pattern-or-practice claim in the complaint; and the court presumed that CRST would not have sought summary judgment on a claim "it does not believe to exist." *Id.*, at 26. Because both parties accepted that the claim was live, "the court assume[d] without deciding that this is a sexual harassment pattern or practice case." *Ibid.* After reviewing the parties' arguments, the court held that the Commission had "not established a pattern or practice of tolerating sexual harassment" and dismissed with prejudice the assumed pattern-or-practice claim. *Id.*, at 67. The court, as a final matter, advised that "[n]othing in this opinion . . . should be construed as a final ruling on the individual claims of sexual harassment that the [Commission] presses in this action." *Ibid.*

Next, the District Court ruled in several orders that the Commission's claims on behalf of all but 67 of the women were barred on a variety of grounds. The court had previously dismissed claims on behalf of nearly 100 women as a discovery sanction due to the Commission's failure to produce the women for deposition. In rejecting the Commission's other claims, the court relied on (1) the expiration of the statute of limitations; (2) judicial estoppel; (3) the employee's failure to report the alleged harassment in a timely fashion; (4) CRST's prompt and effective response to reports of harassment; and (5) the lack of severity or pervasiveness of the alleged harassment.

The District Court then barred the Commission from seeking relief for the remaining 67 women on the ground that the Commission had not satisfied its § 706 presuit requirements

before filing the lawsuit. The court concluded that the suit was "one of those exceptionally rare" cases where the Commission "wholly abandoned its statutory duties" to investigate and conciliate. 2009 WL 2524402, *16. The court noted, however, that it "expresse[d] no view as to whether the [Commission's] investigation, determination and conciliation of Starke's Charge would be sufficient to support a pattern[-]or-practice lawsuit." *Ibid.*, n. 21. The District Court then dismissed the suit, held that CRST is a prevailing party, and invited CRST to apply for attorney's fees.

CRST filed a motion for attorney's fees. After describing how it disposed of the Commission's claims piece by piece, the District Court held that the Commission's failure to satisfy its presuit obligations for its claims on behalf of the final 67 women was "unreasonable," and that an award of attorney's fees was therefore appropriate. App. 140. The court awarded CRST over $4 million in attorney's fees. *Id.*, at 173–174.

The Commission appealed the District Court's order dismissing the claims on behalf of the 67 women that the District Court rejected for failure to satisfy Title VII's presuit requirements as well as the District Court's dismissal of some of the Commission's other claims. As relevant here, the Court of Appeals held that the District Court's dismissal of the 67 claims for a lack of investigation and conciliation was proper. The Commission, according to the Court of Appeals, "did not reasonably investigate the class allegations of sexual harassment during a reasonable investigation of the charge," but rather used "discovery in the resulting lawsuit as a fishing expedition to uncover more violations." 679 F. 3d, at 676 (internal quotation marks omitted). The Commission in fact "did not investigate the specific allegations of *any* of the 67 allegedly aggrieved persons . . . until *after* the Complaint was filed." *Ibid.* (internal quotation marks omitted).

The Court of Appeals affirmed the District Court's dismissal of almost all of the other claims on which the Commis-

sion had appealed, reversing only the claims on behalf of Starke and one other employee—Tillie Jones—for reasons not material to the question at issue here. Like the District Court before it, the Court of Appeals declined to comment on whether the presuit investigation and attempted conciliation would have been sufficient to support a pattern-or-practice claim. The Court of Appeals also vacated, without prejudice, the attorney's fees award. "In light of our reversals" of the District Court's summary-judgment orders with respect to Starke and Jones, the court reasoned, "CRST is no longer a 'prevailing' defendant because the [Commission] still asserts live claims against it." *Id.*, at 694–695. Judge Murphy dissented from the court's holding that the Commission had failed to satisfy its obligation to investigate and conciliate the final 67 claims, arguing that the Commission did not need to "complete its presuit duties for each individual alleged victim of discrimination when pursuing a class claim." *Id.*, at 695.

After the case was remanded, the Commission withdrew its claim on behalf of Jones and settled its claim on behalf of Starke. The Commission thus had no claims left. The company again moved for attorney's fees, and the District Court again awarded CRST more than $4 million in fees. The court first concluded "that this case contained multiple and distinct claims for relief," thereby rejecting the Commission's contention that it had brought a single claim on which it had prevailed. 2013 WL 3984478, *9 (ND Iowa, Aug. 1, 2013). Noting that the defendant does not have to prevail on every claim in a suit to obtain attorney's fees, see *Fox* v. *Vice*, 563 U. S. 826 (2011), the court then determined the claims on which CRST had prevailed. Applying Circuit precedent requiring a ruling on the merits of a claim before a defendant can be considered a prevailing party, the court found that CRST did not prevail on the claims that were dismissed because of the Commission's failure to produce many of the allegedly aggrieved women for deposition. The

court also found that CRST had not prevailed on the merits with respect to a handful of the Commission's other claims. The court found that CRST did prevail, however, on the Commission's pattern-or-practice claim and on the claims on behalf of over 150 of the allegedly aggrieved women, including the 67 claims dismissed because of the Commission's failure to satisfy its presuit requirements. The court held that its dismissal of those 67 claims was a ruling on the merits because the Commission's obligation to investigate and conciliate "is not a jurisdictional prerequisite; rather, it is an ingredient of the [Commission's] claim." 2013 WL 3984478, *10. The court further concluded that an award of attorney's fees was appropriate because the Commission's failure to investigate and conciliate those 67 claims was unreasonable, as were the pattern-or-practice claim and the other claims on which it prevailed.

The Commission appealed, and the Court of Appeals again reversed and remanded. The Court of Appeals first agreed with the District Court that the Commission brought many individual claims, not just a single claim. The Court of Appeals disagreed, however, with the District Court's conclusion that CRST could recover attorney's fees for the pattern-or-practice claim. The Commission did not allege a pattern-or-practice claim in its complaint, the Court of Appeals noted, and the District Court had "merely *assumed without deciding* that the [Commission] brought a pattern-or-practice claim." 774 F. 3d, at 1179. The Court of Appeals concluded that the District Court erred by awarding fees "based on a purported" claim. *Ibid.*

The Court of Appeals, bound by its own precedent in *Marquart*, then held that before a defendant can be deemed to have prevailed and to be eligible for fees there must have been a favorable "'judicial determination . . . on the merits.'" 774 F. 3d, at 1179 (quoting *Marquart*, 26 F. 3d, at 852). A merits-based disposition is necessary, the court reasoned, because "'[p]roof that a plaintiff's case is frivolous, unreason-

able, or groundless is not possible without a judicial determination of the plaintiff's case on the merits.'" 774 F. 3d, at 1179 (quoting *Marquart*, *supra*, at 852). A case has not been decided on the merits, according to the Court of Appeals, if the defendant secured a "dismissal for lack of subject matter jurisdiction, on res judicata grounds, . . . on statute-of-limitations grounds," or for something similar. 774 F. 3d, at 1179. The Court of Appeals distinguished "claim elements," on the one hand, from "jurisdictional prerequisites or nonjurisdictional prerequisites to filing suit," on the other. *Id.*, at 1180. As relevant here, the court held that because Title VII's presuit requirements are not elements of a Title VII claim, the dismissal of the claims regarding the 67 women on the ground that the Commission failed to investigate or conciliate was not a ruling on the merits, and CRST did not prevail on those claims. *Id.*, at 1181. As a result, the court concluded, CRST was "not entitled to an award of attorneys' fees on such claims." *Ibid.* The Court of Appeals also criticized the District Court for "mak[ing] a universal finding that all of the [Commission's] claims were without foundation," instead of laying out "particularized findings . . . as to each individual claim upon which it granted summary judgment on the merits to CRST." *Id.*, at 1183. Such findings are necessary, the court reasoned, to avoid providing the defendant with "'compensation for any fees that he would have paid in the absence of the frivolous claims.'" *Ibid.* (quoting *Fox*, *supra*, at 841). In particular, the court found it "problematic" that the District Court's blanket finding included "(1) the purported pattern-or-practice claim and (2) the claims dismissed for the [Commission's] failure to satisfy its presuit obligations." 774 F. 3d, at 1183. The District Court was ordered to undertake a proper, particularized inquiry on remand.

By precluding the defendant from recovering attorney's fees when the claims in question have been dismissed because the Commission failed to satisfy its presuit obligations,

the decision of the Court of Appeals conflicts with the decisions of three other Courts of Appeals. See *EEOC* v. *Propak Logistics, Inc.*, 746 F. 3d 145, 152–154 (CA4 2014); *EEOC* v. *Asplundh Tree Expert Co.*, 340 F. 3d 1256, 1261 (CA11 2003); *EEOC* v. *Pierce Packing Co.*, 669 F. 2d 605, 608–609 (CA9 1982). This Court granted certiorari. 577 U. S. 1025 (2015).

III

A

The Court of Appeals held that CRST did not prevail on the claims brought on behalf of 67 women because the District Court's disposition of these claims for failure to investigate and conciliate was not a ruling on the merits. In this Court the Commission now takes the position that the court erred by applying an on-the-merits requirement. Brief for Respondent 29 ("[A]sking whether a judgment is 'on the merits' in some abstract sense risks confusion"); Tr. of Oral Arg. 30 ("We have abandoned the Eighth Circuit's view that you need a disposition on the merits"). This Court agrees and now holds that a defendant need not obtain a favorable judgment on the merits in order to be a "prevailing party."

Common sense undermines the notion that a defendant cannot "prevail" unless the relevant disposition is on the merits. Plaintiffs and defendants come to court with different objectives. A plaintiff seeks a material alteration in the legal relationship between the parties. A defendant seeks to prevent this alteration to the extent it is in the plaintiff's favor. The defendant, of course, might prefer a judgment vindicating its position regarding the substantive merits of the plaintiff's allegations. The defendant has, however, fulfilled its primary objective whenever the plaintiff's challenge is rebuffed, irrespective of the precise reason for the court's decision. The defendant may prevail even if the court's final judgment rejects the plaintiff's claim for a nonmerits reason.

There is no indication that Congress intended that defendants should be eligible to recover attorney's fees only when courts dispose of claims on the merits. The congressional policy regarding the exercise of district court discretion in the ultimate decision whether to award fees does not distinguish between merits-based and non-merits-based judgments. Rather, as the Court explained in *Christiansburg Garment Co.* v. *EEOC*, one purpose of the fee-shifting provision is "to deter the bringing of lawsuits without foundation." 434 U. S., at 420 (internal quotation marks omitted); see also *Fox*, 563 U. S., at 836 (noting, in the context of 42 U. S. C. § 1988's closely related provision, that Congress wanted "to relieve defendants of the burdens associated with fending off frivolous litigation"). The Court, therefore, has interpreted the statute to allow prevailing defendants to recover whenever the plaintiff's "claim was frivolous, unreasonable, or groundless." *Christiansburg*, *supra*, at 422. It would make little sense if Congress' policy of "sparing defendants from the costs of *frivolous* litigation," *Fox*, *supra*, at 840, depended on the distinction between merits-based and non-merits-based frivolity. Congress must have intended that a defendant could recover fees expended in frivolous, unreasonable, or groundless litigation when the case is resolved in the defendant's favor, whether on the merits or not. Imposing an on-the-merits requirement for a defendant to obtain prevailing party status would undermine that congressional policy by blocking a whole category of defendants for whom Congress wished to make fee awards available.

Christiansburg itself involved a defendant's request for attorney's fees in a case where the District Court had rejected the plaintiff's claim for a nonmerits reason. That case involved a claim under Title VII, as originally enacted, which did not give the Commission the authority to sue in its own name on behalf of an aggrieved person. Rosa Helm had filed

a charge of discrimination against Christiansburg Garment Co. with the Commission in 1968. A few years later, the Commission determined that its conciliation efforts had failed and told Helm of her right to sue Christiansburg, which she did not exercise. Then in 1972, Congress amended Title VII to allow the Commission to sue in its own name on behalf of an aggrieved person, including where the employee's charge was "pending with the Commission" when the amendments took effect. Equal Employment Opportunity Act of 1972, § 14, 86 Stat. 113. The Commission sued Christiansburg based on Helm's charge, but the District Court granted summary judgment to the defendant on the ground that the charge was not pending on the amendments' effective date. *EEOC* v. *Christiansburg Garment Co.*, 376 F. Supp. 1067, 1073–1074 (WD Va. 1974). This Court was asked "what standard should inform a district court's discretion in deciding whether to award attorney's fees to a successful defendant in a Title VII action." *Christiansburg*, 434 U. S., at 417 (emphasis deleted). If a ruling on the merits were necessary for the defendant to prevail and be eligible for attorney's fees, the lack of a ruling on the merits would have been dispositive to this Court's analysis. But the Court said nothing to suggest that the fact that the ruling was not on the merits ended the inquiry. Its reasoning was to the contrary. This Court noted with approval that the District Court had applied the correct standard and found that the "Commission's statutory interpretation of § 14 of the 1972 amendments was not frivolous." *Id.*, at 424 (internal quotation marks omitted).

Various Courts of Appeals likewise have applied the *Christiansburg* standard when claims were dismissed for nonmerits reasons. A plaintiff's claim may be frivolous, unreasonable, or groundless if the claim is barred by state sovereign immunity, *C. W.* v. *Capistrano Unified School Dist.*, 784 F. 3d 1237, 1247–1248 (CA9 2015), or is moot, *Propak*

Logistics, 746 F. 3d, at 152. See also Brief for Petitioner 33–34 (collecting Courts of Appeals cases in which the defendant received attorney's fees and the District Court's judgment was not on the merits). In cases like these, significant attorney time and expenditure may have gone into contesting the claim. Congress could not have intended to bar defendants from obtaining attorney's fees in these cases on the basis that, although the litigation was resolved in their favor, they were nonetheless not prevailing parties. Neither the text of the fee-shifting statute nor the policy which underpins it counsels in favor of adopting the Court of Appeals' on-the-merits requirement.

B

Having abandoned its defense of the Court of Appeals' reasoning, the Commission now urges this Court to hold that a defendant must obtain a preclusive judgment in order to prevail. The Court declines to decide this issue, however. The Commission changed its argument between the certiorari and merits stages. As a result, the Commission may have forfeited the preclusion argument by not raising it earlier. The Commission's failure to articulate its preclusion theory before the eleventh hour has resulted in inadequate briefing on the issue. The Commission and CRST dispute, moreover, whether the District Court's judgment was in fact preclusive. Compare Brief for Respondent 38–45 with Reply Brief 8–13. The Court leaves these legal and factual issues for the Court of Appeals to consider in the first instance.

The Commission submits the Court should affirm on the alternative ground that, even if CRST is a prevailing party, the Commission's position that it had satisfied its presuit obligations was not frivolous, unreasonable, or groundless. The Commission acknowledges that the Court of Appeals has not decided this issue, but nevertheless invokes the Court's authority to affirm "on any ground properly raised below."

Washington v. *Confederated Bands and Tribes of Yakima Nation*, 439 U. S. 463, 476, n. 20 (1979); see Brief for Respondent 49–50. In light of this case's intricate procedural history, see *supra*, at 423–431, this is not an appropriate case to reach and settle this fact-sensitive issue.

It has been over 10 years since Starke first filed her charge and close to 9 years since the Commission filed its complaint. The dispute over the award of attorney's fees has continued over much of that period and is still unresolved. When it appeared the litigation was coming to a close in the District Court, the trial judge considered this a case in which attorney's fees should be assessed against the Commission. The Court of Appeals then made the rulings it considered proper in response, and there were further proceedings in the trial court and once again on appeal. Against this background of protracted and expensive litigation on the fee issue, the Court is aware of the need to resolve the outstanding issues without unnecessary delay. As the Court has noted in earlier cases, "the determination of fees 'should not result in a second major litigation.'" *Fox*, 563 U. S., at 838 (quoting *Hensley*, 461 U. S., at 437).

It is not prudent, however, for the Court to attempt to resolve all the pending issues under the circumstances here. It is not the Court's usual practice to adjudicate either legal or predicate factual questions in the first instance. See *Adarand Constructors, Inc.* v. *Mineta*, 534 U. S. 103, 110 (2001) (*per curiam*) (noting "that this is a court of final review and not first view" (internal quotation marks omitted)). That precept is applicable here, especially in light of the extensive record in the case and the Commission's change in its position. This Court is confident that the Court of Appeals, and, if necessary, the District Court, will resolve the case by taking any proper steps to expedite its resolution in a manner consistent with their own procedures and their responsibilities in other pending cases.

The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, concurring.

Under Title VII of the Civil Rights Act of 1964, a district court may award attorney's fees to "the prevailing party." 42 U. S. C. § 2000e–5(k). In *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412 (1978), this Court concluded that a prevailing plaintiff "ordinarily is to be awarded attorney's fees in all but special circumstances," but a prevailing defendant is to be awarded fees only "upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation." *Id.*, at 417, 421. That holding "mistakenly cast aside the statutory language" in interpreting the phrase "prevailing party." *Fogerty* v. *Fantasy, Inc.*, 510 U. S. 517, 538 (1994) (THOMAS, J., concurring in judgment) (internal quotation marks omitted). In this case, the Court of Appeals compounded *Christiansburg*'s error by requiring a district court to make yet another finding before a Title VII defendant may be considered a "prevailing party": The defendant must also obtain a "ruling on the merits." 774 F. 3d 1169, 1181 (CA8 2014). Today, the Court correctly vacates that ruling and holds that "a favorable ruling on the merits is not a necessary predicate to find that a defendant has prevailed." *Ante*, at 421. I therefore join the Court's opinion in full. Nevertheless, I continue to adhere to my view that *Christiansburg* is a "dubious precedent" that I will "decline to extend" any further. *Fogerty*, *supra*, at 539 (opinion of THOMAS, J.).

Syllabus

BETTERMAN *v.* MONTANA

CERTIORARI TO THE SUPREME COURT OF MONTANA

No. 14–1457. Argued March 28, 2016—Decided May 19, 2016

Petitioner Brandon Betterman pleaded guilty to bail jumping after failing to appear in court on domestic assault charges. He was then jailed for over 14 months awaiting sentence, in large part due to institutional delay. He was eventually sentenced to seven years' imprisonment, with four of the years suspended. Arguing that the 14-month gap between conviction and sentencing violated his speedy trial right, Betterman appealed, but the Montana Supreme Court affirmed the conviction and sentence, ruling that the Sixth Amendment's Speedy Trial Clause does not apply to postconviction, presentencing delay.

Held: The Sixth Amendment's speedy trial guarantee does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges. Pp. 441–449.

(a) Criminal proceedings generally unfold in three discrete phases. First, the State investigates to determine whether to arrest and charge a suspect. Once charged, the suspect is presumed innocent until conviction upon trial or guilty plea. After conviction, the court imposes sentence. There are checks against delay geared to each particular phase. P. 441.

(b) Statutes of limitations provide the primary protection against delay in the first stage, when the suspect remains at liberty, with the Due Process Clause safeguarding against fundamentally unfair prosecutorial conduct. *United States* v. *Lovasco*, 431 U. S. 783, 789. P. 441.

(c) The Speedy Trial Clause right attaches when the second phase begins, that is, upon a defendant's arrest or formal accusation. *United States* v. *Marion*, 404 U. S. 307, 320–321. The right detaches upon conviction, when this second stage ends. Before conviction, the accused is shielded by the presumption of innocence, *Reed* v. *Ross*, 468 U. S. 1, 4, which the Speedy Trial Clause implements by minimizing the likelihood of lengthy incarceration before trial, lessening the anxiety and concern associated with a public accusation, and limiting the effects of long delay on the accused's ability to mount a defense, *Marion*, 404 U. S., at 320. The Speedy Trial Clause thus loses force upon conviction.

This reading comports with the historical understanding of the speedy trial right. It "has its roots at the very foundation of our English law heritage," *Klopfer* v. *North Carolina*, 386 U. S. 213, 223, and it was the contemporaneous understanding of the Sixth Amendment's language

that "accused" described a status preceding "convicted" and "trial" meant a discrete episode after which judgment (*i. e.*, sentencing) would follow. The Court's precedent aligns with the text and history of the Speedy Trial Clause. See *Barker* v. *Wingo*, 407 U. S. 514, 532–533. Just as the right to speedy trial does not arise prearrest, *Marion*, 404 U. S., at 320–322, adverse consequences of postconviction delay are outside the purview of the Speedy Trial Clause. The sole remedy for a violation of the speedy trial right—dismissal of the charges—fits the preconviction focus of the Clause, for it would be an unjustified windfall to remedy sentencing delay by vacating validly obtained convictions. This reading also finds support in the federal Speedy Trial Act of 1974 and numerous state analogues, which impose time limits for charging and trial but say nothing about sentencing. The prevalence of guilty pleas and the resulting scarcity of trials in today's justice system do not bear on the presumption-of-innocence protection at the heart of the Speedy Trial Clause. Moreover, a central feature of contemporary sentencing—the preparation and review of a presentence investigation report—requires some amount of wholly reasonable presentencing delay. Pp. 441–447.

(d) Although the Constitution's presumption-of-innocence-protective speedy trial right is not engaged in the sentencing phase, statutes and rules offer defendants recourse. Federal Rule of Criminal Procedure 32(b)(1), for example, directs courts to "impose sentence without unnecessary delay." Further, as at the prearrest stage, due process serves as a backstop against exorbitant delay. Because Betterman advanced no due process claim here, however, the Court expresses no opinion on how he might fare under that more pliable standard. Pp. 447–448.

378 Mont. 182, 342 P. 3d 971, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion, in which ALITO, J., joined, *post*, p. 449. SOTOMAYOR, J., filed a concurring opinion, *post*, p. 450.

Fred A. Rowley, Jr., argued the cause for petitioner. With him on the briefs were *Daniel B. Levin*, *Eric C. Tung*, and *Stuart Banner*.

Dale Schowengerdt, Solicitor General of Montana, argued the cause for respondent. With him on the brief were *Timothy C. Fox*, Attorney General, *C. Mark Fowler*, and *Tammy A. Hinderman* and *Jonathan M. Krauss*, Assistant Attorneys General.

Ginger D. Anders argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Caldwell*, *Deputy Solicitor General Dreeben*, and *Ross B. Goldman*.*

JUSTICE GINSBURG delivered the opinion of the Court.

The Sixth Amendment to the U. S. Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ." Does the Sixth Amendment's speedy trial guarantee apply to the sentencing phase of a criminal prosecution? That is the sole question this case presents. We hold that the guarantee protects the accused from arrest or indictment through trial, but does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges. For inordinate delay in sentencing, although the Speedy Trial Clause does not govern, a defendant may have other recourse, including, in appropriate circumstances, tailored relief under the Due Process Clauses of the Fifth and Fourteenth Amendments. Petitioner Brandon Better-

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**Mark E. Haddad*, *Collin P. Wedel*, and *Jeffrey L. Fisher* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

A brief of *amici curiae* urging affirmance was filed for the State of Indiana et al. by *Gregory F. Zoeller*, Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, *Stephen R. Creason*, and *Brian Reitz*, *Larry D. Allen*, *Heather Hagan McVeigh*, and *Lara Langeneckert*, Deputy Attorneys General, by *John J. Hoffman*, Acting Attorney General of New Jersey, and *Bruce R. Beemer*, First Deputy Attorney General of Pennsylvania, and by the Attorneys General for their respective States as follows: *Leslie Rutledge* of Arkansas, *Pamela Jo Bondi* of Florida, *Derek Schmidt* of Kansas, *Jeff Landry* of Louisiana, *Janet T. Mills* of Maine, *Bill Schuette* of Michigan, *Adam Paul Laxalt* of Nevada, *Wayne Stenehjem* of North Dakota, *Michael DeWine* of Ohio, *Alan Wilson* of South Carolina, *Marty J. Jackley* of South Dakota, *William H. Sorrell* of Vermont, *Patrick Morrisey* of West Virginia, *Brad D. Schimel* of Wisconsin, and *Peter K. Michael* of Wyoming.

man, however, advanced in this Court only a Sixth Amendment speedy trial claim. He did not preserve a due process challenge. See Tr. of Oral Arg. 19. We, therefore, confine this opinion to his Sixth Amendment challenge.

I

Ordered to appear in court on domestic assault charges, Brandon Betterman failed to show up and was therefore charged with bail jumping. 378 Mont. 182, 184, 342 P. 3d 971, 973 (2015). After pleading guilty to the bail-jumping charge, he was jailed for over 14 months awaiting sentence on that conviction. *Id.*, at 184–185, 342 P. 3d, at 973–974. The holdup, in large part, was due to institutional delay: The presentence report took nearly five months to complete; the trial court took several months to deny two presentence motions (one seeking dismissal of the charge on the ground of delay); and the court was slow in setting a sentencing hearing. *Id.*, at 185, 195, 342 P. 3d, at 973–974, 980. Betterman was eventually sentenced to seven years' imprisonment, with four of those years suspended. *Id.*, at 185, 342 P. 3d, at 974.

Arguing that the 14-month gap between conviction and sentencing violated his speedy trial right, Betterman appealed. The Montana Supreme Court affirmed his conviction and sentence, ruling that the Sixth Amendment's Speedy Trial Clause does not apply to postconviction, presentencing delay. *Id.*, at 188–192, 342 P. 3d, at 975–978.

We granted certiorari, 577 U. S. 1025 (2015), to resolve a split among courts over whether the Speedy Trial Clause applies to such delay.[1] Holding that the Clause does not

[1] Compare *Burkett* v. *Cunningham*, 826 F. 2d 1208, 1220 (CA3 1987); *Juarez-Casares* v. *United States*, 496 F. 2d 190, 192 (CA5 1974); *Ex parte Apicella*, 809 So. 2d 865, 869 (Ala. 2001); *Gonzales* v. *State*, 582 P. 2d 630, 632 (Alaska 1978); *Jolly* v. *State*, 358 Ark. 180, 191, 189 S. W. 3d 40, 45 (2004); *Trotter* v. *State*, 554 So. 2d 313, 316 (Miss. 1989), superseded by statute on other grounds, Miss. Code Ann. § 99–35–101 (2008); *Commonwealth* v. *Glass*, 526 Pa. 329, 334, 586 A. 2d 369, 371 (1991); *State* v. *Leyva*, 906 P. 2d 910, 912 (Utah 1995); and *State* v. *Dean*, 148 Vt. 510, 513, 536

apply to delayed sentencing, we affirm the Montana Supreme Court's judgment.

II

Criminal proceedings generally unfold in three discrete phases. First, the State investigates to determine whether to arrest and charge a suspect. Once charged, the suspect stands accused but is presumed innocent until conviction upon trial or guilty plea. After conviction, the court imposes sentence. There are checks against delay throughout this progression, each geared to its particular phase.

In the first stage—before arrest or indictment, when the suspect remains at liberty—statutes of limitations provide the primary protection against delay, with the Due Process Clause as a safeguard against fundamentally unfair prosecutorial conduct. *United States* v. *Lovasco*, 431 U. S. 783, 789 (1977); see *id.*, at 795, n. 17 (Due Process Clause may be violated, for instance, by prosecutorial delay that is "tactical" or "reckless" (internal quotation marks omitted)).

The Sixth Amendment's Speedy Trial Clause homes in on the second period: from arrest or indictment through conviction. The constitutional right, our precedent holds, does not attach until this phase begins, that is, when a defendant is arrested or formally accused. *United States* v. *Marion*, 404 U. S. 307, 320–321 (1971). Today we hold that the right detaches upon conviction, when this second stage ends.[2]

A. 2d 909, 912 (1987) (Speedy Trial Clause applies to sentencing delay), with *United States* v. *Ray*, 578 F. 3d 184, 198–199 (CA2 2009); *State* v. *Drake*, 259 N. W. 2d 862, 866 (Iowa 1977), abrogated on other grounds by *State* v. *Kaster*, 469 N. W. 2d 671, 673 (Iowa 1991); *State* v. *Pressley*, 290 Kan. 24, 29, 223 P. 3d 299, 302 (2010); *State* v. *Johnson*, 363 So. 2d 458, 460 (La. 1978); 378 Mont. 182, 192, 342 P. 3d 971, 978 (2015) (case below); and *Ball* v. *Whyte*, 170 W. Va. 417, 418, 294 S. E. 2d 270, 271 (1982) (Speedy Trial Clause does not apply to sentencing delay).

[2] We reserve the question whether the Speedy Trial Clause applies to bifurcated proceedings in which, at the sentencing stage, facts that could increase the prescribed sentencing range are determined (*e. g.*, capital cases in which eligibility for the death penalty hinges on aggravating fac-

Prior to conviction, the accused is shielded by the presumption of innocence, the "bedrock[,] axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law." *Reed* v. *Ross*, 468 U. S. 1, 4 (1984) (internal quotation marks omitted). The Speedy Trial Clause implements that presumption by "prevent[ing] undue and oppressive incarceration prior to trial, . . . minimiz[ing] anxiety and concern accompanying public accusation[,] and . . . limit[ing] the possibilities that long delay will impair the ability of an accused to defend himself." *Marion*, 404 U. S., at 320 (internal quotation marks omitted). See also *Barker* v. *Wingo*, 407 U. S. 514, 532–533 (1972). As a measure protecting the presumptively innocent, the speedy trial right—like other similarly aimed measures—loses force upon conviction. Compare *In re Winship*, 397 U. S. 358, 364 (1970) (requiring "proof beyond a reasonable doubt of every fact necessary to constitute the crime"), with *United States* v. *O'Brien*, 560 U. S. 218, 224 (2010) ("Sentencing factors . . . can be proved . . . by a preponderance of the evidence."). Compare also 18 U. S. C. § 3142(b) (bail presumptively available for accused awaiting trial) with § 3143(a) (bail presumptively unavailable for those convicted awaiting sentence).

Our reading comports with the historical understanding. The speedy trial right, we have observed, "has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215) . . . ." *Klopfer* v. *North Carolina*, 386 U. S. 213, 223 (1967). Regarding the Framers' comprehension of the right as it existed at the founding, we have cited Sir Edward Coke's Institutes of the Laws of England. See *id.*, at 223–225, and nn. 8, 12–14, 18. Coke wrote that "the *innocent* shall not be worn and wasted by long imprisonment, but . . . speedily come to his *tria[l]*." 1 E.

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tor findings). Nor do we decide whether the right reattaches upon renewed prosecution following a defendant's successful appeal, when he again enjoys the presumption of innocence.

Coke, Second Part of the Institutes of the Laws of England 315 (1797) (emphasis added).

Reflecting the concern that a presumptively innocent person should not languish under an unresolved charge, the Speedy Trial Clause guarantees "the *accused*" "the right to a speedy . . . *trial*." U. S. Const., Amdt. 6 (emphasis added). At the founding, "accused" described a status preceding "convicted." See, *e. g.*, 4 W. Blackstone, Commentaries on the Laws of England 322 (1769) (commenting on process in which "persons *accused* of felony . . . were tried . . . and *convicted*" (emphasis added)). And "trial" meant a discrete episode after which judgment (*i. e.*, sentencing) would follow. See, *e. g.*, *id.*, at 368 ("We are now to consider the next stage of criminal prosecution, after trial and conviction are past . . . : which is that of *judgment*.").[3]

This understanding of the Sixth Amendment language—"accused" as distinct from "convicted," and "trial" as separate from "sentencing"—endures today. See, *e. g.*, Black's Law Dictionary 26 (10th ed. 2014) (defining "accused" as "a person who has been *arrested* and brought before a magistrate or who has been formally *charged*" (emphasis added)); Fed. Rule Crim. Proc. 32 (governing "Sentencing and Judgment," the Rule appears in the chapter on "Post-Conviction Procedures," which follows immediately after the separate chapter headed "Trial").[4]

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[3] As Betterman points out, at the founding, sentence was often imposed promptly after rendition of a verdict. Brief for Petitioner 24–26. But that was not invariably the case. For the court's "own convenience, or on cause shown, [sentence could be] postpone[d] . . . to a future day or term." 1 J. Bishop, Criminal Procedure § 1291, p. 767 (3d ed. 1880) (footnote omitted). See also 1 J. Chitty, A Practical Treatise on the Criminal Law 481 (1819) ("The sentence . . . is usually given immediately after the conviction, but the court may adjourn to another day and then give judgment.").

[4] We do not mean to convey that provisions of the Sixth Amendment protecting interests other than the presumption of innocence are inapplicable to sentencing. In this regard, we have held that the right to defense counsel extends to some postconviction proceedings. See *Mempa* v. *Rhay*, 389 U. S. 128, 135–137 (1967).

This Court's precedent aligns with the text and history of the Speedy Trial Clause. Detaining the accused pretrial, we have said, disadvantages him, and the imposition is "especially unfortunate" as to those "ultimately found to be innocent." *Barker*, 407 U. S., at 532–533. And in *Marion*, 404 U. S., at 320, addressing "the major evils protected against by the speedy trial guarantee," we observed: "Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends." We acknowledged in *Marion* that even prearrest—a stage at which the right to a speedy trial does not arise—the passage of time "may impair memories, cause evidence to be lost, deprive the defendant of witnesses, and otherwise interfere with his ability to defend himself." *Id.*, at 321. Nevertheless, we determined, "this possibility of prejudice at trial is not itself sufficient reason to wrench the Sixth Amendment from its proper [arrest or charge triggered] context." *Id.*, at 321–322. Adverse consequences of postconviction delay, though subject to other checks, see *infra*, at 447–448, are similarly outside the purview of the Speedy Trial Clause.[5]

The sole remedy for a violation of the speedy trial right—dismissal of the charges, see *Strunk* v. *United States*, 412 U. S. 434, 440 (1973); *Barker*, 407 U. S., at 522—fits the preconviction focus of the Clause. It would be an unjustified windfall, in most cases, to remedy sentencing delay by vacat-

[5] *Smith* v. *Hooey*, 393 U. S. 374 (1969), on which Betterman relies, is not to the contrary. There we concluded that a defendant, though already convicted and imprisoned on one charge, nevertheless has a right to be speedily brought to trial on an unrelated charge. *Id.*, at 378. "[T]here is reason to believe," we explained in *Smith*, "that an outstanding untried charge (of which even a convict may, of course, be innocent) can have fully as depressive an effect upon a prisoner as upon a person who is at large." *Id.*, at 379. *Smith* is thus consistent with comprehension of the Speedy Trial Clause as protective of the presumptively innocent.

ing validly obtained convictions. Betterman concedes that a dismissal remedy ordinarily would not be in order once a defendant has been convicted. See Tr. of Oral Arg. 5–6; cf. *Bozza* v. *United States*, 330 U. S. 160, 166 (1947) ("[A]n error in passing the sentence" does not permit a convicted defendant "to escape punishment altogether.").[6]

The manner in which legislatures have implemented the speedy trial guarantee matches our reading of the Clause. Congress passed the Speedy Trial Act of 1974, 18 U. S. C. § 3161 *et seq.*, "to give effect to the sixth amendment right." *United States* v. *MacDonald*, 456 U. S. 1, 7, n. 7 (1982) (quoting S. Rep. No. 93–1021, p. 1 (1974)). "The more stringent provisions of the Speedy Trial Act have mooted much litigation about the requirements of the Speedy Trial Clause . . . ." *United States* v. *Loud Hawk*, 474 U. S. 302, 304, n. 1 (1986) (citation omitted). With certain exceptions, the Act directs—on pain of dismissal of the charges, § 3162(a)—that no more than 30 days pass between arrest and indictment, § 3161(b), and that no more than 70 days pass between indictment and trial, § 3161(c)(1). The Act says nothing, however, about the period between conviction and sentencing, suggesting that Congress did not regard that period as falling within the Sixth Amendment's compass. Numerous state analogues similarly impose precise time limits for charging and trial; they, too, say nothing about sentencing.[7]

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[6] Betterman suggests that an appropriate remedy for the delay in his case would be reduction of his sentence by 14 months—the time between his conviction and sentencing. See Tr. of Oral Arg. 6. We have not read the Speedy Trial Clause, however, to call for a flexible or tailored remedy. Instead, we have held that violation of the right demands termination of the prosecution.

[7] See, *e. g.*, Alaska Rule Crim. Proc. 45 (2016); Ark. Rules Crim. Proc. 28.1 to 28.3 (2015); Cal. Penal Code Ann. § 1382 (West 2011); Colo. Rev. Stat. § 18–1–405 (2015); Conn. Rules Crim. Proc. 43–39 to 43–42 (2016); Fla. Rule Crim. Proc. 3.191 (2016); Haw. Rule Crim. Proc. 48 (2016); Ill. Comp. Stat., ch. 725, § 5/103–5 (West 2014); Ind. Rule Crim. Proc. 4 (2016); Iowa Rule Crim. Proc. 2.33 (2016); Kan. Stat. Ann. § 22–3402 (2014

Betterman asks us to take account of the prevalence of guilty pleas and the resulting scarcity of trials in today's justice system. See *Lafler* v. *Cooper*, 566 U. S. 156, 170 (2012) ("[C]riminal justice today is for the most part a system of pleas, not a system of trials."). The sentencing hearing has largely replaced the trial as the forum for dispute resolution, Betterman urges. Therefore, he maintains, the concerns supporting the right to a speedy trial now recommend a speedy sentencing hearing. The modern reality, however, does not bear on the presumption-of-innocence protection at the heart of the Speedy Trial Clause. And factual disputes, if any there be, at sentencing, do not go to the question of guilt; they are geared, instead, to ascertaining the proper sentence within boundaries set by statutory minimums and maximums.

Moreover, a central feature of contemporary sentencing in both federal and state courts is preparation by the probation office, and review by the parties and the court, of a presentence investigation report. See 18 U. S. C. § 3552; Fed. Rule Crim. Proc. 32(c)–(g); 6 W. LaFave, J. Israel, N. King, & O. Kerr, Criminal Procedure § 26.5(b), pp. 1048–1049 (4th ed. 2015) (noting reliance on presentence reports in federal and state courts). This aspect of the system requires some amount of wholly reasonable presentencing delay.[8] Indeed, many—if not most—disputes are resolved, not at the hearing

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Cum. Supp.); La. Code Crim. Proc. Ann., Art. 701 (2016 West Cum. Supp.); Mass. Rule Crim. Proc. 36 (2016); Neb. Rev. Stat. §§ 29–1207, 29–1208 (2008); Nev. Rev. Stat. § 178.556 (2013); N. Y. Crim. Proc. Law Ann. § 30.30 (2016 West Cum. Supp.); Ohio Rev. Code Ann. §§ 2945.71 to 2945.73 (Lexis 2014); Ore. Rev. Stat. §§ 135.745, 135.746, 135.748, 135.750, 135.752 (2015); Pa. Rule Crim. Proc. 600 (2016); S. D. Codified Laws § 23A–44–5.1 (2015 Cum. Supp.); Va. Code Ann. § 19.2–243 (2015); Wash. Rule Crim. Proc. 3.3 (2016); Wis. Stat. § 971.10 (2011–2012); Wyo. Rule Crim. Proc. 48 (2015).

[8] "In federal prosecutions," the Solicitor General informs us, "the median time between conviction and sentencing in 2014 was 99 days." Brief for United States as *Amicus Curiae* 31, n. 5. A good part of this time no doubt was taken up by the drafting and review of a presentence report. See Fed. Rule Crim. Proc. 32(c)–(g) (detailing presentence-report process).

itself, but rather through the presentence-report process. See N. Demleitner, D. Berman, M. Miller, & R. Wright, Sentencing Law and Policy 443 (3d ed. 2013) ("Criminal justice is far more commonly negotiated than adjudicated; defendants and their attorneys often need to be more concerned about the charging and plea bargaining practices of prosecutors and the presentence investigations of probation offices than . . . about the sentencing procedures of judges or juries."); cf. Bierschbach & Bibas, Notice-and-Comment Sentencing, 97 Minn. L. Rev. 1, 15 (2012) ("[T]oday's sentencing hearings . . . rubber-stamp plea-bargained sentences.").

As we have explained, at the third phase of the criminal-justice process, *i. e.*, between conviction and sentencing, the Constitution's presumption-of-innocence-protective speedy trial right is not engaged.[9] That does not mean, however, that defendants lack any protection against undue delay at this stage. The primary safeguard comes from statutes and rules. The Federal Rule on point directs the court to "impose sentence without unnecessary delay." Fed. Rule Crim. Proc. 32(b)(1). Many States have provisions to the same effect,[10] and some States prescribe numerical time

[9] It is true that during this period the defendant is often incarcerated. See, *e. g.*, § 3143(a) (bail presumptively unavailable for convicted awaiting sentence). Because postconviction incarceration is considered punishment for the offense, however, a defendant will ordinarily earn time-served credit for any period of presentencing detention. See § 3585(b); A. Campbell, Law of Sentencing § 9:28, pp. 444–445, and n. 4 (3d ed. 2004) ("[State c]rediting statutes routinely provide that any period of time during which a person was incarcerated in relation to a given offense be counted toward satisfaction of any resulting sentence."). That such detention may occur in a local jail rather than a prison is of no constitutional moment, for a convicted defendant has no right to serve his sentence in the penal institution he prefers. See *Meachum* v. *Fano*, 427 U. S. 215, 224–225 (1976).

[10] See, *e. g.*, Alaska Rule Crim. Proc. 32(a) (2016); Colo. Rule Crim. Proc. 32(b)(1) (2015); Del. Super. Ct. Crim. Rule 32(a)(1) (2003); Fla. Rule Crim. Proc. 3.720 (2016); Haw. Rule Penal Proc. 32(a) (2016); Kan. Stat. Ann. § 22–3424(c) (2014 Cum. Supp.); Ky. Rule Crim. Proc. 11.02(1) (2016);

limits.[11] Further, as at the prearrest stage, due process serves as a backstop against exorbitant delay. See *supra*, at 441. After conviction, a defendant's due process right to liberty, while diminished, is still present. He retains an interest in a sentencing proceeding that is fundamentally fair. But because Betterman advanced no due process claim here, see *supra*, at 439–440, we express no opinion on how he might fare under that more pliable standard. See, *e. g.*, *United States* v. *$8,850*, 461 U. S. 555, 562–565 (1983).[12]

* * *

The course of a criminal prosecution is composed of discrete segments. During the segment between accusation and conviction, the Sixth Amendment's Speedy Trial Clause protects the presumptively innocent from long enduring unresolved criminal charges. The Sixth Amendment speedy trial right, however, does not extend beyond conviction,

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La. Code Crim. Proc. Ann., Art. 874 (West 2016); Me. Rule Crim. Proc. 32(a)(1) (2015); Mass. Rule Crim. Proc. 28(b) (2016); Mich. Ct. Rule 6.425(E)(1) (2011); Mo. Sup. Ct. Rule 29.07(b)(1) (2011); Mont. Code Ann. § 46–18–115 (2015); Nev. Rev. Stat. § 176.015(1) (2013); N. H. Rule Crim. Proc. 29(a)(1) (2016); N. J. Ct. Rule 3:21–4(a) (2016); N. Y. Crim. Proc. Law Ann. § 380.30(1) (2016 West Cum. Supp.); N. D. Rule Crim. Proc. 32(a)(1) (2011); Ohio Rule Crim. Proc. 32(A) (2013); R. I. Super. Ct. Rule 32(a)(1) (2015); S. D. Codified Laws § 23A–27–1 (2015 Cum. Supp.); Vt. Rule Crim. Proc. 32(a)(1) (2010); Va. Sup. Ct. Rule 3A:17.1(b) (2012); W. Va. Rule Crim. Proc. 32(a) (2006); Wyo. Rule Crim. Proc. 32(c)(1) (2015).

[11] See, *e. g.*, Ariz. Rule Crim. Proc. 26.3(a)(1) (2011); Ark. Rule Crim. Proc. 33.2 (2015); Cal. Penal Code Ann. § 1191 (West 2015); Ind. Rule Crim. Proc. 11 (2016); N. M. Rule Crim. Proc. 5–701(B) (2016); Ore. Rev. Stat. § 137.020(3) (2015); Pa. Rule Crim. Proc. 704(A)(1) (2016); Tenn. Code Ann. § 40–35–209(a) (2014); Utah Rule Crim. Proc. 22(a) (2015); Wash. Rev. Code § 9.94A.500(1) (2016 Cum. Supp.). These sentencing provisions are separate from state analogues to the Speedy Trial Act. See *supra*, at 445, and n. 7.

[12] Relevant considerations may include the length of and reasons for delay, the defendant's diligence in requesting expeditious sentencing, and prejudice.

which terminates the presumption of innocence. The judgment of the Supreme Court of Montana is therefore

Affirmed.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, concurring.

I agree with the Court that the Sixth Amendment's Speedy Trial Clause does not apply to sentencing proceedings, except perhaps to bifurcated sentencing proceedings where sentencing enhancements operate as functional elements of a greater offense. See *ante*, at 440–441, and n. 2. I also agree with the Court's decision to reserve judgment on whether sentencing delays might violate the Due Process Clause. *Ante*, at 448. Brandon Betterman's counsel repeatedly disclaimed that he was raising in this Court a challenge under the Due Process Clause. See Tr. of Oral Arg. 7–8 ("We haven't included that. We didn't include that in the question presented, Your Honor"); *id.*, at 8 ("[W]e are not advancing that claim here"); *id.*, at 19 ("[W]e didn't preserve a—a due process challenge. Our challenge is solely under the Sixth Amendment").

We have never decided whether the Due Process Clause creates an entitlement to a reasonably prompt sentencing hearing. Today's opinion leaves us free to decide the proper analytical framework to analyze such claims if and when the issue is properly before us.

JUSTICE SOTOMAYOR suggests that, for such claims, we should adopt the factors announced in *Barker* v. *Wingo*, 407 U. S. 514, 530–533 (1972). *Post*, at 451 (concurring opinion). I would not prejudge that matter. The factors listed in *Barker* may not necessarily translate to the delayed sentencing context. The Due Process Clause can be satisfied where a State has adequate procedures to redress an improper deprivation of liberty or property. See *Parratt* v. *Taylor*, 451 U. S. 527, 537 (1981). In unusual cases where trial courts

fail to sentence a defendant within a reasonable time, a State might fully satisfy due process by making traditional extraordinary legal remedies, such as mandamus, available. Or, much like the federal Speedy Trial Act regulates trials, see 18 U. S. C. §3161, a State might remedy improper sentencing delay by statute.* And a person who sleeps on these remedies, as Betterman did, may simply have no right to complain that his sentencing was delayed. We should await a proper presentation, full briefing, and argument before taking a position on this issue.

The Court thus correctly "express[es] no opinion on how [Betterman] might fare" under the Due Process Clause. *Ante*, at 448.

JUSTICE SOTOMAYOR, concurring.

I agree with the Court that petitioner cannot bring a claim under the Speedy Trial Clause for a delay between his guilty plea and his sentencing. As the majority notes, however, a defendant may have "other recourse" for such a delay, "including, in appropriate circumstances, tailored relief under the Due Process Clauses of the Fifth and Fourteenth Amendments." *Ante*, at 439. The Court has no reason to consider today the appropriate test for such a Due Process Clause challenge because petitioner has forfeited any such claim. See Tr. of Oral Arg. 19. I write separately to emphasize that the question is an open one.

The Due Process Clause is "flexible and calls for such procedural protections as the particular situation demands." *Morrissey* v. *Brewer*, 408 U. S. 471, 481 (1972). This Court

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*Montana law, for example, secures the right to a prompt sentencing hearing. See Mont. Code Ann. §46–18–101(3)(a) (2015) ("Sentencing and punishment must be certain, timely, consistent, and understandable"); §46–18–102(3)(a) ("[I]f the verdict or finding is guilty, sentence must be pronounced and judgment rendered within a reasonable time"); §46–18–115 ("[T]he court shall conduct a sentencing hearing, without unreasonable delay").

thus uses different tests to consider whether different kinds of delay run afoul of the Due Process Clause. In evaluating whether a delay in instituting judicial proceedings following a civil forfeiture violated the Due Process Clause, the Court applied the test from *Barker* v. *Wingo*, 407 U. S. 514 (1972)—the same test that the Court applies to violations of the Speedy Trial Clause. See *United States* v. *$8,850*, 461 U. S. 555, 564 (1983). Under the *Barker* test, courts consider four factors—the length of the delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *$8,850*, 461 U. S., at 564. None of the four factors is "either . . . necessary or sufficient," and no one factor has a "talismanic qualit[y]." *Barker*, 407 U. S., at 533.

The Montana Supreme Court did not use the *Barker* test in evaluating petitioner's Due Process Clause claim. 378 Mont. 182, 193–194, 342 P. 3d 971, 979 (2015). But it seems to me that the *Barker* factors capture many of the concerns posed in the sentencing delay context and that because the *Barker* test is flexible, it will allow courts to take account of any differences between trial and sentencing delays. See 407 U. S., at 531. The majority of the Circuits in fact use the *Barker* test for that purpose. See *United States* v. *Sanders*, 452 F. 3d 572, 577 (CA6 2006) (collecting cases).

In the appropriate case, I would thus consider the correct test for a Due Process Clause delayed sentencing challenge.

Syllabus

LUNA TORRES *v.* LYNCH, ATTORNEY GENERAL

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 14–1096. Argued November 3, 2015—Decided May 19, 2016

Any alien convicted of an "aggravated felony" after entering the United States is deportable, ineligible for several forms of discretionary relief, and subject to expedited removal. 8 U. S. C. §§ 1227(a)(2)(A)(iii), (3). An "aggravated felony" is defined as any of numerous offenses listed in § 1101(a)(43), each of which is typically identified either as an offense "described in" a specific federal statute or by a generic label (*e. g.*, "murder"). Section 1101(a)(43)'s penultimate sentence states that each enumerated crime is an aggravated felony irrespective of whether it violates federal, state, or foreign law.

Petitioner Jorge Luna Torres (Luna), a lawful permanent resident, pleaded guilty in a New York court to attempted third-degree arson. When immigration officials discovered his conviction, they initiated removal proceedings. The Immigration Judge determined that Luna's arson conviction was for an "aggravated felony" and held that Luna was therefore ineligible for discretionary relief. The Board of Immigration Appeals affirmed. It found the federal and New York arson offenses to be identical except for the former's requirement that the crime have a connection to interstate or foreign commerce. Because the federal statute's commerce element serves only a jurisdictional function, the Board held, New York's arson offense is "described in" the federal statute, 18 U. S. C. § 844(i), for purposes of determining whether an alien has been convicted of an aggravated felony. The Second Circuit denied review.

Held: A state offense counts as a § 1101(a)(43) "aggravated felony" when it has every element of a listed federal crime except one requiring a connection to interstate or foreign commerce.

Because Congress lacks general constitutional authority to punish crimes, most federal offenses include a jurisdictional element to tie the substantive crime to one of Congress's enumerated powers. State legislatures are not similarly constrained, and so state crimes do not need such a jurisdictional hook. That discrepancy creates the issue here—whether a state offense lacking a jurisdictional element but otherwise mirroring a particular federal offense can be said to be "described" by that offense. Dictionary definitions of the word "described" do not clearly resolve this question one way or the other. Rather, two contextual considerations decide this case: § 1101(a)(43)'s penultimate sentence and a

well-established background principle that distinguishes between substantive and jurisdictional elements in criminal statutes. Pp. 457–473.

(a) Section 1101(a)(43)'s penultimate sentence shows that Congress meant the term "aggravated felony" to capture serious crimes regardless of whether they are made illegal by the Federal Government, a State, or a foreign country. But Luna's view would substantially undercut that function by excluding from the Act's coverage all state and foreign versions of any enumerated federal offense containing an interstate commerce element. And it would do so in a particularly perverse fashion—excluding state and foreign convictions for many of § 1101(a)(43)'s gravest crimes (*e. g.*, most child pornography offenses), while reaching convictions for far less harmful offenses (*e. g.*, operating an unlawful gambling business). Luna theorizes that such haphazard coverage might reflect Congress's belief that crimes with an interstate connection are generally more serious than those without. But it is implausible that Congress viewed the presence of an interstate commerce element as separating serious from non-serious conduct. Luna's theory misconceives the function of interstate commerce elements and runs counter to the penultimate sentence's central message—that the state, federal, or foreign nature of a crime is irrelevant. And his claim that many serious crimes excluded for want of an interstate commerce element would nonetheless count as § 1101(a)(43)(F) "crime[s] of violence" provides little comfort: That alternative would not include nearly all such offenses, nor even the worst ones. Pp. 460–466.

(b) The settled practice of distinguishing between substantive and jurisdictional elements in federal criminal statutes also supports reading § 1101(a)(43) to include state analogues that lack only an interstate commerce requirement. Congress uses substantive and jurisdictional elements for different reasons and does not expect them to receive identical treatment. See, *e. g.*, *United States* v. *Yermian*, 468 U. S. 63, 68. And that is true where, as here, the judicial task is to compare federal and state offenses. See *Lewis* v. *United States*, 523 U. S. 155, 165. Pp. 467–471.

764 F. 3d 152, affirmed.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, and ALITO, JJ., joined. SOTOMAYOR, J., filed a dissenting opinion, in which THOMAS and BREYER, JJ., joined, *post*, p. 473.

Matthew L. Guadagno argued the cause for petitioner. With him on the briefs was *Stuart Banner.*

Elaine J. Goldenberg argued the cause for respondent. On the brief were *Solicitor General Verrilli*, *Principal Dep-*

uty Assistant Attorney General Mizer, *Deputy Solicitor General Kneedler*, *Rachel P. Kovner*, *Donald E. Keener*, and *Patrick J. Glen*.*

JUSTICE KAGAN delivered the opinion of the Court.

The Immigration and Nationality Act (INA or Act) imposes certain adverse immigration consequences on an alien convicted of an "aggravated felony." The INA defines that term by listing various crimes, most of which are identified as offenses "described in" specified provisions of the federal criminal code. Immediately following that list, the Act provides that the referenced offenses are aggravated felonies irrespective of whether they are "in violation of Federal[,] State[,]" or foreign law. 108 Stat. 4322, 8 U. S. C. § 1101(a)(43). In this case, we must decide if a state crime counts as an aggravated felony when it corresponds to a specified federal offense in all ways but one—namely, the state crime lacks the interstate commerce element used in the federal statute to establish legislative jurisdiction (*i. e.*, Congress's power to enact the law). We hold that the absence of such a jurisdictional element is immaterial: A state crime of that kind is an aggravated felony.

I

The INA makes any alien convicted of an "aggravated felony" after entering the United States deportable. See § 1227(a)(2)(A)(iii). Such an alien is also ineligible for several forms of discretionary relief, including cancellation of removal—an order allowing a deportable alien to remain in the country. See § 1229b(a)(3). And because of his felony, the alien faces expedited removal proceedings. See § 1228(a)(3)(A).

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*Briefs for *amici curiae* urging reversal were filed for the National Association of Criminal Defense Lawyers et al. by *David Debold*, *Manuel D. Vargas*, *Sarah S. Gannett*, *Donna F. Coltharp*, *Joshua L. Dratel*, and *Sara B. Thomas*; and for the National Immigrant Justice Center et al. by *Linda T. Coberly* and *Charles G. Roth*.

The Act defines the term "aggravated felony" by way of a long list of offenses, now codified at § 1101(a)(43). In all, that provision's 21 subparagraphs enumerate some 80 different crimes. In more than half of those subparagraphs, Congress specified the crimes by citing particular federal statutes. According to that common formulation, an offense is an aggravated felony if it is "described in," say, 18 U. S. C. § 2251 (relating to child pornography), § 922(g) (relating to unlawful gun possession), or, of particular relevance here, § 844(i) (relating to arson and explosives). 8 U. S. C. §§ 1101(a)(43)(E), (I). Most of the remaining subparagraphs refer to crimes by their generic labels, stating that an offense is an aggravated felony if, for example, it is "murder, rape, or sexual abuse of a minor." § 1101(a)(43)(A). Following the entire list of crimes, § 1101(a)(43)'s penultimate sentence reads: "The term [aggravated felony] applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years." So, putting aside the 15-year curlicue, the penultimate sentence provides that an offense listed in § 1101(a)(43) is an aggravated felony whether in violation of federal, state, or foreign law.

Petitioner Jorge Luna Torres, who goes by the name George Luna, immigrated to the United States as a child and has lived here ever since as a lawful permanent resident. In 1999, he pleaded guilty to attempted arson in the third degree, in violation of New York law; he was sentenced to one day in prison and five years of probation. Seven years later, immigration officials discovered his conviction and initiated proceedings to remove him from the country. During those proceedings, Luna applied for cancellation of removal. But the Immigration Judge found him ineligible for that discretionary relief because his arson conviction qualified as an aggravated felony. See App. to Pet. for Cert. 21a–22a.

The Board of Immigration Appeals (Board) affirmed, based on a comparison of the federal and New York arson

statutes. See *id.*, at 15a–17a. The INA, as just noted, provides that "an offense described in" 18 U. S. C. § 844(i), the federal arson and explosives statute, is an aggravated felony. Section 844(i), in turn, makes it a crime to "maliciously damage[ ] or destroy[ ], or attempt[ ] to damage or destroy, by means of fire or an explosive, any building [or] vehicle . . . used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce." For its part, the New York law that Luna was convicted under prohibits "intentionally damag[ing]," or attempting to damage, "a building or motor vehicle by starting a fire or causing an explosion." N. Y. Penal Law Ann. §§ 110, 150.10 (West 2010). The state law, the Board explained, thus matches the federal statute element-for-element with one exception: The New York law does not require a connection to interstate commerce. According to the Board, that single difference did not matter because the federal statute's commerce element is "jurisdictional"—that is, its function is to establish Congress's power to legislate. See App. to Pet. for Cert. 16a–17a. Given that the two laws' substantive (*i. e.*, non-jurisdictional) elements map onto each other, the Board held, the New York arson offense is "described in" 18 U. S. C. § 844(i).

The Court of Appeals for the Second Circuit denied Luna's petition for review of the Board's ruling. See 764 F. 3d 152 (2014). The court's decision added to a Circuit split over whether a state offense is an aggravated felony when it has all the elements of a listed federal crime except one requiring a connection to interstate commerce.[1] We granted certiorari. 576 U. S. 1053 (2015).

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[1] Compare *Espinal-Andrades* v. *Holder*, 777 F. 3d 163 (CA4 2015) (finding an aggravated felony in that circumstance); *Spacek* v. *Holder*, 688 F. 3d 536 (CA8 2012) (same); *Nieto Hernandez* v. *Holder*, 592 F. 3d 681 (CA5 2009) (same); *Negrete-Rodriguez* v. *Mukasey*, 518 F. 3d 497 (CA7 2008) (same); *United States* v. *Castillo-Rivera*, 244 F. 3d 1020 (CA9 2001) (same), with *Bautista* v. *Attorney General*, 744 F. 3d 54 (CA3 2014) (declining to find an aggravated felony).

II

The issue in this case arises because of the distinctive role interstate commerce elements play in federal criminal law. In our federal system, "Congress cannot punish felonies generally," *Cohens* v. *Virginia*, 6 Wheat. 264, 428 (1821); it may enact only those criminal laws that are connected to one of its constitutionally enumerated powers, such as the authority to regulate interstate commerce. As a result, most federal offenses include, in addition to substantive elements, a jurisdictional one, like the interstate commerce requirement of § 844(i). The substantive elements "primarily define[ ] the behavior that the statute calls a 'violation' of federal law," *Scheidler* v. *National Organization for Women, Inc.*, 547 U. S. 9, 18 (2006)—or, as the Model Penal Code puts the point, they relate to "the harm or evil" the law seeks to prevent, § 1.13(10). The jurisdictional element, by contrast, ties the substantive offense (here, arson) to one of Congress's constitutional powers (here, its authority over interstate commerce), thus spelling out the warrant for Congress to legislate. See *id.*, at 17–18 (explaining that Congress intends "such statutory terms as 'affect commerce' or 'in commerce' . . . as terms of art connecting the congressional exercise of legislative authority with the constitutional provision (here, the Commerce Clause) that grants Congress that authority").

For obvious reasons, state criminal laws do not include the jurisdictional elements common in federal statutes.[2] State

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[2] That flat statement is infinitesimally shy of being wholly true. We have found a handful of state criminal laws with an interstate commerce element, out of the tens (or perhaps hundreds) of thousands of state crimes on the books. Mississippi, for example, lifted essentially verbatim the text of the federal money laundering statute when drafting its own, and thus wound up with such an element. See Miss. Code Ann. § 97–23–101 (rev. 2014). But because the incidence of such laws is so vanishingly small, and the few that exist play no role in Luna's arguments, we proceed without qualifying each statement of the kind above.

legislatures, exercising their plenary police powers, are not limited to Congress's enumerated powers; and so States have no reason to tie their substantive offenses to those grants of authority. See, *e. g.*, *United States* v. *Lopez*, 514 U. S. 549, 567 (1995). In particular, state crimes do not contain interstate commerce elements because a State does not need such a jurisdictional hook. Accordingly, even state offenses whose substantive elements match up exactly with a federal law's will part ways with respect to interstate commerce. That slight discrepancy creates the issue here: If a state offense lacks an interstate commerce element but otherwise mirrors one of the federal statutes listed in § 1101(a)(43), does the state crime count as an aggravated felony? Or, alternatively, does the jurisdictional difference reflected in the state and federal laws preclude that result, no matter the laws' substantive correspondence?

Both parties begin with the statutory text most directly at issue, disputing when a state offense (here, arson) is "described in" an enumerated federal statute (here, 18 U. S. C. § 844(i)). Luna, armed principally with Black's Law Dictionary, argues that "described in" means "expressed" or "set forth" in—which, he says, requires the state offense to include each one of the federal law's elements. Brief for Petitioner 15–16.[3] The Government, brandishing dictionaries of its own, contends that the statutory phrase has a looser meaning—that "describing entails . . . not precise replication," but "convey[ance of] an idea or impression" or of a thing's "central features." Brief for Respondent 17.[4] On

[3] Black's Law Dictionary 401 (5th ed. 1979) (defining "describe" as to "express, explain, set forth, relate, recount, narrate, depict, delineate, portray"). Luna also cites Webster's New Collegiate Dictionary 307 (1976), which defines "describe" to mean "to represent or give an account of in words."

[4] See American Heritage Dictionary 490 (5th ed. 2011) (defining "describe" as "[t]o convey an idea or impression of"); Webster's Third New International Dictionary 610 (1986) (defining "describe" as "to convey an image or notion of" or "trace or traverse the outline of").

that view, "described in," as opposed to the more precise "defined in" sometimes found in statutes, denotes that the state offense need only incorporate the federal law's core, substantive elements.

But neither of those claims about the bare term "described in" can resolve this case. Like many words, "describe" takes on different meanings in different contexts. Consider two ways in which this Court has used the word. In one case, "describe" conveyed exactness: A contractual provision, we wrote, "describes the subject [matter] with great particularity[,] . . . giv[ing] the precise number of pounds [of tobacco], the tax for which each pound was liable, and the aggregate of the tax." *Ryan* v. *United States*, 19 Wall. 514, 517 (1874). In another case, not: "The disclosure provision is meant," we stated, "to describe the law to consumers in a manner that is concise and comprehensible to the layman—which necessarily means that it will be imprecise." *CompuCredit Corp.* v. *Greenwood*, 565 U. S. 95, 102 (2012). So staring at, or even looking up, the words "described in" cannot answer whether a state offense must replicate every last element of a listed federal statute, including its jurisdictional one, to qualify as an aggravated felony. In considering that issue, we must, as usual, "interpret the relevant words not in a vacuum, but with reference to the statutory context." *Abramski* v. *United States*, 573 U. S. 169, 179 (2014).[5]

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[5] The dissent disagrees, contending that the word "describe" decides this case in Luna's favor because a "description cannot refer to features that the thing being described does not have." *Post*, at 477 (opinion of SOTOMAYOR, J.). Says the dissent: If a Craigslist ad "describes" an apartment as having an "in-unit laundry, a dishwasher, rooftop access, central A/C, and a walk-in closet," it does not describe an apartment lacking rooftop access. *Ibid.* That is true enough, but irrelevant. The dissent is right that when someone describes an object by a list of specific characteristics, he means that the item has each of those attributes. But things are different when someone uses a more general descriptor—even when that descriptor (as here, a federal statute) itself has a determinate set of elements. It would be natural, for example, to say (in the exact syntax of

Here, two contextual considerations decide the matter. The first is § 1101(a)(43)'s penultimate sentence, which shows that Congress meant the term "aggravated felony" to capture serious crimes regardless of whether they are prohibited by federal, state, or foreign law. The second is a well-established background principle distinguishing between substantive and jurisdictional elements in federal criminal statutes. We address each factor in turn.

A

Section 1101(a)(43)'s penultimate sentence, as noted above, provides: "The term [aggravated felony] applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years." See *supra*, at 455. That sentence (except for the time limit on foreign convictions) declares the source of criminal law irrelevant: The listed offenses count as aggravated felonies regardless of whether they are made illegal by the Federal Government, a State, or a foreign country. That is true of the crimes identified by reference to federal statutes (as here, an offense described in 18 U. S. C. § 844(i)), as well as those employing generic labels (for example, murder). As even Luna recognizes, state and foreign analogues of the enumerated federal crimes qualify as aggravated felonies. See Brief for Peti-

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§ 1101(a)(43)) that a person followed the itinerary for a journey through Brazil that is "described in" a Lonely Planet guide if he traveled every leg of the tour other than a brief "detour north to Petrópolis." The Lonely Planet, On the Road: Destination Brazil, p. 30, http://media.lonelyplanet.com/shop/pdfs/brazil-8-getting-started.pdf (all Internet materials as last visited May 16, 2016). And similarly, a person would say that she had followed the instructions for setting up an iPhone that are "described in" the user's manual even if she in fact ignored the one (specifically highlighted there) telling her to begin by "read[ing] important safety information" to "avoid injury." Apple, Set Up iPhone, http://help.apple.com/iphone/9/#iph3bf43d79.

tioner 21 (contesting only what properly counts as such an analogue). The whole point of § 1101(a)(43)'s penultimate sentence is to make clear that a listed offense should lead to swift removal, no matter whether it violates federal, state, or foreign law.

Luna's jot-for-jot view of "described in" would substantially undercut that function by excluding from the Act's coverage all state and foreign versions of any enumerated federal offense that (like § 844(i)) contains an interstate commerce element. Such an element appears in about half of § 1101(a)(43)'s listed statutes—defining, altogether, 27 serious crimes.[6] Yet under Luna's reading, only those federal

[6] See 8 U. S. C. § 1101(a)(43)(D) ("an offense described in" 18 U. S. C. § 1956, which criminalizes laundering of monetary instruments); *ibid.* ("an offense described in" 18 U. S. C. § 1957, which criminalizes engaging in monetary transactions involving property derived from specified unlawful activities); § 1101(a)(43)(E)(i) (three "offense[s] described in" 18 U. S. C. §§ 842(h)–(i), 844(d), which criminalize activities involving explosives); *ibid.* ("an offense described in" 18 U. S. C. § 844(e), which criminalizes threatening to cause death, injury, or property damage using explosives); *ibid.* ("an offense described in" 18 U. S. C. § 844(i), which criminalizes using fire or explosives to cause property damage); § 1101(a)(43)(E)(ii) (six "offense[s] described in" 18 U. S. C. §§ 922(g)(1)–(5), (j), which criminalize possessing a firearm in various circumstances); *ibid.* (two "offense[s] described in" 18 U. S. C. §§ 922(n), 924(b), which criminalize transporting or receiving a firearm under certain circumstances); § 1101(a)(43)(E)(iii) ("an offense described in" 26 U. S. C. § 5861(j), which criminalizes transporting an unregistered firearm); § 1101(a)(43)(H) ("an offense described in" 18 U. S. C. § 875, which criminalizes making a threat to kidnap or a ransom demand); *ibid.* ("an offense described in" 18 U. S. C. § 1202(b), which criminalizes possessing, receiving, or transmitting proceeds of a kidnapping); § 1101(a)(43)(I) ("an offense described in" 18 U. S. C. § 2251, which criminalizes sexually exploiting a child); *ibid.* ("an offense described in" 18 U. S. C. § 2251A, which criminalizes selling a child for purposes of child pornography); *ibid.* ("an offense described in" 18 U. S. C. § 2252, which criminalizes various activities relating to child pornography); § 1101(a)(43)(J) ("an offense described in" 18 U. S. C. § 1962, which criminalizes activities relating to racketeering); *ibid.* ("an offense described in" 18 U. S. C. § 1084, which criminalizes transmitting information to facilitate gambling); § 1101(a)(43)(K)(ii) ("an offense described in" 18 U. S. C. § 2421, which crim-

crimes, and not their state and foreign counterparts, would provide a basis for an alien's removal—because, as explained earlier, only Congress must ever show a link to interstate commerce. See *supra*, at 457–458. No state or foreign legislature needs to incorporate a commerce element to establish its jurisdiction, and so none ever does. Accordingly, state and foreign crimes will never precisely replicate a federal statute containing a commerce element. And that means, contrary to § 1101(a)(43)'s penultimate sentence, that the term "aggravated felony" would *not* apply to many of the Act's listed offenses irrespective of whether they are "in violation of Federal[,] State[, or foreign] law"; instead, that term would apply exclusively to the federal variants.[7]

Indeed, Luna's view would limit the penultimate sentence's effect in a peculiarly perverse fashion—excluding state and foreign convictions for many of the gravest crimes listed in § 1101(a)(43), while reaching those convictions for less harmful offenses. Consider some of the state and foreign crimes that would not count as aggravated felonies on Luna's reading because the corresponding federal law has a commerce element: most child pornography offenses, including selling a child for the purpose of manufacturing such material, see § 1101(a)(43)(I); demanding or receiving a ran-

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inalizes transporting a person for purposes of prostitution); *ibid.* ("an offense described in" 18 U. S. C. § 2422, which criminalizes coercing or enticing a person to travel for purposes of prostitution); *ibid.* ("an offense described in" 18 U. S. C. § 2423, which criminalizes transporting a child for purposes of prostitution); § 1101(a)(43)(K)(iii) ("an offense described in" 18 U. S. C. § 1591(a)(1), which criminalizes sex trafficking of children, or of adults by force, fraud, or coercion).

[7] The dissent replies: What's the big deal? See *post*, at 482. After all, it reasons, some listed federal statutes—specifically, those prohibiting treason, levying war against the United States, and disclosing national defense information—will lack state or foreign analogues even under our construction. See *post*, at 481–482. But Congress's inclusion of a few federal offenses that, by their nature, have no state or foreign analogues hardly excuses expelling from the Act's coverage the countless state and foreign versions of 27 other serious crimes.

som for kidnapping, see § 1101(a)(43)(H); and possessing a firearm after a felony conviction, see § 1101(a)(43)(E)(ii). Conversely, the term "aggravated felony" in Luna's world would include state and foreign convictions for such comparatively minor offenses as operating an unlawful gambling business, see § 1101(a)(43)(J), and possessing a firearm not identified by a serial number, see § 1101(a)(43)(E)(iii), because Congress chose, for whatever reason, not to use a commerce element when barring that conduct. And similarly, the term would cover any state or foreign conviction for such nonviolent activity as receiving stolen property, see § 1101(a)(43)(G), or forging documents, see § 1101(a)(43)(R), because the INA happens to use generic labels to describe those crimes. This Court has previously refused to construe § 1101(a)(43) so as to produce such "haphazard"—indeed, upside-down—coverage. *Nijhawan* v. *Holder*, 557 U. S. 29, 40 (2009). We see no reason to follow a different path here: Congress would not have placed an alien convicted by a State of running an illegal casino at greater risk of removal than one found guilty under the same State's law of selling a child.[8]

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[8] Luna's position, in addition to producing this bizarre patchwork of coverage, conflicts with our ordinary assumption that Congress, when drafting a statute, gives each provision independent meaning. See *United States* v. *Butler*, 297 U. S. 1, 65 (1936) ("These words cannot be meaningless, else they would not have been used"). Until its most recent amendment, § 1101(a)(43)(J) provided that the term "aggravated felony" included any "offense described in [18 U. S. C. § 1962] (relating to racketeer influenced corrupt organizations) for which a sentence of 5 years' imprisonment or more may be imposed." 8 U. S. C. § 1101(a)(43)(J) (1994 ed., Supp. I). (That provision now incorporates two more federal crimes, and uses one year of prison as the threshold.) The federal racketeering statute cited has an interstate commerce element; analogous state and foreign laws (per usual) do not, and therefore would fall outside § 1101(a)(43)(J) on Luna's reading. But if Congress had meant to so exclude those state and foreign counterparts, then § 1101(a)(43)(J)'s final clause—"for which a sentence of 5 years' imprisonment may be imposed"—would have been superfluous, because federal racketeering is *always* punishable by more than five years'

In an attempt to make some sense of his reading, Luna posits that Congress might have believed that crimes having an interstate connection are generally more serious than those lacking one—for example, that interstate child pornography is "worse" than the intrastate variety. Brief for Petitioner 35. But to begin with, that theory cannot explain the set of crazy-quilt results just described: Not even Luna maintains that Congress thought local acts of selling a child, receiving explosives, or demanding a ransom are categorically less serious than, say, operating an unlawful casino or receiving stolen property (whether or not in interstate commerce). And it is scarcely more plausible to view an interstate commerce element in any given offense as separating serious from non-serious conduct: Why, for example, would Congress see an alien who carried out a kidnapping for ransom wholly within a State as materially less dangerous than one who crossed state lines in committing that crime? The essential harm of the crime is the same irrespective of state borders. Luna's argument thus misconceives the function of interstate commerce elements: Rather than distinguishing greater from lesser evils, they serve (as earlier explained) to connect a given substantive offense to one of Congress's enumerated powers. See *supra*, at 457. And still more fundamentally, Luna's account runs counter to the penultimate sentence's central message: that the national, local, or foreign character of a crime has no bearing on whether it is grave enough to warrant an alien's automatic removal.[9]

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imprisonment, see 18 U. S. C. § 1963(a). That language's presence shows that Congress thought § 1101(a)(43)(J) would sweep in some state and foreign laws: The final clause served to filter out such statutes when—but only when—they applied to less serious conduct than the federal racketeering offense.

[9] The dissent attempts a variant of Luna's "not so serious" argument, but to no better effect. Claims the dissent: Even if Congress could not have viewed "interstate crimes [as] worse than wholly intrastate crimes," it might have thought that, say, "arsons *prosecuted* as federal crimes are more uniformly serious than arsons *prosecuted* as state crimes." *Post*,

Luna (and the dissent, see *post,* at 478) must therefore fall back on a different defense: that his approach would exclude from the universe of aggravated felonies fewer serious state and foreign offenses than one might think. To make that argument, Luna relies primarily on a part of the Act specifying that the term "aggravated felony" shall include "a crime of violence (as defined in [18 U. S. C. § 16]) for which the term of imprisonment [is] at least one year." § 1101(a)(43)(F); see 18 U. S. C. § 16 (defining "crime of violence" as involving the use of "physical force" against the person or property of another). According to Luna, many state and foreign offenses failing to match the Act's listed federal statutes (for want of an interstate commerce element) would count as crimes of violence and, by that alternative route, trigger automatic removal. A different statutory phrase, or so Luna says, would thus plug the holes opened by his construction of the "described in" provisions.

Luna's argument does not reassure us. We agree that state counterparts of some enumerated federal offenses would qualify as aggravated felonies through the "crime of violence" provision. But not nearly all such offenses, and not even the worst ones. Consider again some of the listed offenses described earlier. See *supra,* at 462–463. The "crime of violence" provision would not pick up demanding a

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at 486 (emphasis added). But we see no call to suppose that Congress regarded state prosecutions as Grapefruit League versions of the Big Show. Cf. *Mistretta* v. *United States*, 488 U. S. 361, 427 (1989) (Scalia, J., dissenting). In our federal system, "States possess primary authority for defining and enforcing" criminal laws, including those prohibiting the gravest crimes. *Brecht* v. *Abrahamson*, 507 U. S. 619, 635 (1993) (quoting *Engle* v. *Isaac*, 456 U. S. 107, 128 (1982)). For that reason, even when U. S. Attorneys have jurisdiction, they are generally to defer to, rather than supplant, state prosecutions of serious offenses. See U. S. Attorneys' Manual: Principles of Federal Prosecution § 9–27.240 (1997). And still more obviously, the dissent's theory fails with respect to foreign convictions. That a foreign sovereign prosecutes a given crime reflects nothing about its gravity, but only about its location.

ransom for kidnapping. See 18 U. S. C. § 875(a) (defining the crime without any reference to physical force). It would not cover most of the listed child pornography offenses, involving the distribution, receipt, and possession of such materials. It would not reach felon-in-possession laws and other firearms offenses. And indeed, it would not reach arson in the many States defining that crime to include the destruction of one's own property. See *Jordison* v. *Gonzales*, 501 F. 3d 1134, 1135 (CA9 2007) (holding that a violation of California's arson statute does not count as a crime of violence for that reason); Tr. of Oral Arg. 28–29 (Solicitor General agreeing with that interpretation).[10] So under Luna's reading, state and foreign counterparts to a broad swath of listed statutes would remain outside § 1101(a)(43)'s coverage merely because they lack an explicit interstate commerce connection. And for all the reasons discussed above, that result would significantly restrict the penultimate sentence's force and effect, and in an utterly random manner.[11]

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[10] In all those States, arsons of every description (whether of one's own or another's property) would fall outside the "crime of violence" provision. See Tr. of Oral Arg. 29, 46 (Solicitor General noting that the categorical approach to comparing federal and state crimes produces that effect). And contrary to the dissent's suggestion, *post*, at 479, n. 2, that would be true of the most dangerous arsons, as well as of less serious ones. The dissent similarly fails to take into account the categorical approach's rigorous requirements when discussing a couple of the non-arson offenses discussed above. (Still others, the dissent wholly ignores.) It speculates that if the exact right state charge is filed, some of that conduct "may" qualify, through the crime-of-violence provision or some other route, as an aggravated felony. *Ibid.* "May" is very much the operative word there, because—depending on the elements of the state offense chosen—that conduct also "may not." And the dissent never explains why Congress would have left the deportation of dangerous felons to such prosecutorial happenstance.

[11] The dissent well-nigh embraces those consequences, arguing that a narrow reading of "aggravated felony" would make more convicted criminals removable under *other* statutory provisions, all of which allow for relief at the Attorney General's discretion. See *post*, at 480, 487 (lamenting that aliens convicted of aggravated felonies may not "even appeal[ ] to the

B

Just as important, a settled practice of distinguishing between substantive and jurisdictional elements of federal criminal laws supports reading § 1101(a)(43) to include state analogues lacking an interstate commerce requirement. As already explained, the substantive elements of a federal statute describe the evil Congress seeks to prevent; the jurisdictional element connects the law to one of Congress's enumerated powers, thus establishing legislative authority. See *supra*, at 457; ALI, Model Penal Code § 1.13(10) (1962). Both kinds of elements must be proved to a jury beyond a reasonable doubt; and because that is so, both may play a real role in a criminal case. But still, they are not created equal for every purpose. To the contrary, courts have often recognized—including when comparing federal and state offenses—that Congress uses substantive and jurisdictional elements for different reasons and does not expect them to receive identical treatment.

Consider the law respecting *mens rea*. In general, courts interpret criminal statutes to require that a defendant possess a *mens rea*, or guilty mind, as to every element of an offense. See *Elonis* v. *United States*, 575 U. S. 723, 734–735 (2015). That is so even when the "statute by its terms does not contain" any demand of that kind. *United States* v. *X-Citement Video, Inc.*, 513 U. S. 64, 70 (1994). In such cases, courts read the statute against a "background rule" that the defendant must know each fact making his conduct illegal. *Staples* v. *United States*, 511 U. S. 600, 619 (1994). Or otherwise said, they infer, absent an express indication to the contrary, that Congress intended such a mental-state requirement.

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mercy of the Attorney General"). But Congress made a judgment that aliens convicted of certain serious offenses (irrespective of whether those convictions were based on federal, state, or foreign law) should be not only removable but also ineligible for discretionary relief. It is not our place to second-guess that decision.

Except when it comes to jurisdictional elements. There, this Court has stated, "the existence of the fact that confers federal jurisdiction need not be one in the mind of the actor at the time he perpetrates the act made criminal by the federal statute." *United States* v. *Feola*, 420 U. S. 671, 676–677, n. 9 (1975); see *United States* v. *Yermian*, 468 U. S. 63, 68 (1984) ("Jurisdictional language need not contain the same culpability requirement as other elements of the offense"); Model Penal Code § 2.02. So when Congress has said nothing about the mental state pertaining to a jurisdictional element, the default rule flips: Courts assume that Congress wanted such an element to stand outside the otherwise applicable *mens rea* requirement. In line with that practice, courts have routinely held that a criminal defendant need not know of a federal crime's interstate commerce connection to be found guilty. See, *e. g.*, *United States* v. *Jinian*, 725 F. 3d 954, 964–966 (CA9 2013); *United States* v. *Lindemann*, 85 F. 3d 1232, 1241 (CA7 1996); *United States* v. *Blackmon*, 839 F. 2d 900, 907 (CA2 1988). Those courts have recognized, as we do here, that Congress viewed the commerce element as distinct from, and subject to a different rule than, the elements describing the substantive offense.

Still more strikingly, courts have distinguished between the two kinds of elements in contexts, similar to this one, in which the judicial task is to compare federal and state offenses. The Assimilative Crimes Act (ACA), 18 U. S. C. § 13(a), subjects federal enclaves, like military bases, to state criminal laws except when they punish the same conduct as a federal statute. The ACA thus requires courts to decide when a federal and a state law are sufficiently alike that only the federal one will apply. And we have held that, in making that assessment, courts should ignore jurisdictional elements: When the "differences among elements" of the state and federal crimes "reflect jurisdictional, or other technical, considerations" alone, then the state law will have no effect in the area. *Lewis* v. *United States*, 523 U. S. 155, 165

(1998); see also *id.*, at 182 (KENNEDY, J., dissenting) (agreeing that courts should "look beyond . . . jurisdictional elements," and focus only on substantive ones, in determining whether "the elements of the two crimes are the same"). In such a case, we reasoned—just as we do now—that Congress meant for the federal jurisdictional element to be set aside.

And lower courts have uniformly adopted the same approach when comparing federal and state crimes in order to apply the federal three-strikes statute. That law imposes mandatory life imprisonment on a person convicted on three separate occasions of a "serious violent felony." 18 U. S. C. §3559(c)(1). Sounding very much like the INA, the three-strikes statute defines such a felony to include "a Federal or State offense, by whatever designation and wherever committed, consisting of" specified crimes (*e. g.*, murder, manslaughter, robbery) "as described in" listed federal criminal statutes. §3559(c)(2)(F). In deciding whether a state crime of conviction thus corresponds to an enumerated federal statute, every court to have faced the issue has ignored the statute's jurisdictional element. See, *e. g.*, *United States* v. *Rosario-Delgado*, 198 F. 3d 1354, 1357 (CA11 1999) (*per curiam*); *United States* v. *Wicks*, 132 F. 3d 383, 386–387 (CA7 1997). Judge Wood, writing for the Seventh Circuit, highlighted the phrase "a Federal or State offense, by whatever designation and wherever committed"—the three-strikes law's version of §1101(a)(43)'s penultimate sentence. "It is hard to see why Congress would have used this language," she reasoned, "if it had meant that every detail of the federal offense, including its jurisdictional element[ ], had to be replicated in the state offense." *Id.*, at 386–387. Just so, too, in the INA—whose "aggravated felony" provisions operate against, and rely on, an established legal backdrop distinguishing between jurisdictional and substantive elements.[12]

[12] The dissent declares our discussion of the three-strikes law, the ACA, and *mens rea* "unhelpful" on the ground that all three contexts are somehow "differ[ent]." *Post*, at 483–484. But what makes them relevantly so

Luna objects to drawing that line on the ground that it is too hard to tell the difference between the two. See Brief for Petitioner 26–28 (discussing, in particular, statutes criminalizing the destruction of federal property and sending threats via the Postal Service). But that contention collides with the judicial experience just described. Courts regularly separate substantive from jurisdictional elements in applying federal criminal statutes' *mens rea* requirements; so too in implementing other laws that require a comparison of federal and state offenses. And from all we can see, courts perform that task with no real trouble: Luna has not pointed to any divisions between or within Circuits arising from the practice. We do not deny that some tough ques-

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the dissent fails to explain. First, the dissent errs in suggesting that the uniform judicial interpretation of the three-strikes law ignores only "place-based jurisdiction elements" (because, so says the dissent, of the phrase "wherever committed"). *Post*, at 484–485. As Judge Wood's analysis indicates, that is a theory of the dissent's own creation; the actual appellate decisions apply to *all* jurisdictional elements, not just territorial ones. Next, the dissent goes wrong in claiming that the ACA is not pertinent because this Court adopted a different method for matching *substantive* elements under that law than under the INA. See *post*, at 482–483. For even as the Court made that choice, it unanimously agreed that, however substantive elements should be compared, jurisdictional elements should be disregarded. See *Lewis* v. *United States*, 523 U. S. 155, 165 (1998); *id.*, at 182 (KENNEDY, J., dissenting). And finally, the dissent does nothing to undermine our point on *mens rea* by noting that Congress very occasionally dispenses with that requirement for substantive elements. See *post*, at 483–484. As just shown, the *default rule* respecting mental states flips as between jurisdictional and substantive elements, see *supra*, at 468—reflecting the view (also at play in the three-strikes and ACA contexts) that Congress generally means to treat the two differently. That leaves the dissent with nothing except its observation that when applying the beyond-a-reasonable-doubt and jury-trial requirements, the Court does not distinguish between jurisdictional and substantive elements. See *post*, at 482–483. But the dissent forgets that those commands are constitutional in nature; a principle of statutory interpretation distinguishing between the two kinds of elements, as best reflecting Congress's intent, could not bear on those mandates.

tions may lurk on the margins—where an element that makes evident Congress's regulatory power also might play a role in defining the behavior Congress thought harmful. But a standard interstate commerce element, of the kind appearing in a great many federal laws, is almost always a simple jurisdictional hook—and courts may as easily acknowledge that fact in enforcing the INA as they have done in other contexts.

C

Luna makes a final argument opposing our reading of § 1101(a)(43): If Congress had meant for "ordinary state-law" crimes like arson to count as aggravated felonies, it would have drafted the provision to make that self-evident. *Id.*, at 20. Congress, Luna submits, would have used the generic term for those crimes—*e. g.*, "arson"—rather than demanding that the state law of conviction correspond to a listed federal statute. See *id.*, at 20–23. Or else, Luna (and the dissent) suggests, see *id.*, at 24; *post*, at 485, Congress would have expressly distinguished between substantive and jurisdictional elements, as it did in an unrelated law mandating the pretrial detention of any person convicted of a federal offense "described in [a certain federal statute], or of a State or local offense that would have been an offense described in [that statute] if a circumstance giving rise to Federal jurisdiction had existed," 18 U. S. C. § 3142(e)(2)(A).

But as an initial matter, Congress may have had good reason to think that a statutory reference would capture more accurately than a generic label the range of state convictions warranting automatic deportation. The clause of § 1101(a)(43) applying to Luna's case well illustrates the point. By referring to 18 U. S. C. § 844(i), that provision incorporates not only the garden-variety arson offenses that a generic "arson" label would cover, but various explosives offenses too. See Brief for Petitioner 23, n. 7 (conceding that had Congress used the term "arson," it would have had to separately identify the explosives crimes encompassed in

§ 844(i)). And the elements of generic arson are themselves so uncertain as to pose problems for a court having to decide whether they are present in a given state law. See Poulos, The Metamorphosis of the Law of Arson, 51 Mo. L. Rev. 295, 364, 387–435 (1986) (describing multiple conflicts over what conduct the term "arson" includes). Nor is the clause at issue here unusual in those respects: Section 1101(a)(43) includes many other statutory references that do not convert easily to generic labels. See, *e. g.*, § 1101(a)(43)(E)(ii) (listing federal statutes defining various firearms offenses). To be sure, Congress used such labels to describe some crimes qualifying as aggravated felonies—for example, "murder, rape, or sexual abuse of a minor." § 1101(a)(43)(A). But what is good for some crimes is not for others. The use of a federal statutory reference shows only that Congress thought it the best way to identify certain substantive crimes—not that Congress wanted (in conflict with the penultimate sentence) to exclude state and foreign versions of those offenses for lack of a jurisdictional element.

Still more, Congress's omission of statutory language specifically directing courts to ignore those elements cannot tip the scales in Luna's favor. We have little doubt that "Congress could have drafted [§ 1101(a)(43)] with more precision than it did." *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 545 U. S. 409, 422 (2005). But the same could be said of many (even most) statutes; as to that feature, § 1101(a)(43) can join a well-populated club. And we have long been mindful of that fact when interpreting laws. Rather than expecting (let alone demanding) perfection in drafting, we have routinely construed statutes to have a particular meaning even as we acknowledged that Congress could have expressed itself more clearly. See, *e. g.*, *ibid.*; *Florida Dept. of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U. S. 33, 41 (2008); *Scarborough* v. *United States*, 431 U. S. 563, 570–571, 575 (1977). The question, then, is not: Could Congress have indicated (or even did

Congress elsewhere indicate) in more crystalline fashion that comparisons of federal and state offenses should disregard elements that merely establish legislative jurisdiction? The question is instead, and more simply: Is that the right and fair reading of the statute before us? And the answer to that question, given the import of § 1101(a)(43)'s penultimate sentence and the well-settled background rule distinguishing between jurisdictional and substantive elements, is yes.

III

That reading of § 1101(a)(43) resolves this case. Luna has acknowledged that the New York arson law differs from the listed federal statute, 18 U. S. C. § 844(i), in only one respect: It lacks an interstate commerce element. See Pet. for Cert. 3. And Luna nowhere contests that § 844(i)'s commerce element—featuring the terms "in interstate or foreign commerce" and "affecting interstate or foreign commerce"—is of the standard, jurisdictional kind. See Tr. of Oral Arg. 12, 19; *Scheidler*, 547 U. S., at 17–18 (referring to the phrases "affect commerce" and "in commerce" as conventional "jurisdictional language"). For all the reasons we have given, such an element is properly ignored when determining if a state offense counts as an aggravated felony under § 1101(a)(43). We accordingly affirm the judgment of the Second Circuit.

It is so ordered.

JUSTICE SOTOMAYOR, with whom JUSTICE THOMAS and JUSTICE BREYER join, dissenting.

The Immigration and Nationality Act (INA) metes out severe immigration consequences to a noncitizen convicted of any of a number of "aggravated felon[ies]." 8 U. S. C. § 1101(a)(43). An offense "described in" 18 U. S. C. § 844(i)—a federal arson statute—qualifies as such a crime.

In this case, petitioner, who goes by George Luna, was convicted of third-degree arson under N. Y. Penal Law Ann.

§ 150.10 (West 2010), which punishes anyone who (1) "intentionally" (2) "damages," by (3) "starting a fire or causing an explosion," (4) "a building or motor vehicle." By contrast, the federal arson statute, 18 U. S. C. § 844(i), applies when someone (1) "maliciously" (2) "damages or destroys," (3) "by means of fire or an explosive," (4) "any building, vehicle, or other real or personal property" (5) "used in interstate or foreign commerce." There is one more element in the federal offense than in the state offense—(5), the interstate or foreign commerce element. Luna thus was not convicted of an offense "described in" the federal statute. Case closed.

Not for the majority. It dubs the fifth element "jurisdictional," then relies on contextual clues to read it out of the statute altogether. As a result of the majority's sleuthing, Luna—a long-time legal permanent resident—is foreclosed from even appealing to the sound discretion of the Attorney General to obtain relief from removal. Because precedent and the text and structure of the INA require the opposite result, I respectfully dissent.

I

A

Noncitizens convicted of crimes face various consequences under the INA. Among the harshest of those consequences fall on noncitizens convicted of 1 of the approximately 80 "aggravated felonies." A crime that falls into one of the listed provisions can be an aggravated felony "whether in violation of Federal or State law" or "in violation of the law of a foreign country." See 8 U. S. C. § 1101(a)(43).

An aggravated felony conviction has two primary repercussions for noncitizens: It renders them deportable, § 1227(a)(2)(A)(iii), and it makes them categorically ineligible for several forms of immigration relief ordinarily left to the discretion of the Attorney General, see, *e. g.*, §§ 1229b(a)–(b) (cancellation of removal).

The dozens of aggravated felonies in the INA are specified in two main ways. First, some are specified by reference to a generic crime. It is an aggravated felony, for instance, to commit "murder, rape, or sexual abuse of a minor." § 1101(a)(43)(A). Some of those crimes use a federal definition as one of the elements. For example: "Illicit trafficking in a controlled substance (*as defined in* [21 U. S. C. § 802])." 8 U. S. C. § 1101(a)(43)(B) (emphasis added). ("Illicit trafficking" is a generic crime; the element of "controlled substance" takes the meaning in 21 U. S. C. § 802, the "Definitions" provision of the Controlled Substances Act.)

Second, it lists crimes that are wholly "described in" the Federal Criminal Code. See, *e. g.*, § 1101(a)(43)(H) ("an offense described in section 875, 876, 877, or 1202 of title 18 (relating to the demand for or receipt of ransom)"); § 1101(a)(43)(I) ("an offense described in section 2251, 2251A, or 2252 of title 18 (relating to child pornography)"). The Government contends that Luna committed a crime in this second category: an "offense described in" 18 U. S. C. § 844(i), which criminalizes arson. 8 U. S. C. § 1101(a)(43)(E)(i).

B

In 2006, Luna was found removable from the United States. He attempted to apply for cancellation of removal, a form of relief available to long-time legal permanent residents at the discretion of the Attorney General. § 1229b(a). Nothing in Luna's history would otherwise preclude cancellation. He was the sole source of financial support for his U. S. citizen fiance, enrolled in college and studying engineering, a homeowner, and a law-abiding legal permanent resident since he was brought to the United States as a child over 30 years ago, aside from the one third-degree arson conviction at issue in this case, for which he served a day in jail.

But the Immigration Judge found—and the Board of Immigration Appeals and the Second Circuit confirmed—that Luna was ineligible for cancellation of removal. Luna's

New York State arson conviction, the judge held, qualified as an aggravated felony under the provision for "an offense described in" § 844(i), a federal arson statute. See § 1101(a)(43)(E)(i). Aggravated felons are ineligible for cancellation of removal. See § 1229b(a)(3). Luna's cancellation-of-removal application was thus summarily denied.

II

But the offense of which Luna was convicted is *not* "described in" § 844(i). This Court's ordinary method of interpreting the aggravated felony statute, the plain text of that provision, and the structure of the INA all confirm as much.

A

This is not the first time the Court has been tasked with determining whether a state offense constitutes an "aggravated felony" under the INA. Until today, the Court has always required the state offense to match *every* element of the listed "aggravated felony." *Kawashima* v. *Holder*, 565 U. S. 478, 482 (2012); see also *Moncrieffe* v. *Holder*, 569 U. S. 184, 190 (2013); *Carachuri-Rosendo* v. *Holder*, 560 U. S. 563, 580 (2010); *Nijhawan* v. *Holder*, 557 U. S. 29, 33 (2009); *Gonzales* v. *Duenas-Alvarez*, 549 U. S. 183, 185 (2007); *Lopez* v. *Gonzales*, 549 U. S. 47, 52–53 (2006); *Leocal* v. *Ashcroft*, 543 U. S. 1, 8 (2004).

Our ordinary methodology thus confirms that the federal arson statute does not describe the New York arson statute under which Luna was convicted. As I have outlined above, see *supra*, at 474, the federal statute is more limited: It applies only to fires that involve "interstate or foreign commerce." The state statute contains no such limitation. Thus, under the approach we have used in every case to date, the omission of the interstate commerce element means that Luna's state arson conviction was not an aggravated felony under the INA.

B

The plain language of the statute supports this straightforward approach. The word "describe" means to "express," "portray," or "represent." See Black's Law Dictionary 445 (6th ed. 1990); Webster's Third New International Dictionary 610 (1986). A description may be "detailed" or it may be general, setting forth only the "recognizable features, or characteristic marks," of the thing described while leaving the rest to the imagination. 4 Oxford English Dictionary 512 (2d ed. 1989). For example, a Craigslist ad describing an apartment with "in-unit laundry, a dishwasher, rooftop access, central A/C, and a walk-in closet" may leave much to the imagination. After all, the description does not mention the apartment's square footage, windows, or floor number. But though the ad omits features, we would still call it a "description" because it accurately conveys the "recognizable features" of the apartment.

However, even the most general description cannot refer to features that the thing being described does not have. The ad is only an accurate description if the apartment "described in" it has *at least* the five features listed. If the apartment only has four of the five listed features—there is no rooftop access, say, or the walk-in closet is not so much walk-in as shimmy-in—then the Craigslist ad no longer "describes" the apartment. Rather, it *mis*describes it.

So, too, with the statutes in this case. The federal description can be general as long as it is still accurate—that is, as long as the state law has at least all of the elements in the federal law. But there is no meaning of "describe" that allows the Court to say § 844(i) "describes" the New York offense when the New York offense only has four of the five elements listed in § 844(i). Section 844(i) misdescribes the New York offense just as surely as the too-good-to-be-true Craigslist ad misdescribes the real-life apartment.

C

The structure of the INA confirms that conclusion and makes clear that we need not contort the ordinary, accepted meaning of the phrase "described in." The INA has many overlapping provisions that assign carefully calibrated consequences to various types of criminal convictions. The Court thus need not interpret any provision—and certainly none of the aggravated felony provisions, among the harshest in the INA—as broadly as possible because the INA as a whole ensures that serious criminal conduct is adequately captured.

That overlapping structure is apparent throughout the INA. First, the aggravated felony list itself has multiple fail-safe provisions. Most serious offenses, for instance, will qualify as "crime[s] of violence . . . for which the term of imprisonment [is] at least one year," 8 U. S. C. § 1101(a)(43)(F), even if they are not covered by a more specific provision in the aggravated felony list. Had his crime been charged as a more serious arson and had he been punished by one year of imprisonment instead of one day, Luna might have qualified as an aggravated felon under that provision. See *Santana* v. *Holder*, 714 F. 3d 140, 145 (CA2 2013) (second-degree arson in New York is a "crime of violence").[1]

[1] Many of the majority's own examples of "the gravest" state offenses supposedly excluded from the aggravated felony list by Luna's reading actually fall within these fail-safe provisions. *Ante*, at 462. Many state arsons will qualify as "crime[s] of violence" under 8 U. S. C. § 1101(a)(43)(F), see, *e. g.*, *Mbea* v. *Gonzales*, 482 F. 3d 276, 279 (CA4 2007); an even greater fraction of the most serious arsons will fall under that heading because States like New York have enacted gradated statutes under which more severe degrees of arson are crimes of violence, see *Santana*, 714 F. 3d, at 145. To take another of the majority's examples, while a state conviction for demanding a ransom in a kidnaping is not "an offense described in [18 U. S. C. § 875]" under § 1101(a)(43)(H), a state conviction for kidnaping or conspiring to kidnap may qualify as a crime of violence under § 1101(a)(43)(F). See *United States* v. *Kaplansky*, 42 F. 3d 320 (CA6 1994).

And even under the majority's reading, a state-law conviction will only qualify as an aggravated felony if the "right state charge is filed." *Ante*,

Second, other sections of the INA provide intertwining coverage for serious crimes. Some examples of provisions that encompass many offenses include those for the commission of a "crime involving moral turpitude," a firearms offense, or a controlled substance offense, all of which will render a noncitizen removable, even if he or she has not committed an aggravated felony. See §§ 1227(a)(2)(A)(i), (B)(i), (C); §§ 1182(a)(2)(A)(i)–(ii). Cf. *Judulang* v. *Holder*, 565 U. S. 42, 48 (2011) (commenting on the breadth of the "crime involving moral turpitude" provision).[2]

And finally, in Luna's case or anyone else's, the Attorney General can exercise her discretion to deny relief to a serious criminal whether or not that criminal has been convicted of an aggravated felony. See *Carachuri-Rosendo*, 560 U. S., at 581 (doubting that a narrow reading of § 1101(a)(43) will have "any practical effect on policing our Nation's borders").

To be sure, on Luna's reading, some serious conduct may not be captured by the INA. But not nearly so much as the majority suggests. By contrast, once the aggravated felony statute applies to a noncitizen, no provision in the INA—and

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at 466, n. 10. For example, even on the majority's reading, a state-court defendant who sells a child for purposes of child pornography is unlikely to be convicted of "an offense described in [18 U. S. C.] § 2251A," see § 1101(a)(43)(I). That is because virtually no States have a statute corresponding to 18 U. S. C. § 2251A, with or without the interstate commerce element. (But see Fla. Stat. § 847.0145 (2015).) Such a defendant may, however, be convicted of a state offense that qualifies as an aggravated felony for conspiring to commit sexual abuse of a minor under 8 U. S. C. §§ 1101(a)(43)(U) and 1101(a)(43)(A).

[2] Other crimes in the majority's list of serious offenses, *ante*, at 462–463, will be covered by these separate INA provisions. For example, the Board of Immigration Appeals has held that any child pornography offense is a "crime involving moral turpitude," rendering a noncitizen removable in many cases. See §§ 1227(a)(2)(A)(i), 1182(a)(2)(A)(i); *In re Olquin-Rufino*, 23 I. & N. Dec. 896 (BIA 2006). Any offense involving a gun would make a noncitizen deportable under one of the catchall provisions for buying, selling, or possessing a firearm in violation of "any law." See § 1227(a)(2)(C).

virtually no act by the Attorney General—can prevent him or her from being removed.

Looking for consistency in the aggravated felony provisions of the INA is often a fool's errand. See *Kawashima*, 565 U. S., at 497, n. 2 (GINSBURG, J., dissenting) (noting the absurdity of making a tax misdemeanor, but not driving while drunk and causing serious bodily injury, an aggravated felony). But the structure of the INA gives the Court no reason to read the aggravated felony provisions as broadly as possible.[3] That is why this Court has repeatedly cautioned against interpreting the aggravated felony section to sweep in offenses that—like many state arson convictions—may be neither aggravated nor felonies. See *Carachuri-Rosendo*, 560 U. S., at 574; Brief for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* 28–29 (collecting state misdemeanor arson statutes).

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[3] If the aggravated felony provisions were the primary mechanism for removing serious noncitizen criminals, we would expect *any* noncitizen convicted of an aggravated felony to face immigration consequences. In fact, the aggravated felony provisions only apply to noncitizens who are lawfully admitted or later paroled. *Matter of Alyazji*, 25 I. & N. Dec. 397, 399 (BIA 2011). Other noncitizens—such as undocumented immigrants, noncitizens applying for a visa, or some legal permanent residents returning after an extended stay abroad—cannot be removed based on the conviction of an aggravated felony; the Government must rely on the other provisions of the INA, including the statute's other criminal provisions, to remove such noncitizens. See §§ 1101(a)(13)(A), 1182, 1227(a)(2)(A)(iii).

Similarly, if the aggravated felony provision were the only way to ensure that the Attorney General exercised her discretion wisely, we would expect that discretion to be constrained as to *all* noncitizens who potentially pose a threat to the United States. In fact, the Attorney General is not prevented from granting cancellation of removal—the discretionary relief at issue in this case—to, for instance, a noncitizen who has not been convicted of a crime but is removable for having "received military-type training" from a terrorist organization. See §§ 1227(a)(4)(B), 1182(a)(3)(B)(i)(VIII), 1229b(a).

In short, it cannot be the case that the aggravated felony provisions were intended to be the statute's sole mechanism for identifying the most dangerous noncitizens.

III

The majority denies Luna the opportunity to present his case to the Attorney General based on two "contextual considerations," *ante*, at 460, and an intuition about how the statute ought to work. None are sufficiently persuasive to overcome the most natural reading of the aggravated felony statute.

A

The majority first perceives a conflict between Luna's reading of the INA and what it calls the "penultimate sentence" of the aggravated felony statute. The "penultimate sentence" provides that an offense can be an aggravated felony "whether in violation of Federal or State law" or "in violation of the law of a foreign country." 8 U. S. C. § 1101(a)(43). The majority claims that Luna's reading of the INA would vitiate the quoted proviso. *Ante*, at 461–462.

It is true that, on Luna's reading, *some* of the aggravated felonies listed in the INA (including "an offense described in" § 844(i)) will have no state or foreign analog. But the proviso still applies to generic offenses, which constitute nearly half of the entries in the aggravated felony list. See, *e. g.*, §§ 1101(a)(43)(A), (G), (M)(i). And that already-large portion jumps to close to three-quarters of the offenses after counting those many listed federal statutes with no jurisdictional element. See, *e. g.*, §§ 1101(a)(43)(C), (E)(ii), (J). In fact, it applies to the vast majority of offenses adjudicated under the INA given that most serious crimes are also "crimes of violence." See § 1101(a)(43)(F).[4]

And the majority must admit that its interpretation will also leave entries in the aggravated felony section with no state or foreign analogs. For instance, it seems unlikely

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[4] When the proviso was added to the INA in 1990, it would have applied to an even greater fraction of the aggravated felonies: At that time, the aggravated felony statute listed only five offenses, four of which would have had state analogs even on Luna's reading. See 104 Stat. 5048 (1990).

that the proviso contemplates state analogs for the aggravated felony provisions regarding treason, levying war against the United States, or disclosing national defense information. See §§ 1101(a)(43)(L)(i), (P).

In other words, under Luna's reading, the "penultimate sentence" applies to most, but not all, of the entries of the aggravated felony statute; under the majority's reading, the "penultimate sentence" also applies to most, but not all, of the entries of the aggravated felony statute. The majority's first "contextual consideration" thus supplies no reason to prefer one reading over the other.

B

Just as important, the majority suggests, is a "settled practice of distinguishing between substantive . . . elements"—those that define "the evil Congress seeks to prevent"—and "jurisdictional element[s]," which merely "establis[h] legislative authority." *Ante*, at 467. The majority admits that the Court does *not* distinguish between substantive and jurisdictional elements for many purposes, such as proof beyond a reasonable doubt and the right to a jury trial. *Ante*, at 468; see *Ring* v. *Arizona*, 536 U. S. 584, 606 (2002). But it nonetheless insists on a standard distinction so entrenched that Congress must have intended it to apply even absent any particular indication in the INA.

None of the three examples that the majority proffers is evidence of such a strong norm. First, the majority invokes our rules for interpreting criminal statutes. *Ante*, at 468. Whereas our general assumption is that a defendant must know each fact making his conduct illegal, courts generally hold that a criminal defendant need not know the facts that satisfy the jurisdictional element of a statute.

But jurisdictional elements are not the only elements a defendant need not know. Under the "default rule," *ante*, at 470, n. 12 (emphasis deleted), for interpreting so-called "public

welfare" offenses, courts have held that a defendant need not know that the substance he possesses is a narcotic, that the device he possesses is unregistered, or that he reentered the United States after previously being deported. See *Staples* v. *United States*, 511 U. S. 600, 606–609, 611 (1994) (citing *United States* v. *Balint*, 258 U. S. 250 (1922), and *United States* v. *Freed*, 401 U. S. 601 (1971)); *United States* v. *Burwell*, 690 F. 3d 500, 508–509 (CADC 2012); *United States* v. *Giambro*, 544 F. 3d 26, 29 (CA1 2008); *United States* v. *Martinez-Morel*, 118 F. 3d 710, 715–717 (CA10 1997). But surely the majority would not suggest that if we agree with those holdings regarding *mens rea*, we must then ignore the "controlled substance" element of the drug trafficking aggravated felony, the "unregistered" element of the unregistered firearms aggravated felony, or the "following deportation" element of the illegal reentry aggravated felony. See 8 U. S. C. §§ 1101(a)(43)(B), (E)(iii), (M)(i), (O). So there is likewise no reason to believe that the "default rule" for assigning *mens rea* to jurisdictional elements is embedded in the INA.

The majority next points to two of the many statutes that, like the INA, require comparing the elements of federal and state offenses. But in each case, it is the statute's language and context, not some "settled practice," *ante*, at 467, that command the omission of the jurisdictional element.

The majority's first example, *ante*, at 468–469, is the Assimilative Crimes Act, 18 U. S. C. § 13(a), a gap-filling statute that incorporates state criminal law into federal enclaves if the "act or omission" is not "made punishable by any enactment of Congress" but "would be punishable if committed or omitted within the jurisdiction of the State." The Court held that, in identifying such a gap, courts should ignore "jurisdictional, or other technical," differences between a state and federal statute. *Lewis* v. *United States*, 523 U. S. 155, 165 (1998). But the way courts match the elements of a state

law to a federal analog under the Assimilative Crimes Act differs fundamentally from our INA inquiry. The basic question under the Assimilative Crimes Act is whether "federal statutes reveal an intent to occupy so much of a field as would exclude the use of the particular state statute at issue." *Id.*, at 164. Under the Assimilative Crimes Act, the state statute is not compared to a single federal statute, but rather to a complex of federal statutes that roughly cover the same general conduct and "policies." *Ibid.* That statute thus has little to teach us about 8 U. S. C. § 1101(a)(43): In interpreting the Assimilative Crimes Act, every Member of the Court rejected the simple elements-matching approach that the Court generally employs to construe the aggravated felony provisions of the INA. See 523 U. S., at 182 (KENNEDY, J., dissenting) (allowing "slight differences" in definition between federal and state statute and using "same-elements inquiry" only as a "starting point").

The majority's analogy to the federal three strikes statute, 18 U. S. C. § 3559(c)(2)(F), *ante*, at 469, is similarly unhelpful. That provision counts as a predicate "'serious violent felony'" any "'Federal or State offense . . . *wherever committed*, consisting of'" various crimes, including several "'as described in'" federal statutes. *Ante*, at 469 (emphasis added). Though this Court has not construed the statute, the majority notes that courts of appeals disregard the jurisdictional element of federal statutes in assessing whether a state conviction is for a "serious violent felony." *Ibid.* But nearly all of the statutes listed in § 3559(c)(2)(F) contain place-based jurisdiction elements—the crime must take place "within the special maritime and territorial jurisdiction of the United States," *e. g.*, § 1111(b), or within "the special aircraft jurisdiction of the United States," 49 U. S. C. § 46502, and so on. In the two cases cited by the majority, for instance, *ante*, at 469, Courts of Appeals concluded that a state robbery offense qualified as an offense "described in" the federal bank robbery statute even though the robbery did not

take place in a bank. See *United States* v. *Wicks*, 132 F. 3d 383, 387 (CA7 1997); *United States* v. *Rosario-Delgado*, 198 F. 3d 1354, 1357 (CA11 1999). In that statute, it is the "wherever committed," not some loose construction of "described in," that specifically instructs the courts that the location where a crime occurs does not matter.

Moreover, in other statutes where Congress wants to exclude jurisdictional elements when comparing state and federal offenses, it ordinarily just says so. See, *e. g.*, 18 U. S. C. § 3142(e)(2)(A) (requiring detention of defendant pending trial if "the person has been convicted . . . of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed"); § 2265A(b)(1)(B); § 2426(b)(1)(B); § 3142(f)(1)(D); § 5032; 42 U. S. C. §§ 671(a)(15)(D)(ii)(I)–(II); §§ 5106a(b)(2)(B)(xvi)(I)–(II). Absent comparably clear language, the Court should not presume that the INA intended deportability to depend on a not-so-"settled practice," *ante*, at 467, of occasionally distinguishing between substantive and jurisdictional elements.

C

Finally, the majority suggests that it would be "peculiarly perverse," *ante*, at 462, to adopt Luna's plain-text reading of the statute because it would draw a distinction among crimes based on a jurisdictional element that the majority assumes is wholly divorced from "the evil Congress seeks to prevent," *ante*, at 467. The jurisdictional element of a federal statute, the majority asserts, is as trivial as the perfunctory warning on a new electronic device: "[A] person would say that she had followed the instructions for setting up an iPhone that are 'described in' the user's manual even if she in fact ignored the one" instructing that she "begin by 'read[ing] important safety information.'" *Ante*, at 460, n. 5; see also *ibid.* (comparing jurisdictional element to a "'detour'" in a 3-week itinerary).

For instance, the majority assumes that it would not be "plausible," *ante,* at 464, for Congress to have thought that interstate crimes are worse than wholly intrastate crimes. Perhaps. But when faced with an offense that, like arson, admits of a range of conduct, from the minor to the serious, Congress *could* plausibly have concluded that arsons prosecuted as federal crimes are more uniformly serious than arsons prosecuted as state crimes and counted only the former as aggravated felonies. See, *e. g.,* Klein et al., Why Federal Prosecutors Charge: A Comparison of Federal and New York State Arson and Robbery Filings, 2006–2010, 51 Houston L. Rev. 1381, 1406, 1416–1419 (2014) (finding that arsons prosecuted federally involve more property damage and more injury than arsons prosecuted under state law).

That is because, far from being token, "conventional jurisdictional elements" serve to narrow the kinds of crimes that can be prosecuted, not just to specify the sovereign that can do the prosecuting. Take the federal statute at issue in this case. Section 844(i) requires that the property destroyed be "used in interstate . . . commerce." The Court has held that "standard, jurisdictional" element, *ante,* at 473, demands the property's "active employment for commercial purposes, and not merely a passive, passing, or past connection to commerce," *Jones* v. *United States*, 529 U. S. 848, 855 (2000). As a result, the Court held that a defendant who threw a Molotov cocktail through the window of an owner-occupied residential house could not be guilty under § 844(i) because the house was not actively "'used in'" interstate commerce. *Id.*, at 850–851. Surely, however, a New York prosecutor could have secured a conviction under N. Y. Penal Law Ann. § 150.10 had the same crime been prosecuted in state, rather than federal, court.

The difference between an offense under N. Y. Penal Law Ann. § 150.10 and an offense under 18 U. S. C. § 844(i) is thus more than a technical consideration about which authority

chooses to prosecute. It is a difference that goes to the magnitude and nature of the "evil," *ante*, at 467, itself.

* * *

On the majority's reading, long-time legal permanent residents with convictions for minor state offenses are foreclosed from even appealing to the mercy of the Attorney General. Against our standard method for comparing statutes and the text and structure of the INA, the majority stacks a supposed superfluity, a not-so-well-settled practice, and its conviction that jurisdictional elements are mere technicalities. But an element is an element, and I would not so lightly strip a federal statute of one. I respectfully dissent.

Syllabus

FOSTER *v.* CHATMAN, WARDEN

CERTIORARI TO THE SUPREME COURT OF GEORGIA

No. 14–8349. Argued November 2, 2015—Decided May 23, 2016

Petitioner Timothy Foster was convicted of capital murder and sentenced to death in a Georgia court. During jury selection at his trial, the State used peremptory challenges to strike all four black prospective jurors qualified to serve on the jury. Foster argued that the State's use of those strikes was racially motivated, in violation of *Batson* v. *Kentucky*, 476 U. S. 79. The trial court rejected that claim, and the Georgia Supreme Court affirmed. Foster then renewed his *Batson* claim in a state habeas proceeding. While that proceeding was pending, Foster, through the Georgia Open Records Act, obtained from the State copies of the file used by the prosecution during his trial. Among other documents, the file contained (1) copies of the jury venire list on which the names of each black prospective juror were highlighted in bright green, with a legend indicating that the highlighting "represents Blacks"; (2) a draft affidavit from an investigator comparing black prospective jurors and concluding, "If it comes down to having to pick one of the black jurors, [this one] might be okay"; (3) notes identifying black prospective jurors as "B#1," "B#2," and "B#3"; (4) notes with "N" (for "no") appearing next to the names of all black prospective jurors; (5) a list titled "[D]efinite NO's" containing six names, including the names of all of the qualified black prospective jurors; (6) a document with notes on the Church of Christ that was annotated "NO. No Black Church"; and (7) the questionnaires filled out by five prospective black jurors, on which each juror's response indicating his or her race had been circled.

The state habeas court denied relief. It noted that Foster's *Batson* claim had been adjudicated on direct appeal. Because Foster's renewed *Batson* claim "fail[ed] to demonstrate purposeful discrimination," the court concluded that he had failed to show "any change in the facts sufficient to overcome" the state law doctrine of res judicata. The Georgia Supreme Court denied Foster the Certificate of Probable Cause necessary to file an appeal.

Held:

1. This Court has jurisdiction to review the judgment of the Georgia Supreme Court denying Foster a Certificate of Probable Cause on his *Batson* claim. Although this Court cannot ascertain the grounds for that unelaborated judgment, there is no indication that it rested on a state law ground that is both "independent of the merits" of Foster's

Batson claim and an "adequate basis" for that decision, so as to preclude jurisdiction. *Harris* v. *Reed*, 489 U. S. 255, 260. The state habeas court held that the state law doctrine of res judicata barred Foster's claim only by examining the entire record and determining that Foster had not alleged a change in facts sufficient to overcome the bar. Based on this lengthy "*Batson* analysis," the state habeas court concluded that Foster's renewed *Batson* claim was "without merit." Because the state court's application of res judicata thus "depend[ed] on a federal constitutional ruling, [that] prong of the court's holding is not independent of federal law, and [this Court's] jurisdiction is not precluded." *Ake* v. *Oklahoma*, 470 U. S. 68, 75; see also *Three Affiliated Tribes of Fort Berthold Reservation* v. *Wold Engineering, P. C.*, 467 U. S. 138, 152. Pp. 496–499.

2. The decision that Foster failed to show purposeful discrimination was clearly erroneous. Pp. 499–514.

(a) *Batson* provides a three-step process for adjudicating claims such as Foster's. "First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race; second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question; and third, in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination." *Snyder* v. *Louisiana*, 552 U. S. 472, 477 (internal quotation marks and brackets omitted). Only *Batson*'s third step is at issue here. That step turns on factual findings made by the lower courts, and this Court will defer to those findings unless they are clearly erroneous. See 552 U. S., at 477. Pp. 499–501.

(b) Foster established purposeful discrimination in the State's strikes of two black prospective jurors: Marilyn Garrett and Eddie Hood. Though the trial court accepted the prosecution's justifications for both strikes, the record belies much of the prosecution's reasoning. Pp. 501–512.

(i) The prosecution explained to the trial court that it made a last-minute decision to strike Garrett only after another juror, Shirley Powell, was excused for cause on the morning that the strikes were exercised. That explanation is flatly contradicted by evidence showing that Garrett's name appeared on the prosecution's list of "[D]efinite NO's"—the six prospective jurors whom the prosecution was intent on striking from the outset. The record also refutes several of the reasons the prosecution gave for striking Garrett instead of Arlene Blackmon, a white prospective juror. For example, while the State told the trial court that it struck Garrett because the defense did not ask her for her thoughts about such pertinent trial issues as insanity, alcohol, or pre-

trial publicity, the record reveals that the defense asked Garrett multiple questions on each topic. And though the State gave other facially reasonable justifications for striking Garrett, those are difficult to credit because of the State's willingness to accept white jurors with the same characteristics. For example, the prosecution claims that it struck Garrett because she was divorced and, at age 34, too young, but three out of four divorced white prospective jurors and eight white prospective jurors under age 36 were allowed to serve. Pp. 501–507.

(ii) With regard to prospective juror Hood, the record similarly undermines the justifications proffered by the State to the trial court for the strike. For example, the prosecution alleged in response to Foster's pretrial *Batson* challenge that its only concern with Hood was the fact that his son was the same age as the defendant. But then, at a subsequent hearing, the State told the court that its chief concern was with Hood's membership in the Church of Christ. In the end, neither of those reasons for striking Hood withstands scrutiny. As to the age of Hood's son, the prosecution allowed white prospective jurors with sons of similar age to serve, including one who, in contrast to Hood, equivocated when asked whether Foster's age would be a factor at sentencing. And as to Hood's religion, the prosecution erroneously claimed that three white Church of Christ members were excused for cause because of their opposition to the death penalty, when in fact the record shows that those jurors were excused for reasons unrelated to their views on the death penalty. Moreover, a document acquired from the State's file contains a handwritten note stating, "NO. NO Black Church," while asserting that the Church of Christ does not take a stand on the death penalty. Other justifications for striking Hood fail to withstand scrutiny because no concerns were expressed with regard to similar white prospective jurors. Pp. 507–512.

(c) Evidence that a prosecutor's reasons for striking a black prospective juror apply equally to an otherwise similar nonblack prospective juror who is allowed to serve tends to suggest purposeful discrimination. *Miller-El* v. *Dretke*, 545 U. S. 231, 241. Such evidence is compelling with respect to Garrett and Hood and, along with the prosecution's shifting explanations, misrepresentations of the record, and persistent focus on race, leads to the conclusion that the striking of those prospective jurors was "motivated in substantial part by discriminatory intent." *Snyder*, 552 U. S., at 485. Pp. 512–513.

(d) Because *Batson* was decided only months before Foster's trial, the State asserts that the focus on black prospective jurors in the prosecution's file was an effort to develop and maintain a detailed account should the prosecution need a defense against any suggestion that its reasons were pretextual. That argument, having never before been

raised in the 30 years since Foster's trial, "reeks of afterthought." *Miller-El*, 545 U. S., at 246. And the focus on race in the prosecution's file plainly demonstrates a concerted effort to keep black prospective jurors off the jury. Pp. 513–514.

Reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in the judgment, *post*, p. 515. THOMAS, J., filed a dissenting opinion, *post*, p. 524.

Stephen B. Bright, by appointment of the Court, 577 U. S. 809, argued the cause for petitioner. With him on the briefs were *Patrick Mulvaney* and *Palmer Singleton*.

Beth A. Burton, Deputy Attorney General of Georgia, argued the cause for respondent. With her on the brief were *Samuel S. Olens*, Attorney General, *Sabrina D. Graham*, Senior Assistant Attorney General, and *Richard W. Tangum*, Assistant Attorney General.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Petitioner Timothy Foster was convicted of capital murder and sentenced to death in a Georgia court. During jury selection at his trial, the State exercised peremptory strikes against all four black prospective jurors qualified to serve. Foster argued that the State's use of those strikes was racially motivated, in violation of our decision in *Batson* v. *Kentucky*, 476 U. S. 79 (1986). The trial court and the Georgia Supreme Court rejected Foster's *Batson* claim.

Foster then sought a writ of habeas corpus from the Superior Court of Butts County, Georgia, renewing his *Batson* objection. That court denied relief, and the Georgia Supreme Court declined to issue the Certificate of Probable Cause necessary under Georgia law for Foster to pursue an appeal. We granted certiorari and now reverse.

**Paul M. Smith* and *Michael B. DeSanctis* filed a brief for Joseph diGenova et al. as *amici curiae* urging reversal.

I

On the morning of August 28, 1986, police found Queen Madge White dead on the floor of her home in Rome, Georgia. White, a 79-year-old widow, had been beaten, sexually assaulted, and strangled to death. Her home had been burglarized. Timothy Foster subsequently confessed to killing White, and White's possessions were recovered from Foster's home and from Foster's two sisters. The State indicted Foster on charges of malice murder and burglary. He faced the death penalty. *Foster* v. *State*, 258 Ga. 736, 374 S. E. 2d 188 (1988).

District Attorney Stephen Lanier and Assistant District Attorney Douglas Pullen represented the State at trial. Jury selection proceeded in two phases: removals for cause and peremptory strikes. In the first phase, each prospective juror completed a detailed questionnaire, which the prosecution and defense reviewed. The trial court then conducted a juror-by-juror *voir dire* of approximately 90 prospective jurors. Throughout this process, both parties had the opportunity to question the prospective jurors and lodge challenges for cause. This first phase whittled the list down to 42 "qualified" prospective jurors. Five were black.

In the second phase, known as the "striking of the jury," both parties had the opportunity to exercise peremptory strikes against the array of qualified jurors. Pursuant to state law, the prosecution had ten such strikes; Foster twenty. See Ga. Code Ann. § 15–12–165 (1985). The process worked as follows: The clerk of the court called the qualified prospective jurors one by one, and the State had the option to exercise one of its peremptory strikes. If the State declined to strike a particular prospective juror, Foster then had the opportunity to do so. If neither party exercised a peremptory strike, the prospective juror was selected for service. This second phase continued until 12 jurors had been accepted.

The morning the second phase began, Shirley Powell, one of the five qualified black prospective jurors, notified the court that she had just learned that one of her close friends was related to Foster. The court removed Powell for cause. That left four black prospective jurors: Eddie Hood, Evelyn Hardge, Mary Turner, and Marilyn Garrett.

The striking of the jury then commenced. The State exercised nine of its ten allotted peremptory strikes, removing all four of the remaining black prospective jurors. Foster immediately lodged a *Batson* challenge. The trial court rejected the objection and empaneled the jury. The jury convicted Foster and sentenced him to death.

Following sentencing, Foster renewed his *Batson* claim in a motion for a new trial. After an evidentiary hearing, the trial court denied the motion. The Georgia Supreme Court affirmed, 258 Ga., at 747, 374 S. E. 2d, at 197, and we denied certiorari, *Foster* v. *Georgia*, 490 U. S. 1085 (1989).

Foster subsequently sought a writ of habeas corpus from the Superior Court of Butts County, Georgia, again pressing his *Batson* claim. While the state habeas proceeding was pending, Foster filed a series of requests under the Georgia Open Records Act, see Ga. Code Ann. §§ 50–18–70 to 50–18–77 (2002), seeking access to the State's file from his 1987 trial. In response, the State disclosed documents related to the jury selection at that trial. Over the State's objections, the state habeas court admitted those documents into evidence. They included the following:

(1) Four copies of the jury venire list. On each copy, the names of the black prospective jurors were highlighted in bright green. A legend in the upper right corner of the lists indicated that the green highlighting "represents Blacks." See, *e. g.*, App. 253. The letter "B" also appeared next to each black prospective juror's name. See, *e. g.*, *ibid.* According to the testimony of Clayton Lundy, an investigator who assisted the prosecution during jury selection, these

highlighted venire lists were circulated in the district attorney's office during jury selection. That allowed "everybody in the office"—approximately "10 to 12 people," including "[s]ecretaries, investigators, [and] district attorneys"—to look at them, share information, and contribute thoughts on whether the prosecution should strike a particular juror. Pl. Exh. 1, 2 Record 190, 219 (Lundy deposition) (hereinafter Tr.). The documents, Lundy testified, were returned to Lanier before jury selection. *Id.*, at 220.

(2) A draft of an affidavit that had been prepared by Lundy "at Lanier's request" for submission to the state trial court in response to Foster's motion for a new trial. *Id.*, at 203. The typed draft detailed Lundy's views on ten black prospective jurors, stating "[m]y evaluation of the jurors are a[s] follows." App. 343. Under the name of one of those jurors, Lundy had written:

> "If it comes down to having to pick one of the black jurors, [this one] might be okay. This is solely my opinion. . . . Upon picking of the jury after listening to all of the jurors we had to pick, if we had to pick a black juror I recommend that [this juror] be one of the jurors." *Id.*, at 345 (paragraph break omitted).

That text had been crossed out by hand; the version of the affidavit filed with the trial court did not contain the crossed-out language. See *id.*, at 127–129. Lundy testified that he "guess[ed]" the redactions had been done by Lanier. Tr. 203.

(3) Three handwritten notes on black prospective jurors Eddie Hood, Louise Wilson, and Corrie Hinds. Annotations denoted those individuals as "B#1," "B#2," and "B#3," respectively. App. 295–297. Lundy testified that these were examples of the type of "notes that the team—the State would take down during voir dire to help select the jury in Mr. Foster's case." Tr. 208–210.

(4) A typed list of the qualified jurors remaining after *voir dire*. App. 287–290. It included "Ns" next to ten jurors' names, which Lundy told the state habeas court "signif[ied] the ten jurors that the State had strikes for during jury selection." Tr. 211. Such an "N" appeared alongside the names of all five qualified black prospective jurors. See App. 287–290. The file also included a handwritten version of the same list, with the same markings. *Id.*, at 299–300; see Tr. 212. Lundy testified that he was unsure who had prepared or marked the two lists.

(5) A handwritten document titled "definite NO's," listing six names. The first five were those of the five qualified black prospective jurors. App. 301. The State concedes that either Lanier or Pullen compiled the list, which Lundy testified was "used for preparation in jury selection." Tr. 215; Tr. of Oral Arg. 45.

(6) A handwritten document titled "Church of Christ." A notation on the document read: "NO. No Black Church." App. 302.

(7) The questionnaires that had been completed by several of the black prospective jurors. On each one, the juror's response indicating his or her race had been circled. *Id.*, at 311, 317, 323, 329, 334.

In response to the admission of this evidence, the State introduced short affidavits from Lanier and Pullen. Lanier's affidavit stated:

> "I did not make any of the highlighted marks on the jury venire list. It was common practice in the office to highlight in yellow those jurors who had prior case experience. I did not instruct anyone to make the green highlighted marks. I reaffirm my testimony made during the motion for new trial hearing as to how I used my peremptory jury strikes and the basis and reasons for those strikes." *Id.*, at 169 (paragraph numeral omitted).

Pullen's affidavit averred:

> "I did not make any of the highlighted marks on the jury venire list, and I did not instruct anyone else to make the highlighted marks. I did not rely on the highlighted jury venire list in making my decision on how to use my peremptory strikes." *Id.*, at 171 (paragraph numeral omitted).

Neither affidavit provided further explanation of the documents, and neither Lanier nor Pullen testified in the habeas proceeding.

After considering the evidence, the state habeas court denied relief. The court first stated that, "[a]s a preliminary matter," Foster's *Batson* claim was "not reviewable based on the doctrine of res judicata" because it had been "raised and litigated adversely to [Foster] on his direct appeal to the Georgia Supreme Court." App. 175. The court nonetheless announced that it would "mak[e] findings of fact and conclusions of law" on that claim. *Id.*, at 191. Based on what it referred to as a "*Batson* . . . analysis," the court concluded that Foster's "renewed *Batson* claim is without merit," because he had "fail[ed] to demonstrate purposeful discrimination." *Id.*, at 192, 195, 196.

The Georgia Supreme Court denied Foster the "Certificate of Probable Cause" necessary under state law for him to pursue an appeal, determining that his claim had no "arguable merit." *Id.*, at 246; see Ga. Code Ann. §9–14–52 (2014); Ga. Sup. Ct. Rule 36 (2014). We granted certiorari. 575 U. S. 1025 (2015).

II

Before turning to the merits of Foster's *Batson* claim, we address a threshold issue. Neither party contests our jurisdiction to review Foster's claims, but we "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 514 (2006).

This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment "if that judgment rests on a state-law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision." *Harris* v. *Reed*, 489 U. S. 255, 260 (1989).

The state habeas court noted that Foster's *Batson* claim was "not reviewable based on the doctrine of res judicata" under Georgia law. App. 175. The Georgia Supreme Court's unelaborated order on review provides no reasoning for its decision.[1] That raises the question whether the Georgia Supreme Court's order—the judgment from which Foster sought certiorari[2]—rests on an adequate and independent state law ground so as to preclude our jurisdiction over Foster's federal claim.

We conclude that it does not. When application of a state law bar "depends on a federal constitutional ruling, the state-law prong of the court's holding is not independent of federal law, and our jurisdiction is not precluded." *Ake* v.

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[1] The order stated, in its entirety: "Upon consideration of the Application for Certificate of Probable Cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied. All the Justices concur, except Benham, J., who dissents." App. 246.

[2] We construe Foster's petition for writ of certiorari as seeking review of the Georgia Supreme Court's order denying him a "Certificate of Probable Cause." App. 246. The Georgia Supreme Court Rules provide that such a certificate "*will* be issued where there is arguable merit." Rule 36 (emphasis added); see also *Hittson* v. *GDCP Warden*, 759 F. 3d 1210, 1231–1232 (CA11 2014). A decision by the Georgia Supreme Court that Foster's appeal had no "arguable merit" would seem to be a decision on the merits of his claim. In such circumstances the Georgia Supreme Court's order is subject to review in this Court pursuant to a writ of certiorari under 28 U. S. C. § 1257(a). *R. J. Reynolds Tobacco Co.* v. *Durham County*, 479 U. S. 130, 138–139 (1986); see *Sears* v. *Upton*, 561 U. S. 945 (2010) (*per curiam*) (exercising jurisdiction over order from Georgia Supreme Court denying a Certificate of Probable Cause). We reach the conclusion that such an order is a decision on the merits "[i]n the absence of positive assurance to the contrary" from the Georgia Supreme Court. *R. J. Reynolds*, 479 U. S., at 138.

Oklahoma, 470 U. S. 68, 75 (1985); see also *Three Affiliated Tribes of Fort Berthold Reservation* v. *Wold Engineering, P. C.*, 467 U. S. 138, 152 (1984).

In this case, the Georgia habeas court's analysis in the section of its opinion labeled "*Batson* claim" proceeded as follows:

> "The [State] argues that this claim is not reviewable due to the doctrine of res judicata. However, because [Foster] claims that additional evidence allegedly supporting this ground was discovered subsequent to the Georgia Supreme Court's ruling [on direct appeal], this court will review the *Batson* claim as to whether [Foster] has shown any change in the facts sufficient to overcome the res judicata bar." App. 192.

To determine whether Foster had alleged a sufficient "change in the facts," the habeas court engaged in four pages of what it termed a "*Batson* . . . analysis," in which it evaluated the original trial record and habeas record, including the newly uncovered prosecution file. *Id.*, at 192–196. Ultimately, that court concluded that Foster's "renewed *Batson* claim is *without merit*." *Id.*, at 196 (emphasis added).

In light of the foregoing, it is apparent that the state habeas court's application of res judicata to Foster's *Batson* claim was not independent of the merits of his federal constitutional challenge.[3] That court's invocation of res judicata

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[3] Contrary to the dissent's assertion, see *post*, at 529–531 (opinion of THOMAS, J.), it is perfectly consistent with this Court's past practices to review a lower court decision—in this case, that of the Georgia habeas court—in order to ascertain whether a federal question may be implicated in an unreasoned summary order from a higher court. See, *e. g.*, *R. J. Reynolds*, 479 U. S., at 136–139 (exercising § 1257 jurisdiction over unreasoned judgment by the North Carolina Supreme Court after examining grounds of decision posited by North Carolina Court of Appeals); see also S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice 211 (10th ed. 2013) ("[W]here the state court opinion fails to yield precise answers as to the grounds of decision, the Court may be forced to

therefore poses no impediment to our review of Foster's *Batson* claim. See *Ake*, 470 U. S., at 75.[4]

III

A

The "Constitution forbids striking even a single prospective juror for a discriminatory purpose." *Snyder* v. *Louisiana*, 552 U. S. 472, 478 (2008) (internal quotation marks omitted). Our decision in *Batson* v. *Kentucky*, 476 U. S. 79, provides a three-step process for determining when a strike is discriminatory:

> "First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race; second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question; and third, in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination." *Sny-*

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turn to other parts of the record, such as pleadings, motions, and trial court rulings, to determine if a federal claim is so central to the controversy as to preclude resting the judgment on independent and adequate state grounds."). And even the dissent does not follow its own rule. It too goes beyond the unreasoned order of the Georgia Supreme Court in determining that the "likely explanation for the court's denial of habeas relief is that Foster's claim is procedurally barred." *Post*, at 525. There would be no way to know this, of course, from the face of the Georgia Supreme Court's summary order.

[4] The concurrence notes that the "res judicata rule applied by the Superior Court in this case is quite different" from the state procedural bar at issue in *Ake*, which was "entirely dependent on federal law." *Post*, at 521–522 (ALITO, J., concurring in judgment). But whether a state law determination is characterized as "entirely dependent on," *ibid.*, "resting primarily on," *Stewart* v. *Smith*, 536 U. S. 856, 860 (2002) (*per curiam*), or "influenced by" a question of federal law, *Three Affiliated Tribes of Fort Berthold Reservation* v. *Wold Engineering, P. C.*, 467 U. S. 138, 152 (1984), the result is the same: The state law determination is not independent of federal law and thus poses no bar to our jurisdiction.

der, 552 U. S., at 476–477 (internal quotation marks and brackets omitted).

Both parties agree that Foster has demonstrated a prima facie case, and that the prosecutors have offered race-neutral reasons for their strikes. We therefore address only *Batson*'s third step. That step turns on factual determinations, and, "in the absence of exceptional circumstances," we defer to state court factual findings unless we conclude that they are clearly erroneous. *Snyder*, 552 U. S., at 477.

Before reviewing the factual record in this case, a brief word is in order regarding the contents of the prosecution's file that Foster obtained through his Georgia Open Records Act requests. Pursuant to those requests, Foster received a "certif[ied] . . . true and correct copy of 103 pages of the State's case file" from his 1987 trial. App. 247. The State argues that "because [Foster] did not call either of the prosecutors to the stand" to testify in his state habeas proceedings, "he can only speculate as to the meaning of various markings and writings" on those pages, "the author of many of them, and whether the two prosecutors at trial (District Attorney Lanier and Assistant District Attorney Pullen) even saw many of them." Brief for Respondent 20. For these reasons, the State argues, "none of the specific pieces of new evidence [found in the file] shows an intent to discriminate." *Ibid.* (capitalization omitted). For his part, Foster argues that "[t]here is no question that the prosecutors used the lists and notes, which came from the prosecution's file and were certified as such," and therefore the "source of the lists and notes, their timing, and their purpose is hardly 'unknown' or based on 'conjecture.' " Reply Brief 4–5 (quoting Brief for Respondent 27–28).

The State concedes that the prosecutors themselves authored some documents, see, *e. g.*, Tr. of Oral Arg. 45 (admitting that one of the two prosecutors must have written the list titled "definite NO's"), and Lundy's testimony strongly suggests that the prosecutors viewed others, see, *e. g.*, Tr.

220 (noting that the highlighted jury venire lists were returned to Lanier prior to jury selection). There are, however, genuine questions that remain about the provenance of other documents. Nothing in the record, for example, identifies the author of the notes that listed three black prospective jurors as "B#1," "B#2," and "B#3." Such notes, then, are not necessarily attributable directly to the prosecutors themselves. The state habeas court was cognizant of those limitations, but nevertheless admitted the file into evidence, reserving "a determination as to what weight the Court is going to put on any of [them]" in light of the objections urged by the State. 1 Record 20.

We agree with that approach. Despite questions about the background of particular notes, we cannot accept the State's invitation to blind ourselves to their existence. We have "made it clear that in considering a *Batson* objection, or in reviewing a ruling claimed to be *Batson* error, all of the circumstances that bear upon the issue of racial animosity must be consulted." *Snyder*, 552 U. S., at 478. As we have said in a related context, "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial . . . evidence of intent as may be available." *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 266 (1977). At a minimum, we are comfortable that all documents in the file were authored by *someone* in the district attorney's office. Any uncertainties concerning the documents are pertinent only as potential limits on their probative value.

B

Foster centers his *Batson* claim on the strikes of two black prospective jurors, Marilyn Garrett and Eddie Hood. We turn first to Marilyn Garrett. According to Lanier, on the morning that the State was to use its strikes he had not yet made up his mind to remove Garrett. Rather, he decided to strike her only after learning that he would not need to use

a strike on another black prospective juror, Shirley Powell, who was excused for cause that morning.

Ultimately, Lanier did strike Garrett. In justifying that strike to the trial court, he articulated a laundry list of reasons. Specifically, Lanier objected to Garrett because she: (1) worked with disadvantaged youth in her job as a teacher's aide; (2) kept looking at the ground during *voir dire*; (3) gave short and curt answers during *voir dire*; (4) appeared nervous; (5) was too young; (6) misrepresented her familiarity with the location of the crime; (7) failed to disclose that her cousin had been arrested on a drug charge; (8) was divorced; (9) had two children and two jobs; (10) was asked few questions by the defense; and (11) did not ask to be excused from jury service. See App. 55–57 (pretrial hearing); *id.*, at 93–98, 105, 108, 110–112 (new trial hearing); Record in No. 45609 (Ga. 1988), pp. 439–440 (hereinafter Trial Record) (brief in opposition to new trial).

The trial court accepted Lanier's justifications, concluding that "[i]n the totality of circumstances," there was "no discriminatory intent, and that there existed reasonably clear, specific, and legitimate reasons" for the strike. App. 143. On their face, Lanier's justifications for the strike seem reasonable enough. Our independent examination of the record, however, reveals that much of the reasoning provided by Lanier has no grounding in fact.

Lanier's misrepresentations to the trial court began with an elaborate explanation of how he ultimately came to strike Garrett:

> "[T]he prosecution considered this juror [to have] the most potential to choose from out of the four remaining blacks in the 42 [member] panel venire. However, a system of events took place on the morning of jury selection that caused the excusal of this juror. The [S]tate had, in his jury notes, *listed this juror as questionable.* The four negative challenges were allocated for Hardge, Hood, Turner and Powell. . . . But on the morning of

> jury selection, Juror Powell was excused for cause with no objections by [d]efense counsel. She was replaced by Juror Cadle [who] was acceptable to the State. This left the State with an additional strike it had not anticipated or allocated. Consequently, the State had to choose between [white] Juror Blackmon or Juror Garrett, the only two *questionable* jurors the State had left on the list." Trial Record 438–439 (brief in opposition to new trial) (emphasis added and citations omitted).

Lanier then offered an extensive list of reasons for striking Garrett and explained that "[t]hese factors, with no reference to race, were considered by the prosecutor in this particular case to result in a juror less desirable from the prosecutor's viewpoint than Juror Blackmon." *Id.*, at 441 (emphasis deleted).

Lanier then compared Blackmon to Garrett. In contrast to Garrett, Juror Blackmon

> "was 46 years old, married 13 years to her husband who works at GE, buying her own home and [was recommended by a third party to] this prosecutor. She was no longer employed at Northwest Georgia Regional Hospital and she attended Catholic church on an irregular basis. She did not hesitate when answering the questions concerning the death penalty, had good eye contact with the prosecutor and gave good answers on the insanity issue. She was perceived by the prosecutor as having a stable home environment, of the right age and no association with any disadvantaged youth organizations." *Ibid.*

Lanier concluded that "the chances of [Blackmon] returning a death sentence were greater when all these factors were considered than Juror Garrett. Consequently, Juror Garrett was excused." *Ibid.*

The trial court accepted this explanation in denying Foster's motion for a new trial. See App. 142–143. But the

predicate for the State's account—that Garrett was "listed" by the prosecution as "questionable," making that strike a last-minute race-neutral decision—was false.

During jury selection, the State went first. As a consequence, the defense could accept any prospective juror not struck by the State without any further opportunity for the State to use a strike against that prospective juror. Accordingly, the State had to "pretty well select the ten specific people [it] intend[ed] to strike" in advance. *Id.*, at 83 (pretrial hearing); accord, *ibid.* (Lanier testimony) ("[T]he ten people that we felt very uncomfortable with, we have to know up front."). The record evidence shows that Garrett was one of those "ten specific people."

That much is evident from the "definite NO's" list in the prosecution's file. Garrett's name appeared on that list, which the State concedes was written by one of the prosecutors. Tr. of Oral Arg. 45. That list belies Lanier's assertion that the State considered allowing Garrett to serve. The title of the list meant what it said: Garrett was a "*definite* NO." App. 301 (emphasis added). The State from the outset was intent on ensuring that *none* of the jurors on that list would serve.

The first five names on the "definite NO's" list were Eddie Hood, Evelyn Hardge, Shirley Powell, Marilyn Garrett, and Mary Turner. All were black. The State struck each one except Powell (who, as discussed, was excused for cause at the last minute—though the prosecution informed the trial court that the "State was not, under any circumstances, going to take [Powell]," Trial Record 439 (brief in opposition to new trial)). Only in the number six position did a white prospective juror appear, and she had informed the court during *voir dire* that she could not "say positively" that she could impose the death penalty even if the evidence warranted it. 6 Tr. in No. 86–2218–2 (Super. Ct. Floyd Cty., Ga., 1987), p. 1152 (hereinafter Trial Transcript); see also *id.*, at 1153–1158. In short, contrary to the prosecution's submis-

sions, the State's resolve to strike Garrett was never in doubt. See also App. 290 ("N" appears next to Garrett's name on juror list); *id.*, at 300 (same).

The State attempts to explain away the contradiction between the "definite NO's" list and Lanier's statements to the trial court as an example of a prosecutor merely "misspeak-[ing]." Brief for Respondent 51. But this was not some off-the-cuff remark; it was an intricate story expounded by the prosecution in writing, laid out over three single-spaced pages in a brief filed with the trial court.

Moreover, several of Lanier's reasons for *why* he chose Garrett over Blackmon are similarly contradicted by the record. Lanier told the court, for example, that he struck Garrett because "the defense did not ask her questions about" pertinent trial issues such as her thoughts on "insanity" or "alcohol," or "much questions on publicity." App. 56 (pretrial hearing). But the trial transcripts reveal that the defense asked her several questions on all three topics. See 5 Trial Transcript 955–956 (two questions on insanity and one on mental illness); *ibid.* (four questions on alcohol); *id.*, at 956–957 (five questions on publicity).

Still other explanations given by the prosecution, while not explicitly contradicted by the record, are difficult to credit because the State willingly accepted white jurors with the same traits that supposedly rendered Garrett an unattractive juror. Lanier told the trial court that he struck Garrett because she was divorced. App. 56 (pretrial hearing). But he declined to strike three out of the four prospective white jurors who were also divorced. See Juror Questionnaire in No. 86–2218–2 (Super. Ct. Floyd Cty., Ga., 1987) (hereinafter Juror Questionnaire), for Juror No. 23, p. 2 (juror Coultas, divorced); *id.*, No. 33, p. 2 (juror Cochran, divorced); *id.*, No. 107, p. 2 (juror Hatch, divorced); App. 23–24, 31 (State accepting jurors Coultas, Cochran, and Hatch). Additionally, Lanier claimed that he struck Garrett because she was too young, and the "State was looking for older ju-

rors that would not easily identify with the defendant." Trial Record 439 (brief in opposition to new trial); see App. 55 (pretrial hearing). Yet Garrett was 34, and the State declined to strike eight white prospective jurors under the age of 36. See Trial Record 439; Juror Questionnaire No. 4, p. 1; *id.*, No. 10, p. 1; *id.*, No. 23, p. 1; *id.*, No. 48, p. 1; *id.*, No. 70, p. 1; *id.*, No. 71, p. 1; *id.*, No. 92, p. 1; *id.*, No. 106, p. 1; see App. 22–31. Two of those white jurors served on the jury; one of those two was only 21 years old. See *id.*, at 35.

Lanier also explained to the trial court that he struck Garrett because he "felt that she was less than truthful" in her answers in *voir dire*. *Id.*, at 108 (new trial hearing). Specifically, the State pointed the trial court to the following exchange:

> "[Court]: Are you familiar with the neighborhood where [the victim] lived, North Rome?
> "[Garrett]: No." 5 Trial Transcript 950–951.

Lanier, in explaining the strike, told the trial court that in apparent contradiction to that exchange (which represented the only time that Garrett was asked about the topic during *voir dire*), he had "noted that [Garrett] attended Main High School, which is only two blocks from where [the victim] lived and certainly in the neighborhood. She denied any knowledge of the area." Trial Record 439 (brief in opposition to new trial).

We have no quarrel with the State's general assertion that it "could not trust someone who gave materially untruthful answers on voir dire." *Foster*, 258 Ga., at 739, 374 S. E. 2d, at 192. But even this otherwise legitimate reason is difficult to credit in light of the State's acceptance of (white) juror Duncan. Duncan gave practically the same answer as Garrett did during *voir dire*:

> "[Court]: Are you familiar with the neighborhood in which [the victim] live[d]?

> "[Duncan]: No. I live in Atteiram Heights, but it's not—I'm not familiar with up there, you know." 5 Trial Transcript 959.

But, as Lanier was aware, Duncan's "residence [was] less than a half a mile from the murder scene" and her workplace was "located less than 250 yards" away. Trial Record 430 (brief in opposition to new trial).

In sum, in evaluating the strike of Garrett, we are not faced with a single isolated misrepresentation.

C

We turn next to the strike of Hood. According to Lanier, Hood "was exactly what [the State] was looking for in terms of age, between forty and fifty, good employment and married." App. 44 (pretrial hearing). The prosecution nonetheless struck Hood, giving eight reasons for doing so. Hood: (1) had a son who was the same age as the defendant and who had previously been convicted of a crime; (2) had a wife who worked in food service at the local mental health institution; (3) had experienced food poisoning during *voir dire*; (4) was slow in responding to death penalty questions; (5) was a member of the Church of Christ; (6) had a brother who counseled drug offenders; (7) was not asked enough questions by the defense during *voir dire*; and (8) asked to be excused from jury service. See *id.*, at 44–47; *id.*, at 86, 105, 110–111 (new trial hearing); Trial Record 433–435 (brief in opposition to new trial). An examination of the record, however, convinces us that many of these justifications cannot be credited.

As an initial matter, the prosecution's principal reasons for the strike shifted over time, suggesting that those reasons may be pretextual. In response to Foster's pretrial *Batson* challenge, Lanier noted all eight reasons, but explained:

> "*The only thing I was concerned about*, and I will state it for the record. He has an eighteen year old son which is about the same age as the defendant.

> "In my experience prosecuting over twenty-five murder cases . . . individuals having the same son as [a] defendant who is charged with murder [have] serious reservations and are more sympathetic and lean toward that particular person.
>
> "It is ironic that his son, . . . Darrell Hood[,] has been sentenced . . . by the Court here, to theft by taking on April 4th, 1982. . . . [T]heft by taking is basically the same thing that this defendant is charged with." App. 44–45 (pretrial hearing) (emphasis added).

But by the time of Foster's subsequent motion for a new trial, Lanier's focus had shifted. He still noted the similarities between Hood's son and Foster, see *id.*, at 105 (new trial hearing), but that was no longer the key reason behind the strike. Lanier instead told the court that his paramount concern was Hood's membership in the Church of Christ: "The Church of Christ people, while they may not take a formal stand against the death penalty, they are very, very reluctant to vote for the death penalty." *Id.*, at 84 (new trial hearing); accord, Trial Record 434–435 (brief in opposition to new trial) ("It is the opinion of this prosecutor that in a death penalty case, Church of Christ affiliates are reluctant to return a verdict of death."). Hood's religion, Lanier now explained, was the most important factor behind the strike: "I evaluated the whole Eddie Hood. . . . And *the bottom line* on Eddie Hood is the Church of Christ affiliation." App. 110–111 (new trial hearing) (emphasis added).

Of course it is possible that Lanier simply misspoke in one of the two proceedings. But even if that were so, we would expect at least *one* of the two purportedly principal justifications for the strike to withstand closer scrutiny. Neither does.

Take Hood's son. If Darrell Hood's age was the issue, why did the State accept (white) juror Billy Graves, who had a 17-year-old son? Juror Questionnaire No. 31, p. 3; see App. 24. And why did the State accept (white) juror Martha Duncan, even though she had a 20-year-old son? Juror Questionnaire No. 88, p. 3; see App. 30.

The comparison between Hood and Graves is particularly salient. When the prosecution asked Hood if Foster's age would be a factor for him in sentencing, he answered "None whatsoever." 2 Trial Transcript 280. Graves, on the other hand, answered the same question "probably so." *Id.*, at 446. Yet the State struck Hood and accepted Graves.

The State responds that Duncan and Graves were not similar to Hood because Hood's son had been convicted of theft, while Graves's and Duncan's sons had not. See Brief for Respondent 34–35; see also App. 135–136 (trial court opinion denying new trial) ("While the defense asserts that the state used different standards for white jurors, insofar as many of them had children near the age of the Defendant, the Court believes that [Darrell Hood's] conviction is a distinction that makes the difference."). Lanier had described Darrell Hood's conviction to the trial court as being for "basically the same thing that this defendant is charged with." *Id.*, at 45 (pretrial hearing). Nonsense. Hood's son had received a 12-month suspended sentence for stealing hubcaps from a car in a mall parking lot five years earlier. Trial Record 446. Foster was charged with capital murder of a 79-year-old widow after a brutal sexual assault. The "implausible" and "fantastic" assertion that the two had been charged with "basically the same thing" supports our conclusion that the focus on Hood's son can only be regarded as pretextual. *Miller-El* v. *Cockrell*, 537 U. S. 322, 339 (2003); see also *ibid.* ("Credibility can be measured by, among other factors, . . . how reasonable, or how improbable, the [State's] explanations are.").

The prosecution's second principal justification for striking Hood—his affiliation with the Church of Christ, and that church's alleged teachings on the death penalty—fares no better. Hood asserted no fewer than four times during *voir dire* that he could impose the death penalty.[5] A prose-

[5] See 2 Trial Transcript 269 ("[Court]: Are you opposed to or against the death penalty? A. I am not opposed to it. Q. If the facts and circumstances warrant the death penalty, are you prepared to vote for the death

cutor is entitled to disbelieve a juror's *voir dire* answers, of course. But the record persuades us that Hood's race, and not his religious affiliation, was Lanier's true motivation.

The first indication to that effect is Lanier's mischaracterization of the record. On multiple occasions, Lanier asserted to the trial court that three white prospective jurors who were members of the Church of Christ had been struck for cause due to their opposition to the death penalty. See App. 46 (pretrial hearing) ("[Hood's] religious preference is Church of Christ. There have been [three] other jurors that have been excused for cause by agreement that belong to the Church of Christ, Juror No. 35, 53 and 78."); *id.*, at 114 (new trial hearing) ("Three out of four jurors who professed to be members of the Church of Christ, went off for [cause related to opposition to the death penalty]."); Trial Record 435 (brief in opposition to new trial) ("Church of Christ jurors Terry (#35), Green (#53), and Waters (#78) [were] excused for cause due to feeling[s] against the death penalty.").

That was not true. One of those prospective jurors was excused before even being questioned during *voir dire* because she was five-and-a-half months pregnant. 5 Trial Transcript 893. Another was excused by the agreement of both parties because her answers on the death penalty made it difficult to ascertain her precise views on capital punishment. See Brief for Respondent 39 ("[I]t was entirely unclear if [this juror] understood any of the trial court's questions and her answers are equivocal at best."). And the judge found cause to dismiss the third because she had already formed an opinion about Foster's guilt. See 3 Trial

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penalty? A. Yes."); *id.*, at 270 ("[Court]: [A]re you prepared to vote for the death penalty? Now you said yes to that. A. All right. Q. Are you still saying yes? A. Uh-huh."); *id.*, at 274 ("[Court]: If the evidence warrants the death penalty, could you vote for the death penalty? A. Yes. I could vote for the death penalty."); *id.*, at 278 ("[Pullen]: And if the facts and circumstances warranted, you could vote to impose the death penalty? Yes.").

Transcript 558 ("[Court]: And you have made up your mind already as to the guilt of the accused? A: Yes, sir. [Court]: I think that's cause.").

The prosecution's file fortifies our conclusion that any reliance on Hood's religion was pretextual. The file contains a handwritten document titled "Church of Christ." The document notes that the church "doesn't take a stand on [the] Death Penalty," and that the issue is "left for each individual member." App. 302. The document then states: "NO. NO Black Church." *Ibid.* The State tries to downplay the significance of this document by emphasizing that the document's author is unknown. That uncertainty is pertinent. But we think the document is nonetheless entitled to significant weight, especially given that it is consistent with our serious doubts about the prosecution's account of the strike.

Many of the State's secondary justifications similarly come undone when subjected to scrutiny. Lanier told the trial court that Hood "appeared to be confused and slow in responding to questions concerning his views on the death penalty." Trial Record 434 (brief in opposition to new trial). As previously noted, however, Hood unequivocally voiced his willingness to impose the death penalty, and a white juror who showed similar confusion served on the jury. Compare 5 Trial Transcript 1100–1101 (white juror Huffman's answers) with 2 *id.*, at 269–278 (Hood's answers); see App. 35. According to the record, such confusion was not uncommon. See *id.*, at 138 ("The Court notes that [Hood's] particular confusion about the death penalty questions was not unusual."); accord, 5 Trial Transcript 994 ("[Court]: I think these questions should be reworded. I haven't had a juror yet that understood what that meant."); *id.*, at 1101–1102 ("[Court]: I still say that these questions need changing overnight, because one out of a hundred jurors, I think is about all that's gone along with knowing what [you're asking].").

Lanier also stated that he struck Hood because Hood's wife worked at Northwest Regional Hospital as a food services supervisor. App. 45 (pretrial hearing). That hospital, Lanier explained, "deals a lot with mentally disturbed, mentally ill people," and so people associated with it tend "to be more sympathetic to the underdog." *Ibid.* But Lanier expressed no such concerns about white juror Blackmon, who had worked at the same hospital. Blackmon, as noted, served on the jury.

Lanier additionally stated that he struck Hood because the defense "didn't ask [Hood] any question[s] about the age of the defendant," "his feelings about criminal responsibility involved in insanity," or "publicity." *Id.*, at 47. Yet again, the trial transcripts clearly indicate the contrary. See 2 Trial Transcript 280 ("Q: Is age a factor to you in trying to determine whether or not a defendant should receive a life sentence or a death sentence? A: None whatsoever."); *ibid.* ("Q: Do you have any feeling about the insanity defense? A: Do I have any opinion about that? I have not formed any opinion about that."); *id.*, at 281 ("Q: Okay. The publicity that you have heard, has that publicity affected your ability to sit as a juror in this case and be fair and impartial to the defendant? A: No, it has no effect on me.").

D

As we explained in *Miller-El* v. *Dretke*, "[i]f a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack [panelist] who is permitted to serve, that is evidence tending to prove purposeful discrimination." 545 U. S. 231, 241 (2005). With respect to both Garrett and Hood, such evidence is compelling. But that is not all. There are also the shifting explanations, the misrepresentations of the record, and the persistent focus on race in the prosecution's file. Considering all of the circumstantial evidence that "bear[s] upon the issue of racial animosity," we are left with the firm conviction that the strikes

of Garrett and Hood were "motivated in substantial part by discriminatory intent." *Snyder*, 552 U. S., at 478, 485.[6]

IV

Throughout all stages of this litigation, the State has strenuously objected that "race [was] not a factor" in its jury selection strategy. App. 41 (pretrial hearing); but see *id.*, at 120 (new trial hearing) (Lanier testifying that the strikes were "based on many factors and not *purely* on race." (emphasis added)). Indeed, at times the State has been downright indignant. See Trial Record 444 (brief in opposition to new trial) ("The Defenses's [*sic*] misapplication of the law and erroneous distortion of the facts are an attempt to discredit the prosecutor. . . . The State and this community demand an apology.").

The contents of the prosecution's file, however, plainly belie the State's claim that it exercised its strikes in a "colorblind" manner. App. 41, 60 (pretrial hearing). The sheer number of references to race in that file is arresting. The State, however, claims that things are not quite as bad as they seem. The focus on black prospective jurors, it contends, does not indicate any attempt to exclude them from the jury. It instead reflects an effort to ensure that the State was "thoughtful and non-discriminatory in [its] consideration of black prospective jurors [and] to develop and maintain detailed information on those prospective jurors in order to properly defend against any suggestion that decisions regarding [its] selections were pretextual." Brief for Respondent 6. *Batson*, after all, had come down only months before Foster's trial. The prosecutors, according to the

[6] In *Snyder*, we noted that we had not previously allowed the prosecution to show that "a discriminatory intent [that] was a substantial or motivating factor" behind a strike was nevertheless not "determinative" to the prosecution's decision to exercise the strike. 552 U. S., at 485. The State does not raise such an argument here and so, as in *Snyder*, we need not decide the availability of such a defense.

State, were uncertain what sort of showing might be demanded of them and wanted to be prepared.

This argument falls flat. To begin, it "reeks of afterthought," *Miller-El*, 545 U. S., at 246, having never before been made in the nearly 30-year history of this litigation: not in the trial court, not in the state habeas court, and not even in the State's brief in opposition to Foster's petition for certiorari.

In addition, the focus on race in the prosecution's file plainly demonstrates a concerted effort to keep black prospective jurors off the jury. The State argues that it "was actively seeking a black juror." Brief for Respondent 12; see also App. 99 (new trial hearing). But this claim is not credible. An "N" appeared next to each of the black prospective jurors' names on the jury venire list. See, *e. g.*, *id.*, at 253. An "N" was also noted next to the name of each black prospective juror on the list of the 42 qualified prospective jurors; each of those names also appeared on the "definite NO's" list. See *id.*, at 299–301. And a draft affidavit from the prosecution's investigator stated his view that "[i]f it comes down to *having to pick* one of the black jurors, [Marilyn] Garrett, might be okay." *Id.*, at 345 (emphasis added); see also *ibid.* (recommending Garrett "if we *had to pick* a black juror" (emphasis added)). Such references are inconsistent with attempts to "actively see[k]" a black juror.

The State's new argument today does not dissuade us from the conclusion that its prosecutors were motivated in substantial part by race when they struck Garrett and Hood from the jury 30 years ago. Two peremptory strikes on the basis of race are two more than the Constitution allows.

The order of the Georgia Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE ALITO, concurring in the judgment.

I agree with the Court that the decision of the Supreme Court of Georgia cannot be affirmed and that the case must be remanded. I write separately to explain my understanding of the role of state law in the proceedings that must be held on remand.

I

As the Court recounts, in August 1986, Queen Madge White, a 79-year-old retired schoolteacher, was sexually assaulted and brutally murdered in her home in Rome, Georgia. Her home was ransacked, and various household items were stolen. *Foster* v. *State*, 258 Ga. 736, 374 S. E. 2d 188 (1988). About a month after the murder, police officers were called to respond to a local disturbance. The complainant, Lisa Stubbs, told them that her boyfriend, petitioner Timothy Foster, had killed White and had distributed the goods stolen from White's home to Stubbs and family members. Tr. 1719–1723. Officers arrested Foster, who confessed to the murder and robbery, 258 Ga., at 736, 374 S. E. 2d, at 190, and the police recovered some of the stolen goods.

Foster was put on trial for White's murder, convicted, and sentenced to death. Before, during, and after his trial, Foster argued that the prosecution violated his rights under this Court's then-recent decision in *Batson* v. *Kentucky*, 476 U. S. 79 (1986), by peremptorily challenging all the prospective jurors who were black. After the Georgia Supreme Court rejected Foster's *Batson* argument on direct appeal, he filed a petition for a writ of certiorari in this Court, but his petition did not raise a *Batson* claim,[1] and the petition was denied. *Foster* v. *Georgia*, 490 U. S. 1085 (1989).

In July 1989, Foster filed a state habeas petition in the Superior Court of Butts County, Georgia. For the next 10

[1] Nor did his petition for rehearing, which was also denied. *Foster* v. *Georgia*, 492 U. S. 928 (1989).

years, most of Foster's claims (including his *Batson* claim) were held in abeyance while the Georgia courts adjudicated Foster's claim that he is "mentally retarded" and thus cannot be executed under Georgia law. *Zant* v. *Foster*, 261 Ga. 450, 406 S. E. 2d 74 (1991). After extensive court proceedings, including two visits to the State Supreme Court,[2] additional petitions for certiorari to this Court,[3] and a jury trial on the issue of intellectual disability, Foster was denied relief on that claim. He then amended his habeas petition, and the Superior Court considered the many other claims asserted in his petition, including his *Batson* claim. In support of that claim, Foster offered new evidence, namely, the prosecution's jury selection notes, which he had obtained through a Georgia open-records request. These notes showed that someone had highlighted the names of black jurors and had written the letter "B" next to their names.

The Superior Court issued a written decision in which it evaluated Foster's habeas claims. The opinion began by noting that many of his claims were barred by res judicata. The opinion stated: "[T]his court notes that . . . the following claims are not reviewable based on the doctrine of res judicata, as the claims were raised and litigated adversely to the Petitioner on his direct appeal to the Georgia Supreme Court." App. 175. Included in the list of barred claims was "Petitioner['s] alleg[ation] that the State used peremptory challenges in a racially discriminatory manner in violation of *Batson*." *Id.*, at 175–176.

Later in its opinion, the Superior Court again referred to the *Batson* claim and wrote as follows:

> "The Respondent argues that this claim is not reviewable due to the doctrine of res judicata. However, because the Petitioner claims that additional evidence

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[2] See *Zant* v. *Foster*, 261 Ga. 450, 406 S. E. 2d 74 (1991); *Foster* v. *State*, 272 Ga. 69, 525 S. E. 2d 78 (2000).

[3] See *Foster* v. *Georgia*, 503 U. S. 921 (1992); *Foster* v. *Georgia*, 531 U. S. 890, reh'g denied, 531 U. S. 1045 (2000).

> allegedly supporting this ground was discovered subsequent to the Georgia Supreme Court's ruling in *Foster v. State*, 258 Ga. 736 (1988) [the decision affirming Foster's conviction on direct appeal], this court will review the *Batson* claim as to whether Petitioner has shown any change in the facts sufficient to overcome the res judicata bar." *Id.*, at 192.

The court then reviewed the evidence and concluded that it "[could not] find that the highlighting of the names of black jurors and the notation of their race can serve to override this previous consideration [on direct appeal]." *Id.*, at 193. Because "all jurors in this case, regardless of race, were thoroughly investigated and considered before the State exercised its peremptory challenges," the court found that "Petitioner fail[ed] to demonstrate purposeful discrimination on the basis that the race of prospective jurors was either circled, highlighted or otherwise noted on various lists." *Id.*, at 195. Thus, the court held that the *Batson* claim was "without merit." App. 196.

Foster subsequently sought review of the Superior Court's decision in the Georgia Supreme Court, but that court refused to issue a certificate of probable cause (CPC) to appeal. In its entirety, the State Supreme Court order states:

> "Upon consideration of the Application for Certificate of Probable Cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied. All the Justices concur, except Benham, J., who dissents." *Id.*, at 246.

Foster sought review of this decision, and this Court granted certiorari to review the decision of the Georgia Supreme Court. 575 U. S. 1025 (2015).

II

The decision of the Georgia Supreme Court was a decision on the merits of Foster's *Batson* claim, as presented in his state habeas petition. See Ga. Sup. Ct. Rule 36 (2016) (a

CPC to appeal a final judgment in a habeas corpus case involving a criminal conviction "will be issued where there is arguable merit"); *Hittson* v. *GDCP Warden*, 759 F. 3d 1210, 1232 (CA11 2014) (The Georgia Supreme Court's standard for denying a CPC "clearly constitutes an adjudication on the merits"). Thus, what the Georgia Supreme Court held was that Foster's *Batson* claim, as presented in his state habeas petition, lacked arguable merit.

That holding was likely based at least in part on state law. As noted, the Superior Court quite clearly held that Foster's *Batson* claim was barred by res judicata. That conclusion, to be sure, was not entirely divorced from the merits of his federal constitutional claim, since the court went on to discuss the evidence advanced by petitioner in support of his argument that the prosecution's strikes of black members of the venire were based on race. Rather, it appears that the Superior Court understood state law to permit Foster to obtain reconsideration of his previously rejected *Batson* claim only if he was able to show that a "change in the facts" was "sufficient to overcome the res judicata bar." App. 192.

In concluding that Foster's renewed *Batson* claim was required to meet a heightened standard, the Superior Court appears to have been following established Georgia law. Some Georgia cases seem to stand for the proposition that the bar is absolute, at least in some circumstances. See, *e. g.*, *Roulain* v. *Martin*, 266 Ga. 353, 466 S. E. 2d 837, 839 (1996) ("Since this issue was raised and resolved in Martin's direct appeal, it should not have been readdressed by the habeas court"); *Davis* v. *Thomas*, 261 Ga. 687, 689, 410 S. E. 2d 110, 112 (1991) ("This issue was raised on direct appeal, and this court determined that it had no merit. Davis recognizes the principle that one who had an issue decided adversely to him on direct appeal is precluded from relitigating that issue on habeas corpus"); *Gunter* v. *Hickman*, 256 Ga. 315, 316, 348 S. E. 2d 644, 645 (1986) ("This issue was actually litigated, i. e., raised and decided, in the appellant's direct

appeal . . . . For this reason, the issue cannot be reasserted in habeas-corpus proceedings"); *Elrod* v. *Ault*, 231 Ga. 750, 204 S. E. 2d 176 (1974) ("After an appellate review the same issues will not be reviewed on habeas corpus"). Other decisions, however, allow a defendant to overcome res judicata if he can produce newly discovered evidence that was not "reasonably available" to him on direct review. *Gibson* v. *Head*, 282 Ga. 156, 159, 646 S. E. 2d 257, 260 (2007); see also *Gibson* v. *Ricketts*, 244 Ga. 482, 483, 260 S. E. 2d 877, 878 (1979).[4]

In restricting the relitigation of previously rejected claims, Georgia is not alone. "[W]e have long and consistently affirmed that a collateral challenge may not do service for an appeal." *United States* v. *Frady*, 456 U. S. 152, 165 (1982). Accordingly, at least as a general rule, federal prisoners may not use a motion under 28 U. S. C. § 2255 to relitigate a claim that was previously rejected on direct appeal. See, *e. g.*, *Reed* v. *Farley*, 512 U. S. 339, 358 (1994) (Scalia, J., concurring in part and concurring in judgment) ("[C]laims will ordinarily not be entertained under § 2255 that have already been rejected on direct review"); *Withrow* v. *Williams*, 507 U. S. 680, 721 (1993) (Scalia, J., concurring in part and dissenting in part) ("[A]bsent countervailing considerations, district courts may refuse to reach the merits of a constitutional claim previously raised and rejected on direct appeal"); *United States* v. *Lee*, 715 F. 3d 215, 224 (CA8 2013); *Rozier* v. *United States*, 701 F. 3d 681, 684 (CA11 2012);

[4] Georgia res judicata law may also include a "miscarriage of justice" exception, but that appears to capture only the exceptionally rare claim of actual innocence, and so is not at issue here. See *Walker* v. *Penn*, 271 Ga. 609, 611, 523 S. E. 2d 325, 327 (1999) ("The term miscarriage of justice is by no means to be deemed synonymous with procedural irregularity, or even with reversible error. To the contrary, it demands a much greater substance, approaching perhaps the imprisonment of one who, not only is *not* guilty of the specific offense for which he is convicted, but, further, is not even culpable in the circumstances under inquiry. (A plain example is a case of mistaken identity)" (brackets omitted)).

United States v. *Roane*, 378 F. 3d 382, 396, n. 7 (CA4 2004); *United States* v. *Webster*, 392 F. 3d 787, 791 (CA5 2004); *White* v. *United States*, 371 F. 3d 900, 902 (CA7 2004); *United States* v. *Jones*, 918 F. 2d 9, 10–11 (CA2 1990); *United States* v. *Prichard*, 875 F. 2d 789, 790–791 (CA10 1989). Cf. *Davis* v. *United States*, 417 U. S. 333, 342 (1974). As we have said, "[i]t has, of course, long been settled law that an error that may justify reversal on direct appeal will not necessarily support a collateral attack on a final judgment. The reasons for narrowly limiting the grounds for collateral attack on final judgments are well known and basic to our adversary system of justice." *United States* v. *Addonizio*, 442 U. S. 178, 184 (1979) (footnote omitted).

In accordance with this principle, federal law provides that a state prisoner may not relitigate a claim that was rejected in a prior federal habeas petition. See 28 U. S. C. §§ 2244(b)(1)–(3). And even when a state prisoner's second or successive federal habeas petition asserts a new federal constitutional claim based on what is asserted to be new evidence, the claim must be dismissed unless a very demanding test is met. See § 2244(b)(2)(B) ("[T]he factual predicate for the claim could not have been discovered previously through the exercise of due diligence"; and the facts must "be sufficient to establish by clear and convincing evidence that . . . no reasonable factfinder would have found the applicant guilty").

"[T]he principle of finality" is "essential to the operation of our criminal justice system." *Teague* v. *Lane*, 489 U. S. 288, 309 (1989) (plurality opinion). Thus, once a criminal conviction becomes final—as Foster's did 30 years ago—state courts need not remain open indefinitely to relitigate claims related to that conviction which were raised and decided on direct review. States are under no obligation to permit collateral attacks on convictions that have become final, and if they allow such attacks, they are free to limit the circumstances in which claims may be relitigated.

To the extent that the decision of the Georgia Supreme Court was based on a state rule restricting the relitigation of previously rejected claims, the decision has a state-law component, and we have no jurisdiction to review a state court's decision on a question of state law. See 28 U. S. C. § 1257(a). This Court, no less than every other federal court, has "an independent obligation to ensure that [we] do not exceed the scope of [our] jurisdiction, and therefore [we] must raise and decide jurisdictional questions that the parties either overlook or elect not to press." *Henderson* v. *Shinseki*, 562 U. S. 428, 434 (2011).

III

"This Court long has held that it will not consider an issue of federal law on direct review from a judgment of a state court if that judgment rests on a state-law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision," *Harris* v. *Reed*, 489 U. S. 255, 260 (1989), and like the Court (and both petitioner and respondent) I agree that we cannot conclude from the brief order issued by the Supreme Court of Georgia that its decision was based wholly on state law. It is entirely possible that the State Supreme Court reached a conclusion about the effect of the state res judicata bar based in part on an assessment of the strength of Foster's *Batson* claim or the extent to which the new evidence bolstered that claim. And if that is what the State Supreme Court held, the rule that the court applied was an amalgam of state and federal law.

By the same token, however, the state-law res judicata rule applied by the Superior Court is clearly not like the rule in *Ake* v. *Oklahoma*, 470 U. S. 68 (1985), which appears to have been entirely dependent on federal law. In *Ake*, a prisoner argued that due process entitled him to obtain the services of a psychiatrist in order to prove that he was insane at the time when he committed a murder. The Oklahoma courts concluded that Ake's claim was waived, but the Okla-

homa waiver rule essentially made an exception for any case in which there was a violation of a fundamental federal constitutional right. See *id.*, at 74–75 ("The Oklahoma waiver rule does not apply to fundamental trial error," including "federal constitutional errors [that] are 'fundamental' "). Thus, the state waiver rule was entirely dependent on federal law, and this Court therefore held that it had jurisdiction to review the underlying constitutional question—whether Ake was entitled to a psychiatrist. Then, having found a constitutional violation, the Court remanded for a new trial. *Id.*, at 86–87.

The res judicata rule applied by the Superior Court in this case is quite different. That court obviously did not think that Georgia law included an *Ake*-like exception that would permit a defendant to overcome res judicata simply by making the kind of showing of federal constitutional error that would have been sufficient when the claim was first adjudicated. Accordingly, *Ake* does not mean that we can simply disregard the possibility that the decision under review may have a state-law component.

Our cases chart the path that we must follow in a situation like the one present here. When "a state court's interpretation of state law has been influenced by an accompanying interpretation of federal law," the proper course is for this Court to "revie[w] the federal question on which the state-law determination appears to have been premised. If the state court has proceeded on an incorrect perception of federal law, it has been this Court's practice to vacate the judgment of the state court and remand the case so that the court may reconsider the state-law question free of misapprehensions about the scope of federal law." *Three Affiliated Tribes of Fort Berthold Reservation* v. *Wold Engineering, P. C.*, 467 U. S. 138, 152 (1984). See also S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice 212 (10th ed. 2013). In a situation like the one presented here, the correct approach is for us to decide the ques-

tion of federal law and then to remand the case to the state court so that it can reassess its decision on the state-law question in light of our decision on the underlying federal issue.[5]

IV

I agree with the Court that the totality of the evidence now adduced by Foster is sufficient to make out a *Batson* violation. On remand, the Georgia Supreme Court is bound to accept that evaluation of the federal question, but whether that conclusion justifies relief under state res judicata law is a matter for that court to decide.

Compliance with *Batson* is essential to ensure that defendants receive a fair trial and to preserve the public confidence upon which our system of criminal justice depends. But it is also important that this Court respect the authority of state courts to structure their systems of postconviction review in a way that promotes the expeditious and definitive disposition of claims of error.

Until recently, this Court rarely granted review of state-court decisions in collateral review proceedings, preferring to allow the claims adjudicated in such proceedings to be decided first in federal habeas proceedings. See *Lawrence* v. *Florida*, 549 U. S. 327, 335 (2007) ("[T]his Court rarely grants review at this stage of the litigation even when the application for state collateral relief is supported by arguably meritorious federal constitutional claims, choosing instead to wait for federal habeas proceedings" (internal quotation marks omitted)); *Kyles* v. *Whitley*, 498 U. S. 931, 932 (1990) (Stevens, J., concurring in denial of stay of execution); *Huffman* v. *Florida*, 435 U. S. 1014, 1017–1018 (1978) (Stevens, J.,

[5] The Court relies on *Ake* solely for the proposition, with which I agree, that we have jurisdiction to review the federal question whether the totality of the circumstances (that is, all the facts brought to the attention of the state courts on direct appeal and collateral review) make out a *Batson* claim. *Ante*, at 499, n. 4. Thus, the Court does not preclude consideration of state-law issues on remand. See *ante*, at 514.

respecting denial of certiorari). When cases reach this Court after habeas review in the lower federal courts, the standards of review set out in the Antiterrorism and Effective Death Penalty Act of 1996, 28 U. S. C. § 2254, apply. Recently, this Court has evidenced a predilection for granting review of state-court decisions denying postconviction relief, see, *e. g.*, *Wearry* v. *Cain*, 577 U. S. 385 (2016) (*per curiam*). Particularly in light of that trend, it is important that we do not lightly brush aside the States' legitimate interest in structuring their systems of postconviction review in a way that militates against repetitive litigation and endless delay.

JUSTICE THOMAS, dissenting.

Thirty years ago, Timothy Foster confessed to murdering Queen Madge White after sexually assaulting her with a bottle of salad dressing. In the decades since, Foster has sought to vacate his conviction and death sentence on the ground that prosecutors violated *Batson* v. *Kentucky*, 476 U. S. 79 (1986), when they struck all black prospective jurors before his trial. Time and again, the state courts have rejected that claim. The trial court twice rejected it, and the Supreme Court of Georgia unequivocally rejected it when Foster directly appealed his conviction and sentence. *Foster* v. *State*, 258 Ga. 736, 736, n. 1, 738–739, 374 S. E. 2d 188, 190, n. 1, 192 (1988), cert. denied, 490 U. S. 1085 (1989). A state habeas court rejected it in 2013. App. 175–176, 192–196. And most recently, the Supreme Court of Georgia again rejected it as lacking "arguable merit," Ga. Sup. Ct. Rule 36 (2001). See App. 246.

Yet, today—nearly three decades removed from *voir dire*—the Court rules in Foster's favor. It does so without adequately grappling with the possibility that we lack jurisdiction. Moreover, the Court's ruling on the merits, based, in part, on new evidence that Foster procured decades after his conviction, distorts the deferential *Batson* inquiry. I respectfully dissent.

I

Federal law authorizes us to review the "judgments or decrees rendered by the highest court of a State in which a decision could be had," 28 U. S. C. § 1257(a), but only if such a judgment or decree raises a question of federal law, *Michigan* v. *Long*, 463 U. S. 1032, 1038 (1983). The Court today errs by assuming that the Supreme Court of Georgia's one-line order—the "judgmen[t] . . . rendered by the highest court of a State in which a decision could be had," § 1257—raises such a question. See *ante*, at 497–498. The far more likely explanation for the court's denial of habeas relief is that Foster's claim is procedurally barred. This disposition is ordinarily a question of state law that this Court is powerless to review. Before addressing the merits of Foster's *Batson* claim, the Court should have sought clarification that the resolution of a federal question was implicated in the Georgia high court's decision.

A

The Supreme Court of Georgia's order in this case states in full: "Upon consideration of the Application for Certificate of Probable Cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied." App. 246. Neither that order nor Georgia law provides adequate assurance that this case raises a federal question.

Under Georgia law, a state prisoner may file a state habeas petition in a state superior court. Ga. Code Ann. §§ 9–14–41 to 9–14–43 (2015). If the state superior court denies the petition, then the prisoner may appeal to the Supreme Court of Georgia, which has exclusive jurisdiction over habeas corpus cases, by timely filing a notice of appeal in the superior court and applying for a certificate of probable cause in the supreme court. See *Fullwood* v. *Sivley*, 271 Ga. 248, 250–251, 517 S. E. 2d 511, 513–515 (1999) (discussing requirements of § 9–14–52). Much like certificates of appealability in federal court, *Miller-El* v. *Cockrell*, 537 U. S. 322, 336

(2003), a Georgia prisoner must establish in his application that at least one of his claims has "arguable merit." Ga. Sup. Ct. Rule 36. If he cannot, the Supreme Court of Georgia summarily denies relief by denying the certificate of probable cause. *Ibid.*; see also § 9–14–52(b); *Hittson* v. *GDCP Warden*, 759 F. 3d 1210, 1231–1232 (CA11 2014). If he can, then the court affords plenary review of the arguably meritorious claim. See, *e. g.*, *Sears* v. *Humphrey*, 294 Ga. 117, 117–118, 751 S. E. 2d 365, 368 (2013); *Hillman* v. *Johnson*, 297 Ga. 609, 611, 615, n. 5, 774 S. E. 2d 615, 617, 620, n. 5 (2015). The most we can glean, therefore, from the summary denial of Foster's state habeas petition is that the Supreme Court of Georgia concluded that Foster's claim lacked "arguable merit."

The most obvious ground for deciding that Foster's claim lacked "arguable merit" is that the Supreme Court of Georgia already considered that claim and rejected it decades ago.[1] Georgia law prohibits Foster from raising the same claim anew in his state habeas petition. See, *e. g.*, *Davis* v. *Thomas*, 261 Ga. 687, 689, 410 S. E. 2d 110, 112 (1991). "It is axiomatic" in the Georgia courts "that a habeas court is

[1] That is obvious, in part, because the Superior Court rested on this procedural bar to deny Foster's *Batson* claim. See, *e. g.*, App. 175–176. We need not blind ourselves to that lurking state-law ground merely because the Supreme Court of Georgia denied relief in an unexplained order. As we would do in the federal habeas context, we may "look through" to the last reasoned state-court opinion to discern whether that opinion rested on state-law procedural grounds. *Ylst* v. *Nunnemaker*, 501 U. S. 797, 806 (1991). If "the last reasoned opinion on the claim explicitly imposes a procedural default," then there is a rebuttable presumption "that a later decision rejecting the claim did not silently disregard that bar and consider the merits." *Id.*, at 803; see also, *e. g.*, *Kernan* v. *Hinojosa*, *ante*, at 415 (*per curiam*). We presume, in other words, that the decision rests on a question of state law. That presumption arguably plays an even more important role in a state-court case like this, where a state-law procedural defect would oust this Court of its jurisdiction. See *Coleman* v. *Thompson*, 501 U. S. 722, 730 (1991) (distinguishing a state-law procedural bar's effect on a state case from its effect in federal habeas).

not to be used as a substitute for an appeal, or as a second appeal." *Walker* v. *Penn*, 271 Ga. 609, 612, 523 S. E. 2d 325, 327 (1999). Without such procedural bars, state prisoners could raise old claims again and again until they are declared victorious, and finality would mean nothing. See Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev. 142, 145 (1970) ("The proverbial man from Mars would surely think we must consider our system of criminal justice terribly bad if we are willing to tolerate such efforts at undoing judgments of conviction").

I would think that this state-law defect in Foster's state habeas petition would be the end of the matter: "Because this Court has no power to review a state law determination that is sufficient to support the judgment, resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory." *Coleman* v. *Thompson*, 501 U. S. 722, 729 (1991). It is fundamental that this Court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights." *Herb* v. *Pitcairn*, 324 U. S. 117, 125–126 (1945). If an adequate and independent state-law ground bars Foster's claim, then the Court today has done nothing more than issue an impermissible advisory opinion.

B

To assure itself of jurisdiction, the Court wrongly assumes that the one-line order before us implicates a federal question. See *ante*, at 497–498. The lurking state-law procedural bar, according to the Court, is not an *independent* state-law ground because it "depends on a federal constitutional ruling." *Ante*, at 497 (internal quotation marks omitted).

I would not so hastily assume that the State Supreme Court's unelaborated order depends on the resolution of a federal question without first seeking clarification from the Supreme Court of Georgia. To be sure, we often presume that a "state court decide[s] the case the way it did because

it believed that federal law required it to do so." *Long*, 463 U. S., at 1040–1041. But there still exist "certain circumstances in which clarification [from the state court] is necessary or desirable" before delving into the merits of a state court's decision. *Id.*, at 1041, n. 6.

This case presents such a circumstance. The *Long* presumption assumes that the ambiguous state-court ruling will come in the form of a reasoned decision: It applies in cases in which "it is not clear from the *opinion itself* that the state court relied upon an adequate and independent state ground and when it *fairly appears* that the state court rested its decision primarily on federal law." *Id.*, at 1042 (emphasis added). But here, when the decision is a one-line judgment, it hardly makes sense to invoke the *Long* presumption. There is neither an "opinion" nor any resolution of federal law that "fairly appears" on the face of the unexplained order. *Ibid.*

Confronted with cases like this in the past, this Court has vacated and remanded for clarification from the state court before proceeding to decide the merits of the underlying claim. I would follow that path instead of assuming that the one-line order implicates a federal question. We have "decline[d] . . . to review the federal questions asserted to be present" when "'there is considerable uncertainty as to the precise grounds for the [state court's] decision.'" *Bush* v. *Palm Beach County Canvassing Bd.*, 531 U. S. 70, 78 (2000) (*per curiam*) (quoting *Minnesota* v. *National Tea Co.*, 309 U. S. 551, 555 (1940)). *A fortiori*, when a State's highest court has denied relief without any explanation, the proper course is to vacate and remand for clarification before reaching the merits of a federal question that might have nothing to do with the state court's decision. See, *e. g.*, *Capital Cities Media, Inc.* v. *Toole*, 466 U. S. 378 (1984) (*per curiam*); see also, *e. g.*, *Johnson* v. *Risk*, 137 U. S. 300, 306–307 (1890). This course respects weighty federalism concerns. "It is fundamental that state courts be left free and unfettered by

us" in interpreting their own law, *National Tea Co.*, *supra*, at 557, especially when a state prisoner's long-final conviction is at stake.

Clarification is especially warranted here. Nothing in the reported decisions of the Supreme Court of Georgia suggests that federal law figures in how Georgia applies its res judicata procedural bar. Those decisions state that "new law or new facts" could "justify the reconsideration of the claims . . . raised on direct appeal," *Hall* v. *Lance*, 286 Ga. 365, 376–377, 687 S. E. 2d 809, 818 (2010), as might a showing that the prisoner is actually innocent, *Walker*, *supra*, at 611, 523 S. E. 2d, at 327. But it is for the Supreme Court of Georgia—not this Court—to decide what new facts suffice to reopen a claim already decided against a state habeas petitioner. It is up to the Georgia courts, for example, to decide whether a petitioner was diligent in discovering those new facts, see, *e. g.*, *Gibson* v. *Head*, 282 Ga. 156, 159, 646 S. E. 2d 257, 260 (2007) (noting that whether a petitioner could overcome the procedural bar "depend[ed] on factual findings" including "the precise timing of [his] discovery of" the new evidence), or whether the new facts are "material," *Rollf* v. *Carter*, 298 Ga. 557, 558, 784 S. E. 2d 341, 342 (2016).

Instead of leaving the application of Georgia law to the Georgia courts, the Court takes it upon itself to decide that the procedural bar implicates a federal question. Worse still, the Court surmises that Georgia's procedural bar depends on the resolution of a federal question by parsing the wrong court's decision, the opinion of the Superior Court of Butts County. *Ante,* at 497–498. Invoking *Ake* v. *Oklahoma*, 470 U. S. 68, 75 (1985), the Court reasons that "*the state habeas court's* application of res judicata to Foster's *Batson* claim was not independent of the merits of his federal constitutional challenge." *Ante,* at 498 (emphasis added). Accordingly, whether Foster has alleged a sufficient " 'change in the facts' " to overcome the Georgia procedural bar depends on whether Foster's *Batson* claim would succeed in light of

those changed facts. *Ante,* at 498. But the State Superior Court's opinion is not the "judgmen[t] . . . by the highest court of [Georgia] in which a decision could be had" subject to our certiorari jurisdiction. 28 U. S. C. § 1257. The unexplained denial of relief by the Supreme Court of Georgia is.

I cannot go along with the Court's decision to assure itself of its jurisdiction by attributing snippets of the State Superior Court's reasoning to the Supreme Court of Georgia. The reported decisions of the Supreme Court of Georgia do not resolve what "type of new alleged facts . . . could ever warrant setting aside the procedural bar," *Hall*, *supra*, at 377, 687 S. E. 2d, at 818, let alone intimate that a prisoner may relitigate a claim already decided against him merely because he might win this second time around. Cf. *Roulain* v. *Martin*, 266 Ga. 353, 354, 466 S. E. 2d 837, 839 (1996) (opining that a state habeas court "would certainly be bound by the ruling [in the petitioner's direct appeal] regardless of whether that ruling may be erroneous"). I therefore refuse to presume that the unexplained denial of relief by the Supreme Court of Georgia presents a federal question.[2]

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[2] The Court takes me to task for not "follow[ing my] own rule," *ante,* at 499, n. 3, because I acknowledge that the State Superior Court's decision is strong evidence that Foster's claim was denied as procedurally defaulted. See *supra*, at 526–527, and n. 1. It is one thing to look to the reasoning of a lower state court's decision to confirm that the Court *lacks* jurisdiction. It is quite another for the Court to probe that lower state court's decision to *assure* itself of jurisdiction. The Court reads the tea leaves of a single State Superior Court's decision to decide that the state-law procedural bar depends on the resolution of a federal question. That is a question of Georgia law that is best answered by the decisions of the Supreme Court of Georgia. See *Commissioner* v. *Estate of Bosch*, 387 U. S. 456, 465 (1967) (concluding that when "the underlying substantive rule involved is based on state law," "the State's highest court is the best authority on its own law"); cf. *King* v. *Order of United Commercial Travelers of America*, 333 U. S. 153, 160–162 (1948) (rejecting an unreported state trial court decision as binding under *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938)).

The Court today imposes an opinion-writing requirement on the States' highest courts. Lest those high courts be subject to lengthy digressions on constitutional claims that might (or might not) be at issue, they must offer reasoned opinions why—after rejecting the same claim decades ago—they refuse to grant habeas relief now. But "[o]pinion-writing practices in state courts are influenced by considerations other than avoiding scrutiny by collateral attack in federal court," including "concentrat[ing their] resources on the cases where opinions are most needed." *Harrington* v. *Richter*, 562 U. S. 86, 99 (2011). Rather than demand detailed opinions of overburdened state courts, the Court should vacate and remand cases such as this one to assure itself of its jurisdiction.

II

The Court further errs by deciding that Foster's *Batson* claim has arguable merit. Because the adjudication of his *Batson* claim is, at bottom, a credibility determination, we owe "great deference" to the state court's initial finding that the prosecution's race-neutral reasons for striking veniremen Eddie Hood and Marilyn Garrett were credible. *Batson*, 476 U. S., at 98, n. 21. On a record far less cold than today's, the Supreme Court of Georgia long ago (on direct appeal) rejected that claim by giving great deference to the trial court's credibility determinations. Evaluating the strike of venireman Hood, the court highlighted that his son had been convicted of a misdemeanor and that both his demeanor and religious affiliation indicated that he might be reluctant to impose the death penalty. *Foster*, 258 Ga., at 738, 374 S. E. 2d, at 192. And the prosecution reasonably struck venireman Garrett, according to the court, because it feared that she would sympathize with Foster given her work with "low-income, underprivileged children" and because she was "related to someone with a drug or alcohol problem." *Id.*, at 739, 374 S. E. 2d, at 192. That should have been the last word on Foster's *Batson* claim.

But now, Foster has access to the prosecution's file. By allowing Foster to relitigate his *Batson* claim by bringing this newly discovered evidence to the fore, the Court upends *Batson*'s deferential framework. Foster's new evidence does not justify this Court's reassessment of who was telling the truth nearly three decades removed from *voir dire*.

A

The new evidence sets the tone for the Court's analysis, but a closer look reveals that it has limited probative value. For this reason, the Court's conclusion that the prosecution violated *Batson* rests mostly on arguments at Foster's disposal decades ago. See *ante*, at 503–506 (concluding that trial transcripts belie proffered reasons for striking Garrett); *ante*, at 507–512 (relying on transcripts and briefs as evidence of the prosecution's shifting explanations for striking Hood). The new evidence is no excuse for the Court's reversal of the state court's credibility determinations.

As even the Court admits, *ante*, at 500–501, we do not know who wrote most of the notes that Foster now relies upon as proof of the prosecutors' race-based motivations. We do know, however, that both prosecutors averred that they "did not make any of the highlighted marks on the jury venire list" and "did not instruct anyone to make the green highlighted marks." App. 168–169, 171. In particular, prosecutor Stephen Lanier reaffirmed his earlier testimony, given during Foster's hearing for a new trial, that he relied only on race-neutral factors in striking the jury. *Id.*, at 169; see also *id.*, at 80–125. And, prosecutor Douglas Pullen swore that he "did not rely on the highlighted jury venire list." *Id.*, at 171.

The hazy recollections of the prosecution's investigator, Clayton Lundy, are not to the contrary. As part of the post-conviction proceedings, Lundy testified that he "[v]aguely" remembered parts of jury selection, he "kind of remember[ed]" some of the documents used during jury selection, and cautioned that he "ain't done this in a long time." Tr.

181–182. (When Lundy testified in 2006, nearly 20 years had passed since Foster's trial and he had changed careers. *Id.*, at 174.) He thought others at the district attorney's office "probably" passed venire lists around the office and "guess[ed]" that everyone would make notations. *Id.*, at 182, 190.

As for the other documents in the prosecution's file, Lundy could not identify who authored any of them, with two exceptions.[3] First, Lundy said he prepared handwritten lists describing seven veniremen, including Garrett, but her race is not mentioned. See *id.*, at 205; App. 293–294. Second, Lundy "guess[ed]" that prosecutor Lanier suggested the handwritten edits to a draft of an affidavit that Lundy later submitted to the trial court. Tr. 203; see App. 343–347 (draft affidavit); *id.*, at 127–129 (final affidavit). The relevant edits suggested deleting two statements that, "*solely [in Lundy's] opinion*," prosecutors ought to pick Garrett "[i]f it comes down to having to pick one of the black jurors." *Id.*, at 345 (emphasis added). Perhaps this look inside the district attorney's office reveals that the office debated internally who would be the best black juror. Or perhaps it reveals only Lundy's personal thoughts about selecting black jurors, an "opinion" with which (we can "guess") Lanier disagreed.

The notion that this "newly discovered evidence" could warrant relitigation of a *Batson* claim is flabbergasting. In *Batson* cases, the "decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed." *Hernandez* v. *New York*, 500 U. S. 352,

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[3] At oral argument, counsel for Georgia also stipulated that "one of the two prosecutors" must have drafted another document comprising a "definite NO's" list and a "questionables" list of veniremen. Tr. of Oral Arg. 45; App. 301. Both veniremen Hood and Garrett appeared on the "definite NO's" list. Of course we cannot know when these lists were created, or whether Lanier himself relied upon them. See Tr. of Oral Arg. 45 (calling into question whether Lanier's "thought process" was based on those lists).

365 (1991) (plurality opinion). And because "[t]here will seldom be much evidence bearing on that issue," "the best evidence often will be the demeanor of the attorney who exercises the challenge." *Ibid.* Time and again, we have said that the credibility of the attorney is best judged by the trial court and can be overturned only if it is clearly erroneous. See *ibid.*; see also *Snyder* v. *Louisiana*, 552 U. S. 472, 477 (2008); *Miller-El*, 537 U. S., at 339; *Hernandez*, *supra*, at 375 (O'Connor, J., concurring in judgment).

But the Court today invites state prisoners to go searching for new "evidence" by demanding the files of the prosecutors who long ago convicted them. If those prisoners succeed, then apparently this Court's doors are open to conduct the credibility determination anew. Alas, "every end is instead a new beginning" for a majority of this Court. *Welch* v. *United States*, *ante*, at 149 (THOMAS, J., dissenting). I cannot go along with that "sort of sandbagging of state courts." *Miller-El* v. *Dretke*, 545 U. S. 231, 279 (2005) (THOMAS, J., dissenting). New evidence should not justify the relitigation of *Batson* claims.

B

Perhaps the Court's decision to reconsider a decades-old *Batson* claim based on newly discovered evidence would be less alarming if the new evidence revealed that the trial court had misjudged the prosecutors' reasons for striking Garrett and Hood. It does not. Not only is the probative value of the evidence severely limited, *supra*, at 531–533 and this page, but also pieces of the new evidence corroborate the trial court's conclusion that the race-neutral reasons were valid. The Court's substitution of its judgment for the trial court's credibility determinations is flawed both as a legal and factual matter.

1

The Court's analysis with respect to Hood is unavailing. The Court first compares Hood with other jurors who had similarly aged children, *ante*, at 507–509, just as the trial court did decades ago, App. 135–136. The trial court was well

aware that Hood's son's conviction was for theft, not murder. But in the words of the trial court, "the conviction is a distinction that makes the difference" between Hood and the other jurors, and the prosecution's "apprehension that this would tend to, perhaps only subconsciously, make the venireman sympathetic to [Foster] was a rational one." *Ibid.* Because "the trial court believe[d] the prosecutor's nonracial justification, and that finding is not clearly erroneous, that [should be] the end of the matter." *Hernandez*, *supra*, at 375 (O'Connor, J., concurring in judgment).

The Court also second-guesses the prosecution's strike of Hood because of his questionable stance on the death penalty. The Court concludes that Hood's transcribed statements at *voir dire* "unequivocally voiced [Hood's] willingness to impose the death penalty." *Ante*, at 511. There is nothing unequivocal about a decades-old record. Our case law requires the Court to defer to the trial court's finding that the State's race-neutral concerns about Hood's "soft-spoken[ness] and slow[ness] in responding to the death penalty questions" were "credible." App. 138; see *Snyder*, *supra*, at 477 ("[R]ace-neutral reasons for peremptory challenges often invoke a juror's demeanor (*e. g.*, nervousness, inattention), making the trial court's firsthand observations of even greater importance"). The "evaluation of the prosecutor's state of mind based on demeanor and credibility lies peculiarly within a trial judge's province." *Hernandez*, *supra*, at 365 (plurality opinion) (internal quotation marks omitted).

The new evidence, moreover, supports the prosecution's concern about Hood's views on capital punishment. A handwritten document in the prosecution's file stated that the Church of Christ "doesn't take a stand on [the] Death Penalty." App. 302. Perplexingly, the Court considers this proof that the prosecution misled the trial court about its reasons for striking Hood. *Ante*, at 509–511. Hardly. That document further states that capital punishment is an issue "left for each individual member," App. 302, and thus in no way discredits the prosecutor's statement that, in his experi-

ence, "Church of Christ people, while they may not take a formal stand against the death penalty, . . . are very, very reluctant to vote for the death penalty," *id.*, at 84. And other notes in the file say that Hood gave "slow D[eath] P[enalty] answers" and that he "hesitated . . . when asked about [the] D[eath] P[enalty]." *Id.*, at 295, 303. This new evidence supports the prosecution's stated reason for striking Hood—that he, as a member of the Church of Christ, had taken an uncertain stance on capital punishment.

2

Likewise, the Court's evaluation of the strike of Garrett is riddled with error. The Court is vexed by a single misrepresentation about the prosecution's decision to strike Garrett—the prosecution stated that Garrett was listed as "'questionable'" but the new evidence reveals that Garrett was on the "'definite NO's'" list from the beginning. *Ante*, at 504. But whether the prosecution planned to strike Garrett all along or only at the last minute seems irrelevant to the more than 10 race-neutral reasons the prosecution supplied for striking Garrett.

The prosecution feared that Garrett might sympathize with Foster at sentencing. She worked with disadvantaged children, she was young, and she failed to disclose that her cousin had been recently arrested. See App. 55–57, 105. And prosecutors were concerned that she gave short answers, appeared nervous, and did not ask to be off the jury even though she was a divorced mother of two children and worked more than 70 hours per week. See *id.*, at 55–56, 93–94. The prosecution also stated repeatedly that they were concerned about female jurors, who "appear to be more sympathetic . . . in . . . death penalty case[s] than men." *Id.*, at 42; see *id.*, at 57.[4]

[4] This Court's decision in *J. E. B.* v. *Alabama ex rel. T. B.*, 511 U. S. 127 (1994), which held that peremptory strikes on the basis of sex were unconstitutional, postdated Foster's direct appeal.

Pieces of the new evidence support some of these concerns. The notes in the prosecutors' file reveal that someone on the prosecution team was aware that Garrett's cousin was Angela Garrett (who had been arrested for drug-related charges and fired from her job on the eve of trial, *id.*, at 105, 129), that Garrett "would not look a[t] [the] C[our]t during V[oir] D[ire]," that she gave "very short answers," and that she "[l]ooked @ floor during D[eath] P[enalty]" questioning. *Id.*, at 293, 308.

Nevertheless, the Court frets that these indisputably race-neutral reasons were pretextual. The Court engages in its own comparison of the jurors to highlight the prosecution's refusal to strike white jurors with similar characteristics. *Ante*, at 503–506. But as with venireman Hood, the Georgia courts were faced with the same contentions regarding Garrett decades ago, and the Supreme Court of Georgia rightly decided that the trial court's findings were worthy of deference. After conducting a post-trial hearing in which one of the prosecutors testified, App. 80–125, the trial court credited the prosecution's concerns. The trial court, for example, agreed that Garrett's association with Head Start might be troubling and "believe[d] that the state [was] honest in voicing its concern that the combination of holding down two jobs and being the divorced mother of two indicates a less stable home environment," which "was the prime defense in [Foster's] case." *Id.*, at 142; see *id.*, at 141. Again, that should be "the end of the matter." *Hernandez*, 500 U. S., at 375 (O'Connor, J., concurring in judgment).

* * *

Today, without first seeking clarification from Georgia's highest court that it decided a federal question, the Court affords a death-row inmate another opportunity to relitigate his long-final conviction. In few other circumstances could I imagine the Court spilling so much ink over a factbound claim arising from a state postconviction proceeding. It was

the trial court that observed the veniremen firsthand and heard them answer the prosecution's questions, and its evaluation of the prosecution's credibility on this point is certainly far better than this Court's nearly 30 years later. See *id.*, at 365 (plurality opinion). I respectfully dissent.

Syllabus

WITTMAN ET AL. *v.* PERSONHUBALLAH ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

No. 14–1504. Argued March 21, 2016—Decided May 23, 2016

Appellee voters from Virginia's Congressional District 3 filed suit challenging the Commonwealth's 2013 congressional redistricting plan on the ground that the legislature's redrawing of their district was an unconstitutional racial gerrymander. Appellant Members of Congress from Virginia, including, as relevant here, Representatives Randy Forbes, Robert Wittman, and David Brat, intervened to help defend the Commonwealth's plan. The District Court struck down the plan, and the intervenors appealed to this Court, which vacated the judgment below and remanded the case in light of one of the Court's recent decisions. Again, the District Court held that the redistricting plan was unconstitutional, and again, the intervenors appealed. This time, the Court directed the parties to address whether appellants lack standing, since none reside in or represent Congressional District 3.

Held: Appellants lack standing to pursue this appeal. Pp. 543–546.

(a) A party invoking a federal court's jurisdiction can establish Article III standing only by showing that he has suffered an "injury in fact," that the injury is "fairly traceable" to the challenged conduct, and that the injury is likely to be "redressed" by a favorable decision. *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561. The need to satisfy these requirements persists throughout the life of the suit. *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 67. P. 543.

(b) In light of the District Court's decision striking down the redistricting plan, Representative Forbes, the Republican incumbent in District 4, decided to run in District 2. Originally, Representative Forbes argued that he would abandon his campaign in District 2 and run in District 4 if this Court ruled in his favor. Now, however, he has informed the Court that he will continue to seek election in District 2 regardless of this appeal's outcome. Given this change, this Court does not see how any injury that Forbes might have suffered is "likely to be redressed by a favorable judicial decision." *Hollingsworth* v. *Perry*, 570 U. S. 693, 704. Regardless of whether Forbes had standing at the time he first intervened, he does not have standing now.

Representatives Wittman and Brat, the incumbents in Congressional Districts 1 and 7, respectively, have not identified any record evidence

to support their allegation that the redistricting plan has harmed their prospects of reelection. The allegation of an injury, without more, is not sufficient to satisfy Article III. See *Lujan*, *supra*, at 561. Given the complete lack of evidence of any injury in this case, the Court need not decide when, or whether, evidence of the kind of injury the Representatives allege would prove sufficient for Article III purposes. Pp. 543–546.

Appeal dismissed.

BREYER, J., delivered the opinion for a unanimous Court.

Michael A. Carvin argued the cause for appellants. With him on the briefs was *John M. Gore*.

Stuart A. Raphael, Solicitor General of Virginia, argued the cause for Virginia State Board of Elections appellees. With him on the brief were *Mark R. Herring*, Attorney General, *Cynthia E. Hudson*, Chief Deputy Attorney General, *Trevor S. Cox*, Deputy Solicitor General, and *Matthew R. McGuire*, Assistant Attorney General. *Marc E. Elias* argued the cause for private appellees. With him on the brief were *John M. Devaney*, *Elisabeth C. Frost*, and *Kevin J. Hamilton*.

Deputy Solicitor General Gershengorn argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Gupta*, *Elizabeth B. Prelogar*, *Tovah R. Calderon*, and *April J. Anderson*.*

**Luther Strange*, Attorney General of Alabama, *Andrew L. Brasher*, Solicitor General, *Brett J. Talley*, Deputy Solicitor General, and *Ken Paxton*, Attorney General of Texas, filed a brief for Alabama et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Campaign Legal Center et al. by *Paul M. Smith*, *Jessica Ring Amunson*, *J. Gerald Hebert*, *Michael T. Kirkpatrick*, and *Lloyd Leonard*; for the Lawyers' Committee for Civil Rights Under Law by *Melvin A. Brosterman*, *Kristen Clarke*, *Jon M. Greenbaum*, and *Ezra D. Rosenberg*; for OneVirginia2021 by *Gregory E. Lucyk*; and for the Virginia State Conference of the NAACP by *Anita Earls* and *Allison Riggs*.

JUSTICE BREYER delivered the opinion of the Court.

Ten Members of Congress from Virginia, intervenors in the District Court below, have appealed a judgment from a three-judge panel striking down a congressional redistricting plan applicable to the November 2016 election. We conclude that the intervenors now lack standing to pursue the appeal. And we consequently order the appeal dismissed.

I

This lawsuit began in October 2013, after the then-Governor of Virginia signed into law a new congressional redistricting plan (which we shall call the "Enacted Plan") designed to reflect the results of the 2010 census. Three voters from Congressional District 3 brought this lawsuit against the Commonwealth. They challenged the Enacted Plan on the ground that its redrawing of their district's lines was an unconstitutional racial gerrymander. The Members of Congress now before us intervened to help defend the Enacted Plan.

After a bench trial, a divided three-judge District Court agreed with the voters. It concluded that the Commonwealth had used race as the predominant basis for modifying the boundaries of District 3. *Page* v. *Virginia State Bd. of Elections*, 58 F. Supp. 3d 533, 550 (ED Va. 2014). And it found that the Commonwealth's use of race, when scrutinized strictly, was not narrowly tailored to serve a compelling governmental interest. *Id.*, at 553.

The Commonwealth of Virginia did not appeal. Instead, the intervenor Members of Congress appealed the District Court's judgment to this Court. See 28 U. S. C. § 1253 (granting the right to directly appeal certain three-judge district court orders to the Supreme Court). Having just decided a racial-gerrymandering case, *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254 (2015), we vacated the District Court's judgment and remanded for reconsidera-

tion in light of that recent decision. *Cantor* v. *Personhuballah*, 575 U. S. 931 (2015).

On remand the District Court again decided that District 3, as modified by the Enacted Plan, was an unconstitutional racial gerrymander. *Page* v. *Virginia State Bd. of Elections*, 2015 WL 3604029, *19 (ED Va., June 5, 2015). The court's order set forth a deadline of September 1, 2015, for the Virginia Legislature to adopt a new redistricting plan.

Again, the Commonwealth of Virginia decided not to appeal. And again, the intervenor Members of Congress appealed to this Court. On September 28, 2015, we asked the parties to file supplemental briefs addressing whether the intervenors had standing to appeal the District Court's decision. 576 U. S. 1093. As relevant here, the intervenors argued in their supplemental brief that they had standing because the District Court's order, if allowed to stand, would necessarily result in a redrawing of their districts that would harm some of the intervenors' reelection prospects. On November 13, 2015, we issued an order explaining that the Court was "postpon[ing]" "consideration of the question of jurisdiction" until "the hearing of the case on the merits." In addition, our order instructed the parties to dedicate a portion of their briefs and their oral argument time to the issue of standing—specifically, "[w]hether [the intervenors] lack standing because none reside in or represent the only congressional district whose constitutionality is at issue in this case." 577 U. S. 982.

In the meantime, the Virginia Legislature failed to meet the September 1 deadline imposed by the District Court. The District Court thus appointed a Special Master to develop a new districting plan. The Special Master did so, and on January 7, 2016, the District Court approved that plan (which we shall call the "Remedial Plan"). The intervenor Members of Congress asked this Court to stay implementation of the Remedial Plan pending resolution of their direct appeal to this Court. We declined to do so. 577 U. S. 1125

(2016). On March 21, we heard oral argument. That argument focused both on (1) the merits of intervenors' claims denying any racial gerrymander and (2) the question of standing. In respect to standing, the Court focused on whether the District Court's approval of the Remedial Plan on January 7 supported, or undermined, the intervenors' standing argument that, in the absence of the original Enacted Plan, they would suffer harm. Tr. of Oral Arg. 9–23.

II

As our request for supplemental briefing, our order postponing consideration of jurisdiction, and our questions at oral argument suggested, we cannot decide the merits of this case unless the intervenor Members of Congress challenging the District Court's racial-gerrymandering decision have standing. We conclude that the intervenors now lack standing. We must therefore dismiss the appeal for lack of jurisdiction.

Article III of the Constitution grants the federal courts the power to decide legal questions only in the presence of an actual "Cas[e]" or "Controvers[y]." This restriction requires a party invoking a federal court's jurisdiction to demonstrate standing. *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 64 (1997). A party has standing only if he shows that he has suffered an "injury in fact," that the injury is "fairly traceable" to the conduct being challenged, and that the injury will likely be "redressed" by a favorable decision. *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992) (internal quotation marks and ellipsis omitted). The need to satisfy these three requirements persists throughout the life of the lawsuit. *Arizonans for Official English*, 520 U. S., at 67.

The relevant parties here are the intervenor Members of Congress. Since the Commonwealth of Virginia has not pursued an appeal, only the intervenors currently attack the District Court's decision striking down the Enacted Plan. And an "intervenor cannot step into the shoes of the original

party" (here, the Commonwealth) "unless the intervenor independently 'fulfills the requirements of Article III.'" *Id.*, at 65 (quoting *Diamond* v. *Charles*, 476 U. S. 54, 68 (1986)).

Although 10 current and former Members of Congress are technically intervenors, only 3 of the 10 now claim before this Court that they have standing. Those three Members are Representative Randy Forbes, Representative Robert Wittman, and Representative David Brat.

Representative Forbes, the Republican incumbent in Congressional District 4, told us in his brief that, unless the Enacted Plan is upheld, District 4 will be "completely transform[ed] from a 48% Democratic district into a safe 60% Democratic district." Brief for Appellants 58. According to Forbes, the threat of that kind of transformation compelled him to run in a different district, namely, Congressional District 2.

At oral argument, Forbes' counsel told the Court that, if the Enacted Plan were reinstated, Representative Forbes would abandon his election effort in Congressional District 2 and run in his old district, namely, Congressional District 4. Tr. of Oral Arg. 10. Soon after oral argument, however, the Court received a letter from counsel stating that Representative Forbes would "continue to seek election in District 2 regardless of whether the Enacted Plan is reinstated." Letter from Counsel for Appellants to Scott S. Harris, Clerk of Court (Mar. 25, 2016), p. 2. Given this letter, we do not see how any injury that Forbes might have suffered "is likely to be redressed by a favorable judicial decision." *Hollingsworth* v. *Perry*, 570 U. S. 693, 704 (2013). Consequently, we need not decide whether, at the time he first intervened, Representative Forbes possessed standing. Regardless, he does not possess standing now. See *Arizonans for Official English*, *supra*, at 65; *Lewis* v. *Continental Bank Corp.*, 494 U. S. 472, 477–478 (1990).

Representative Wittman and Representative Brat are Republicans representing Congressional District 1 and Con-

gressional District 7, respectively. In their opening brief they argue that they have standing to challenge the District Court's order because, unless the Enacted Plan is reinstated, "a portion of the[ir] 'base electorate' " will necessarily be replaced with "unfavorable Democratic voters," thereby reducing the likelihood of the Representatives' reelection. Brief for Appellants 58; see also Application for Stay of Remedial Plan Pending Resolution of Direct Appeal of Liability Judgment 25. Even assuming, without deciding, that this kind of injury is legally cognizable, Representatives Wittman and Brat have not identified record evidence establishing their alleged harm.

We have made clear that the "party invoking federal jurisdiction bears the burden of establishing" that he has suffered an injury by submitting "affidavit[s] or other evidence." *Lujan*, 504 U. S., at 561. When challenged by a court (or by an opposing party) concerned about standing, the party invoking the court's jurisdiction cannot simply allege a nonobvious harm, without more. *Ibid.* Here, there is no "more." Representatives Wittman and Brat claim that unless the Enacted Plan is reinstated, their districts will be flooded with Democratic voters and their chances of reelection will accordingly be reduced. But we have examined the briefs, looking for any evidence that an alternative to the Enacted Plan (including the Remedial Plan) will reduce the relevant intervenors' chances of reelection, and have found none. The briefs focus on Congressional District 3 and Congressional District 4, districts with which Representatives Wittman and Brat are not associated.

We need go no further. Given the lack of evidence that any of the three Representatives has standing, we need not decide when, or whether, evidence of the kind of injury they allege would prove sufficient for purposes of Article III's requirements. In light of the letter we have received about Representative Forbes, and the absence of any evidence in the briefs supporting any harm to the other two Representa-

tives, we conclude that none of the intervenors has standing to bring an appeal in this case. We consequently lack jurisdiction and therefore dismiss this appeal.

It is so ordered.

Syllabus

GREEN *v.* BRENNAN, POSTMASTER GENERAL

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 14–613. Argued November 30, 2015—Decided May 23, 2016

After petitioner Marvin Green complained to his employer, the United States Postal Service, that he was denied a promotion because he was black, his supervisors accused him of the crime of intentionally delaying the mail. In an agreement signed December 16, 2009, the Postal Service agreed not to pursue criminal charges, and Green agreed either to retire or to accept another position in a remote location for much less money. Green chose to retire and submitted his resignation paperwork on February 9, 2010, effective March 31.

On March 22—41 days after resigning and 96 days after signing the agreement—Green reported an unlawful constructive discharge to an Equal Employment Opportunity counselor, an administrative prerequisite to filing a complaint alleging discrimination or retaliation in violation of Title VII of the Civil Rights Act of 1964. See 29 CFR § 1614.105(a)(1). Green eventually filed suit in Federal District Court, which dismissed his complaint as untimely because he had not contacted the counselor within 45 days of the "matter alleged to be discriminatory," *ibid.* The Tenth Circuit affirmed, holding that the 45-day limitations period began to run on December 16, the date Green signed the agreement.

Held:

1. Because part of the "matter alleged to be discriminatory" in a constructive-discharge claim is an employee's resignation, the 45-day limitations period for such action begins running only after an employee resigns. Pp. 552–563.

(a) Where, as here, the regulatory text itself is not unambiguously clear, the Court relies on the standard rule for limitations periods, which provides that a limitations period ordinarily begins to run "'when the plaintiff has a complete and present cause of action,'" *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 545 U. S. 409, 418. Applied here, that rule offers three persuasive reasons to include the employee's resignation in the limitations period. Pp. 552–558.

(i) First, resignation is part of the "complete and present cause of action" in a constructive-discharge claim, which comprises two basic elements: discriminatory conduct such that a reasonable employee

would have felt compelled to resign and actual resignation, *Pennsylvania State Police* v. *Suders*, 542 U. S. 129, 148. Until he resigns, an employee does not have a "complete and present cause of action" for constructive discharge. Under the standard rule, only after the employee has a complete and present cause of action does that trigger the limitations period. In this respect, a constructive-discharge claim is no different from an ordinary wrongful-discharge claim, which accrues only after the employee is fired. Pp. 554–556.

(ii) Second, although the standard rule may be subject to exception where clearly indicated by the text creating the limitations period, nothing in Title VII or the regulation suggests such displacement. To the contrary, it is natural to read "matter alleged to be discriminatory" as including the allegation forming the basis of the claim, which confirms the standard rule's applicability. Pp. 556–557.

(iii) Third, practical considerations also confirm the merit of applying the standard rule. Starting the clock ticking before a plaintiff can actually file suit does little to further the limitations period's goals and actively negates Title VII's remedial structure. A "limitations perio[d] should not commence to run so soon that it becomes difficult for a layman to invoke the protection of the civil rights statutes." *Delaware State College* v. *Ricks*, 449 U. S. 250, 262, n. 16. Nothing in the regulation suggests a two-step process in which an employee would have to file a complaint after an employer's discriminatory conduct, only to be forced to amend that complaint to allege constructive discharge after resigning. Requiring that a complaint be filed before resignation occurs would also, *e. g.*, ignore that an employee may not be in a position to leave his job immediately. Pp. 557–558.

(b) Arguments against applying the standard rule here are rejected. *Suders* stands not for the proposition that a constructive discharge is tantamount to a formal discharge for remedial purposes only, but for the rule that constructive discharge is a claim distinct from the underlying discriminatory act, 542 U. S., at 149. Nor was Green's resignation the mere inevitable consequence of the Postal Service's discriminatory conduct. *Ricks*, 449 U. S. 250, distinguished. Finally, the important goal of promoting conciliation through early, informal contact with a counselor does not warrant treating a constructive discharge different from an actual discharge for purposes of the limitations period. Pp. 558–563.

2. A constructive-discharge claim accrues—and the limitations period begins to run—when the employee gives notice of his resignation, not on the effective date thereof. The Tenth Circuit is left to determine, in the first instance, the date that Green in fact gave notice. Pp. 563–564.

760 F. 3d 1135, vacated and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in the judgment, *post*, p. 565. THOMAS, J., filed a dissenting opinion, *post*, p. 578.

Brian Wolfman argued the cause for petitioner. With him on the briefs were *Jeffrey L. Fisher*, *John Mosby*, *Elisa Moran*, and *Marilyn Cain Gordon*.

Curtis E. Gannon argued the cause for respondent. With him on the briefs were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorneys General Mizer* and *Gupta*, *Deputy Solicitor General Gershengorn*, *Marleigh D. Dover*, *Tovah R. Calderon*, *Stephanie R. Marcus*, and *Bonnie I. Robin-Vergeer*.

Catherine M. A. Carroll, by invitation of the Court, 576 U. S. 1087, argued the cause as *amicus curiae* in support of the judgment below. With her on the brief were *Albinas J. Prizgintas* and *Alan E. Schoenfeld*.*

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.*, prohibits employers from discriminating on the basis of race, color, religion, sex, or national origin, or retaliating against their employees for opposing or seeking relief from such discrimination. Before a federal civil servant can sue his employer for violating Title VII, he must, among other things, "initiate contact" with an

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*Briefs of *amici curiae* urging reversal were filed for the NAACP Legal Defense and Educational Fund, Inc., et al. by *John Paul Schnapper-Casteras*, *Sherrilyn Ifill*, *Janai Nelson*, *Christina Swarns*, *Jin Hee Lee*, *Marcia D. Greenberger*, *Emily J. Martin*, and *Fatima Goss Graves*; and for the National Employment Lawyers Association by *Eric Schnapper*.

Briefs of *amici curiae* urging affirmance were filed for the Equal Employment Advisory Council et al. by *Rae T. Vann*, *Amy Beth Leasure*, *Karen R. Harned*, and *Elizabeth Milito*; and for the New England Legal Foundation by *Benjamin G. Robbins* and *Martin J. Newhouse*.

Equal Employment Opportunity counselor at his agency "within 45 days of the date of the matter alleged to be discriminatory." 29 CFR § 1614.105(a)(1) (2015).

If an employee claims he has been fired for discriminatory reasons, the "matter alleged to be discriminatory" includes the discharge itself and the 45-day limitations period begins running only after the employee is fired.

We address here when the limitations period begins to run for an employee who was not fired, but resigns in the face of intolerable discrimination—a "constructive" discharge. We hold that, in such circumstances, the "matter alleged to be discriminatory" includes the employee's resignation, and that the 45-day clock for a constructive discharge begins running only after the employee resigns.

I

We recite the following facts in the light most favorable to petitioner Marvin Green, against whom the District Court entered summary judgment. Green is a black man who worked for the Postal Service for 35 years. In 2008, he was serving as the postmaster for Englewood, Colorado, when he applied for a promotion to the vacant postmaster position in nearby Boulder. He was passed over. Shortly thereafter, Green complained he was denied the promotion because of his race.

Green's relations with his supervisors crumbled following his complaint. Tensions peaked on December 11, 2009, when two of Green's supervisors accused him of intentionally delaying the mail—a criminal offense. See 18 U. S. C. § 1703. They informed Green that the Postal Service's Office of the Inspector General (OIG) was investigating the charge and that OIG agents had arrived to interview him as part of their investigation. After Green met with the OIG agents, his supervisors gave him a letter reassigning him to off-duty status until the matter was resolved. Even though the OIG agents reported to Green's supervisors that no further inves-

tigation was warranted, the supervisors continued to represent to Green that "the OIG is all over this" and that the "criminal" charge "could be a life changer." App. 53.

On December 16, 2009, Green and the Postal Service signed an agreement whose meaning remains disputed. Relevant here, the Postal Service promised not to pursue criminal charges in exchange for Green's promise to leave his post in Englewood. The agreement also apparently gave Green a choice: Effective March 31, 2010, he could either retire or report for duty in Wamsutter, Wyoming—population 451—at a salary considerably lower than what he earned in his Denver suburb. Green chose to retire and submitted his resignation to the Postal Service on February 9, 2010, effective March 31.

On March 22—41 days after submitting his resignation paperwork to the Postal Service on February 9, but 96 days after signing the settlement agreement on December 16—Green contacted an Equal Employment Opportunity (EEO) counselor to report an unlawful constructive discharge. He contended that his supervisors had threatened criminal charges and negotiated the resulting agreement in retaliation for his original complaint.[1] He alleged that the choice he had been given effectively forced his resignation in violation of Title VII.

Green eventually filed suit in the Federal District Court for the District of Colorado, alleging, *inter alia*, that the Postal Service constructively discharged him. The Postal Service moved for summary judgment, arguing that Green had failed to make timely contact with an EEO counselor within 45 days of the "matter alleged to be discriminatory," as required by 29 CFR § 1614.105(a)(1). The District Court granted the Postal Service's motion for summary judgment.

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[1] We assume without deciding that it is unlawful for a federal agency to retaliate against a civil servant for complaining of discrimination. See *Gómez-Pérez* v. *Potter*, 553 U. S. 474, 488, n. 4 (2008); Brief for Respondent 2.

The Tenth Circuit affirmed, holding that the "matter alleged to be discriminatory" encompassed only the Postal Service's discriminatory actions and not Green's independent decision to resign on February 9. *Green* v. *Donahue*, 760 F. 3d 1135 (2014). Therefore, the 45-day limitations period started running when both parties signed the settlement agreement on December 16, 2009. Accordingly, because 96 days passed between the agreement and when Green contacted an EEO counselor on March 22, 2010, his constructive-discharge claim was time barred.

Two other Courts of Appeals agree with the Tenth Circuit's view that the limitations period begins to run for a constructive-discharge claim after the employer's last discriminatory act.[2] As the Tenth Circuit recognized, however, other Courts of Appeals have held that the limitations period for a constructive-discharge claim does not begin to run until the employee resigns.[3]

We granted certiorari to resolve this split. 575 U. S. 983 (2015). Because no party here supports the Tenth Circuit's holding that an employee's resignation is not part of the "matter alleged to be discriminatory," we appointed Catherine M. A. Carroll to defend that aspect of the judgment below. 576 U. S. 1087 (2015). She has ably discharged her duties and the Court thanks her for her service.

II

Before a federal civil servant can sue his employer in court for discriminating against him in violation of Title VII, he must first exhaust his administrative remedies. 42 U. S. C.

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[2] *Mayers* v. *Laborers' Health & Safety Fund of North America*, 478 F. 3d 364, 370 (CADC 2007) (*per curiam*); *Davidson* v. *Indiana-American Water Works*, 953 F. 2d 1058, 1059 (CA7 1992).

[3] *Flaherty* v. *Metromail Corp.*, 235 F. 3d 133, 138 (CA2 2000); *Draper* v. *Coeur Rochester, Inc.*, 147 F. 3d 1104, 1111 (CA9 1998); *Hukkanen* v. *Operating Engineers*, 3 F. 3d 281, 285 (CA8 1993); *Young* v. *National Center for Health Servs. Research*, 828 F. 2d 235, 238 (CA4 1987).

§2000e–16(c). To exhaust those remedies, the Equal Employment Opportunity Commission (EEOC) has promulgated regulations that require, among other things, that a federal employee consult with an EEO counselor prior to filing a discrimination lawsuit. Specifically, he "must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action." 29 CFR §1614.105(a)(1).[4] The timeliness of Green's claim therefore turns on our interpretation of this EEOC regulation implementing Title VII.[5]

Although we begin our interpretation of the regulation with its text, the text in this case is not particularly helpful. Nowhere does §1614.105 indicate whether a "matter alleged to be discriminatory" in a constructive-discharge claim includes the employee's resignation, as Green contends, or only the employer's discriminatory conduct, as *amica* contends. The word "matter" simply means "an allegation forming the basis of a claim or defense," Black's Law Dictionary 1126 (10th ed. 2014)—a term that could readily apply to a discrimination-precipitated resignation. So the "matter alleged to be discriminatory" could refer to all of the allegations underlying a claim of discrimination, including the employee's resignation, or only to those allegations concerning

[4] This regulation, applicable to federal employees only, has a statutory analog for private-sector Title VII plaintiffs, who are required to file a charge with the EEOC within 180 or 300 days "after the alleged unlawful employment practice occurred." 42 U. S. C. §2000e–5(e)(1). Although the language is different, the EEOC treats the federal and private-sector employee limitations periods as identical in operation. See EEOC Compliance Manual: Threshold Issues §2–IV(C)(1), n. 179, online at http://www.eeoc.gov/policy/docs/threshold.html (as last visited May 20, 2016).

[5] Green does not contend that his alleged constructive discharge is a "personnel action." See Brief for Petitioner 17–18; *Green* v. *Donahoe*, 760 F. 3d 1135, 1144, n. 3 (CA10 2014). We therefore address the "matter alleged to be discriminatory" clause only.

the employer's discriminatory conduct. We therefore must turn to other canons of interpretation.

The most helpful canon in this context is "the 'standard rule'" for limitations periods. *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 545 U. S. 409, 418 (2005). Ordinarily, a "'limitations period commences when the plaintiff has a complete and present cause of action.'" *Ibid.* "[A] cause of action does not become 'complete and present' for limitations purposes until the plaintiff can file suit and obtain relief." *Bay Area Laundry and Dry Cleaning Pension Trust Fund* v. *Ferbar Corp. of Cal.*, 522 U. S. 192, 201 (1997). Although the standard rule can be displaced such that the limitations period begins to run before a plaintiff can file a suit, we "will not infer such an odd result in the absence of any such indication" in the text of the limitations period. *Reiter* v. *Cooper*, 507 U. S. 258, 267 (1993).

Applying this default rule, we are persuaded that the "matter alleged to be discriminatory" in a constructive-discharge claim necessarily includes the employee's resignation for three reasons. First, in the context of a constructive-discharge claim, a resignation is part of the "complete and present cause of action" necessary before a limitations period ordinarily begins to run. Second, nothing in the regulation creating the limitations period here, § 1614.105, clearly indicates an intent to displace this standard rule. Third, practical considerations confirm the merit of applying the standard rule here. We therefore interpret the term "matter alleged to be discriminatory" for a constructive-discharge claim to include the date Green resigned.

A

The standard rule for limitations periods requires us first to determine what is a "complete and present cause of action" for a constructive-discharge claim. We hold that such a claim accrues only after an employee resigns.

The constructive-discharge doctrine contemplates a situation in which an employer discriminates against an employee to the point such that his "working conditions become so intolerable that a reasonable person in the employee's position would have felt compelled to resign." *Pennsylvania State Police* v. *Suders*, 542 U. S. 129, 141 (2004). When the employee resigns in the face of such circumstances, Title VII treats that resignation as tantamount to an actual discharge. *Id.*, at 142–143.

A claim of constructive discharge therefore has two basic elements. A plaintiff must prove first that he was discriminated against by his employer to the point where a reasonable person in his position would have felt compelled to resign. *Id.*, at 148. But he must also show that he actually resigned. *Ibid.* ("A constructive discharge involves *both* an employee's decision to leave and precipitating conduct . . . " (emphasis added)). In other words, an employee cannot bring a constructive-discharge claim until he is constructively *discharged.* Only after both elements are satisfied can he file suit to obtain relief.

Under the standard rule for limitations periods, the limitations period should begin to run for a constructive-discharge claim only after a plaintiff resigns. At that point—and not before—he can file a suit for constructive discharge. So only at that point—and not before—does he have a "complete and present" cause of action. And only after he has a complete and present cause of action does a limitations period ordinarily begin to run. Cf. *Mac's Shell Service, Inc.* v. *Shell Oil Products Co.*, 559 U. S. 175, 189–190 (2010) (the limitations period for a constructive termination of a franchise agreement starts running when the agreement is constructively terminated).

In this respect, a claim that an employer constructively discharged an employee is no different from a claim that an employer actually discharged an employee. An ordinary wrongful-discharge claim also has two basic elements: dis-

crimination and discharge. See *St. Mary's Honor Center* v. *Hicks*, 509 U. S. 502, 506 (1993); 1 B. Lindemann, P. Grossman, & C. Weirich, Employment Discrimination Law 21–33 (5th ed. 2012) (Lindemann) ("The sine qua non of a discharge case is, of course, a discharge"). The claim accrues when the employee is fired. At that point—and not before—he has a "complete and present cause of action." So at that point—and not before—the limitations period begins to run.

With claims of either constructive discharge or actual discharge, the standard rule thus yields the same result: A limitations period should not begin to run until after the discharge itself. In light of this rule, we interpret the term "matter alleged to be discriminatory" in § 1614.105 to refer to all of the elements that make up a constructive-discharge claim—including an employee's resignation.

B

Although the standard rule dictates that a limitations period should commence only after a claim accrues, there is an exception to that rule when the text creating the limitations period clearly indicates otherwise. See, *e. g.*, *Dodd* v. *United States*, 545 U. S. 353, 360 (2005). Nothing in the text of Title VII or the regulation, however, suggests that the standard rule should be displaced here. To the contrary, the language of the regulation confirms our application of the default rule.

As noted previously, the word "matter" generally refers to "an allegation forming the basis of a claim or defense." Black's Law Dictionary, at 1126. The natural reading of "matter alleged to be discriminatory" thus refers to the allegation forming the basis of the discrimination claim—here, a claim of constructive discharge. And as discussed above, a constructive-discharge claim requires two basic allegations: discriminatory conduct by the employer that leads to resignation of the employee. So long as those acts are part of the same, single claim under consideration, they are part of

the "matter alleged to be discriminatory," whatever the role of discrimination in each individual element of the claim. Cf. *National Railroad Passenger Corporation* v. *Morgan*, 536 U. S. 101, 115–121 (2002) (holding that a hostile-work-environment claim is a single "unlawful employment practice" that includes every act composing that claim, whether those acts are independently actionable or not).

C

Finally, we are also persuaded that applying the standard rule for limitations periods to constructive discharge makes a good deal of practical sense. Starting the limitations clock ticking *before* a plaintiff can actually sue for constructive discharge serves little purpose in furthering the goals of a limitations period—and it actively negates Title VII's remedial structure. Cf. *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 398 (1982) (holding that the Title VII limitations period should be construed to "honor the remedial purpose of the legislation as a whole without negating the particular purpose of the filing requirement").

This Court has recognized "that the limitations perio[d] should not commence to run so soon that it becomes difficult for a layman to invoke the protection of the civil rights statutes." *Delaware State College* v. *Ricks*, 449 U. S. 250, 262, n. 16 (1980). If the limitations period begins to run following the employer's precipitating discriminatory conduct, but before the employee's resignation, the employee will be forced to file a discrimination complaint after the employer's conduct and later amend the complaint to allege constructive discharge after he resigns. Nothing in the regulation suggests it intended to require a layperson, while making this difficult decision, to follow such a two-step process in order to preserve any remedy if he is constructively discharged.

Moreover, forcing an employee to lodge a complaint before he can bring a claim for constructive discharge places that employee in a difficult situation. An employee who suffered

discrimination severe enough that a reasonable person in his shoes would resign might nevertheless force himself to tolerate that discrimination for a period of time. He might delay his resignation until he can afford to leave. Or he might delay in light of other circumstances, as in the case of a teacher waiting until the end of the school year to resign. Tr. 17. And, if he feels he must stay for a period of time, he may be reluctant to complain about discrimination while still employed. A complaint could risk termination—an additional adverse consequence that he may have to disclose in future job applications.

III

Amica and the dissent read "matter alleged to be discriminatory" as having a clear enough meaning to displace our reliance on the standard rule for limitations periods. They argue that "matter" is not equivalent to "claim" or "cause of action," and that the use of the phrase "matter alleged to be discriminatory" is a sufficiently clear statement that the standard claim accrual rule should not apply. According to *amica* and the dissent, "matter" refers only to the discriminatory acts of the Postal Service, not Green's resignation.

We disagree. There is nothing inherent in the phrase "matter alleged to be discriminatory" that clearly limits it to employer conduct. Rather, as discussed above, the term can reasonably be interpreted to include the factual basis for a claim. Green is not alleging just that the Postal Service discriminated against him. He claims that the discrimination left him no choice but to resign.

Amica and the dissent dispute that a constructive discharge is a separate claim. According to *amica* and the dissent, the constructive-discharge doctrine merely allows a plaintiff to expand any underlying discrimination claim to include the damages from leaving his job, thereby increasing his available remedies. See 1 Lindemann 21–49 (constructive discharge allows plaintiff to seek backpay, front pay, or reinstatement). In support of this argument, *amica* and the

dissent emphasize this Court's statement in *Suders* that "[u]nder the constructive discharge doctrine, an employee's reasonable decision to resign because of unendurable working conditions is assimilated to a formal discharge *for remedial purposes*." 542 U. S., at 141 (emphasis added); see also *id.*, at 148 ("[A] constructive discharge is functionally the same as an actual termination in damages-enhancing respects").

But the Court did not hold in *Suders* that a constructive discharge is tantamount to a formal discharge for remedial purposes exclusively. To the contrary, it expressly held that constructive discharge is a claim distinct from the underlying discriminatory act. *Id.*, at 149 (holding that a hostile-work-environment claim is a "lesser included component" of the "*graver* claim of hostile-environment constructive discharge"). This holding was no mere dictum. See *id.*, at 142 ("[A] claim for constructive discharge lies under Title VII"). We see no reason to excise an employee's resignation from his constructive-discharge claim for purposes of the limitations period.

The concurrence sets out a theory that there are two kinds of constructive discharge for purposes of the limitations period: constructive-discharge "claims" where the employer "makes conditions intolerable *with the specific discriminatory intent of forcing the employee to resign*," and constructive-discharge "damages" where the employer does not intend to force the employee to quit, but the discriminatory conditions of employment are so intolerable that the employee quits anyway. *Post*, at 569–574 (ALITO, J., concurring in judgment). According to the concurrence, the limitations period does not begin to run until an employee resigns under the "claim" theory of constructive discharge, but begins at the last discriminatory act before resignation under the "damages" theory.

This sometimes-a-claim-sometimes-not theory of constructive discharge is novel and contrary to the constructive-

discharge doctrine. The whole point of allowing an employee to claim "constructive" discharge is that in circumstances of discrimination so intolerable that a reasonable person would resign, we treat the employee's resignation as though the employer actually fired him. *Suders*, 542 U. S., at 141–143.[6] We do not also require an employee to come forward with proof—proof that would often be difficult to allege plausibly—that not only was the discrimination so bad that he had to quit, but also that his quitting was his employer's plan all along.

Amica and the dissent also argue that their interpretation is more consistent with this Court's prior precedent on when the limitations period begins to run for discrimination claims. Under their interpretation, Green's resignation was not part of the discriminatory "matter," but was instead the mere inevitable consequence of the Postal Service's discriminatory conduct, and therefore cannot be used to extend the

[6] The concurrence suggests that its theory is consistent with statements in the *Suders* opinion that constructive discharge is akin to an actual discharge "'for remedial purposes'" and in "'damages-enhancing respects.'" *Post*, at 573 (opinion of ALITO, J.) (quoting *Suders*, 542 U. S., at 141, 148). This ignores the more obvious explanation for this qualification: The Court was distinguishing between the merits of a claim of constructive discharge generally, where resignation is imputed as a discriminatory act of the employer, and the affirmative defense available to an employer in a hostile-work-environment claim specifically, which allows an employer to defend against a hostile-work-environment claim in certain circumstances if it took no "'official act'" against the employee. *Id.*, at 143–146. The Court in *Suders* recognized that it would be bizarre to always impute resignation as an "official act" of the employer in a constructive-discharge hostile-work-environment case and prohibit the employer from relying on the no-"official-act" defense, because it would make it easier to prove the "graver" claim of a constructive-discharge hostile work environment than to prove a hostile-work-environment claim. *Id.*, at 148–149. Thus, the Court declined to hold that resignation in a constructive-discharge case was categorically an "official act" in all instances. *Ibid.* In other words, the Court sought a measure of parity between constructive discharge and ordinary discrimination—parity that we extend to the limitations period here.

limitations period. See Brief for Court-Appointed *Amica Curiae* in Support of Judgment Below 21–27 (Brief for *Amica Curiae*) (citing *Ledbetter* v. *Goodyear Tire & Rubber Co.*, 550 U. S. 618 (2007), overruled by statute, Lilly Ledbetter Fair Pay Act of 2009, 123 Stat. 5; *Delaware State College* v. *Ricks*, 449 U. S. 250; *United Air Lines, Inc.* v. *Evans*, 431 U. S. 553 (1977)); *post*, at 580–585 (THOMAS, J., dissenting) (citing *Ricks*, 449 U. S. 250, and *Chardon* v. *Fernandez*, 454 U. S. 6 (1981) (*per curiam*)). Similarly, the concurrence argues these cases require that an act done with discriminatory intent must occur within the limitations period. *Post*, at 568 (opinion of ALITO, J.).

But these cases are consistent with the standard rule that a limitations period begins to run after a claim accrues, not after an inevitable consequence of that claim. In *Ricks*, for example, the Court considered the discrimination claim of a college faculty member who was denied tenure and given a 1-year "'terminal'" contract for his last year teaching. 449 U. S., at 258. The plaintiff's claim accrued—and he could have sued—when the college informed him he would be denied tenure and gave him "explicit notice that his employment would end" when his 1-year contract expired. *Ibid.* The Court held that the limitations period began to run on that date, and not after his 1-year contract expired. That final year of teaching was merely an inevitable consequence of the tenure denial the plaintiff claimed was discriminatory.

Green's resignation, by contrast, is not merely an inevitable consequence of the discrimination he suffered; it is an essential part of his constructive-discharge claim. That is, Green could not sue for constructive discharge until he actually resigned. Of course, Green could not resign and then wait until the consequences of that resignation became most painful to complain. For example, he could not use the date of the expiration of his health insurance after his resignation to extend the limitations period. But the "inevitable consequence" principle of *Ricks*, *Ledbetter*, and *Evans* does not

change the focus of the limitations period, which remains on the claim of discrimination itself. See *Lewis* v. *Chicago*, 560 U. S. 205, 214 (2010) (holding *Evans* and its progeny "establish only that a Title VII plaintiff must show a present violation within the limitations period" (internal quotation marks omitted)); *Morgan*, 536 U. S., at 115–121 (holding limitations period for hostile-work-environment claim runs from the last act composing the claim).[7] For a constructive discharge, the claim does not exist until the employee resigns.

Finally, *amica* contends that her interpretation of the regulation better advances the EEOC's goal of promoting conciliation for federal employees through early, informal contact with an EEO counselor. See Exec. Order No. 11478, § 4, 34 Fed. Reg. 12986 (1969) (counseling for federal employees "shall encourage the resolution of employee problems on an informal basis"). The dissent suggests that our holding will make a discrimination victim the master of his complaint, permitting him to "'exten[d] the limitation[s period] indefinitely'" by waiting to resign. *Post*, at 584 (opinion of THOMAS, J.). The concurrence claims that an employee who relies on the limitations period in waiting to resign is "doubly out of luck" if his otherwise-meritorious discrimination claim is time barred and he cannot show the discrimination

[7] The dissent relies on *Morgan*'s other holding that, unlike a hostile-work-environment claim that may comprise many discriminatory acts, discrete claims of discrimination based on independent discriminatory acts cannot be aggregated to extend the limitations period. See *post*, at 581 (opinion of THOMAS, J.) (citing 536 U. S., at 109–113). But this just proves the point: The analysis for the limitations period turns on the nature of the specific legal claim at issue. In *Morgan*, the Court noted that even if a claim of discrimination based on a single discriminatory act is time barred, that same act could still be used as part of the basis for a hostile-work-environment claim, so long as one other act that was part of that same hostile-work-environment claim occurred within the limitations period. *Id.*, at 117 ("It is precisely because the entire hostile work environment encompasses a single unlawful employment practice that we do not hold, as have some of the Circuits, that the plaintiff may not base a suit on individual acts that occurred outside the statute of limitations . . . ").

was so intolerable that it amounted to a constructive discharge. *Post*, at 576 (opinion of ALITO, J.).

These concerns are overblown. *Amica* may be right that it is more difficult to achieve conciliation after an employee resigns. But the same is true for a federal civil servant who is fired by his agency for what the employee believes to be a discriminatory purpose. And neither decision is necessarily permanent—a resignation or a termination may be undone after an employee contacts a counselor. Conciliation, while important, does not warrant treating a constructive discharge different from an actual discharge for purposes of the limitations period.

As for the dissent's fear, we doubt that a victim of employment discrimination will continue to work in an intolerable environment merely because he can thereby extend the limitations period for a claim of constructive discharge. If anything, a plaintiff who wishes to prevail on the merits of his constructive-discharge claim has the opposite incentive. A claim of constructive discharge requires proof of a causal link between the allegedly intolerable conditions and the resignation. See 1 Lindemann 21–45, and n. 106.

And as for the concurrence's double-loser concern, no plaintiff would be well advised to delay pursuing what he believes to be a meritorious non-constructive-discharge-discrimination claim on the ground that a timely filed constructive-discharge claim could resuscitate other time-lapsed claims. The 45-day limitations period begins running on any separate underlying claim of discrimination when that claim accrues, regardless of whether the plaintiff eventually claims constructive discharge. The limitations-period analysis is always conducted claim by claim.

IV

Our decision that a resignation triggers the limitations period for a constructive-discharge claim raises the question of when precisely an employee resigns. Here, Green and the

Government agree that an employee resigns when he gives his employer definite notice of his intent to resign. If an employee gives "two weeks' notice"—telling his employer he intends to leave after two more weeks of employment—the limitations period begins to run on the day he tells his employer, not his last day at work. (This issue was not addressed by the Tenth Circuit and, accordingly, *amica* takes no position on it. See Brief for *Amica Curiae* 42.)

We agree. A notice rule flows directly from this Court's precedent. In *Ricks*, 449 U. S. 250, and *Chardon* v. *Fernandez*, 454 U. S. 6, the Court explained that an ordinary wrongful-discharge claim accrues—and the limitations period begins to run—when the employer notifies the employee he is fired, not on the last day of his employment. *Ricks*, 449 U. S., at 258–259; *Chardon*, 454 U. S., at 8. Likewise, here, we hold that a constructive-discharge claim accrues—and the limitations period begins to run—when the employee gives notice of his resignation, not on the effective date of that resignation.

One factual issue remains: when exactly Green gave the Postal Service notice of his resignation. The Government argues that Green resigned on December 16, 2009—when he signed the settlement agreement—and that his claim is therefore still time barred. Green argues that he did not resign until February 9, 2010—when he submitted his retirement paperwork—and that his claim is therefore timely. We need not resolve this issue. Having concluded that the limitations period for Green's constructive-discharge claim runs from the date he gave notice of his resignation, we leave it to the Tenth Circuit to determine when this in fact occurred.

* * *

For these reasons, we vacate the judgment of the Tenth Circuit and remand the case for further proceedings consistent with this opinion.

So ordered.

JUSTICE ALITO, concurring in the judgment.

In its pursuit of a bright-line limitations rule for constructive discharge claims, the Court loses sight of a bedrock principle of our Title VII cases: An act done with discriminatory intent must have occurred within the limitations period. We have repeatedly held that the time to pursue an employment discrimination claim starts running when a discriminatory act occurs, and that a fresh limitations period does not start upon the occurrence of a later nondiscriminatory act—even if that later act carries forward the effects of the earlier discrimination. See, *e. g.*, *United Air Lines, Inc.* v. *Evans*, 431 U. S. 553, 558 (1977); *Delaware State College* v. *Ricks*, 449 U. S. 250, 257–258 (1980); *Chardon* v. *Fernandez*, 454 U. S. 6, 8 (1981) (*per curiam*); *Lorance* v. *AT&T Technologies, Inc.*, 490 U. S. 900, 907–908, 911 (1989); *National Railroad Passenger Corporation* v. *Morgan*, 536 U. S. 101, 113 (2002); *Ledbetter* v. *Goodyear Tire & Rubber Co.*, 550 U. S. 618, 628 (2007). Without mentioning this consistent line of precedent, the Court categorically declares that the limitations period for constructive discharge cases starts upon the employee's resignation, no matter when the last discriminatory act occurred. This effectively disposes of the discriminatory-intent requirement.

Rather than jettison our precedent, I would hold that the limitations period for constructive discharge claims—like all other employment discrimination claims—starts running upon a discriminatory act of the employer. But I would also hold that an employee's resignation can, in many cases, be considered a discriminatory act of the employer. This is so where an employer subjects an employee to intolerable working conditions *with the discriminatory intent to force the employee to resign*. In these circumstances, the employee's consequent resignation is tantamount to an intentional termination by the employer, and so gives rise to a fresh limitations period just as a conventional termination would. Absent such intent, however, the resignation is not an in-

dependent discriminatory act but merely a delayed consequence of earlier discrimination. The resignation may be a basis for enhancing damages in a claim brought on the underlying discrimination, but it cannot restart the limitations clock.

In this case, Green presented sufficient evidence that the Postal Service intended to force him to resign when it presented him with a settlement agreement requiring that he either retire or transfer to a distant post office for much less pay. Accordingly, the 45-day window for him to initiate counseling opened when he gave the Postal Service notice of his resignation.

I

A

The regulation at issue here requires a federal employee who complains of unlawful discrimination to initiate contact with an Equal Employment Opportunity (EEO) counselor "within 45 days of the date of the matter alleged to be discriminatory." 29 CFR § 1614.105(a)(1) (2015). The Court observes that this language "is not particularly helpful" in resolving the question presented, and so it quickly moves on to other considerations. *Ante*, at 553. I think that more can be discerned from the regulation's text. The Court observes that a "matter" in this context is "an allegation forming the basis of a claim or defense." Black's Law Dictionary 1126 (10th ed. 2014); *ante*, at 553. But the Court fails to plug in the regulation's critical qualifier: The matter must be (alleged to be) *discriminatory*. The phrase "matter alleged to be discriminatory" is thus most fairly read to refer to the allegation *of discrimination* that underlies an employee's claim, not just any fact that supports the claim.

Even if the regulation's text were unclear on this point, the next place I would look is not to a "standard rule" governing limitations periods, as the majority does, *ante*, at 554, but to the specific limitations rules we apply in other Title VII

cases. Private-sector Title VII plaintiffs are required to file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 or 300 days "after the alleged unlawful employment practice occurred." 42 U. S. C. §2000e–5(e)(1); see *Morgan*, *supra* (construing this statutory provision).[1] Although this language is not identical to the regulation at issue here, nothing in either text requires that they be read as setting different rules. Indeed, the EEOC's Compliance Manual treats them the same—it describes the regulation as requiring federal employees to contact a counselor within 45 days of "the alleged discriminatory employment *practice*," and it cites *Morgan* as providing the governing standard.[2] We also granted review in this case on the premise that the same rule would apply to both federal-sector and private-sector Title VII cases: Green's petition and merits brief ask us to decide when the filing period for constructive discharge claims begins as a matter of "federal employment discrimination law" generally, Pet. for Cert. i; Brief for Petitioner i, and the Circuit split he alleges consists primarily of cases in which the limitations period ran from the date of an unlawful employment "practice," see Pet. for Cert. 11–16. The majority, for its part, seems to agree that the same rules should apply in the federal and private sectors, and it too relies on private-sector cases in describing the Circuit split that today's decision is meant to "resolve." *Ante*, at 552, and nn. 2–3, 553, n. 4. The majority's relegation of our Title VII timeliness cases to its rebuttal argument, see *ante*, at 560–562, is thus surprising.

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[1] This 180- or 300-day period is often referred to as the "charging" or "filing" period. See, *e. g.*, *Ledbetter* v. *Goodyear Tire & Rubber Co.*, 550 U. S. 618, 624 (2007); *National Railroad Passenger Corporation* v. *Morgan*, 536 U. S. 101, 117 (2002). Because the 45-day period at issue in this case involves initiating counseling rather than filing a charge, for simplicity I refer to all of these periods as "limitations" periods.

[2] EEOC Compliance Manual: Threshold Issues §2–IV(C)(1), and n. 179 (emphasis added), online at http://www.eeoc.gov/policy/docs/threshold.html (as last visited May 20, 2016).

B

Our Title VII precedents set somewhat different limitations rules for claims based on a discrete act of discrimination (such as termination, failure to hire, or demotion) and claims based on a hostile work environment. I will focus on the former set of rules because Green's resignation was a discrete act that was precipitated by another discrete act—namely, the settlement agreement that required him to retire or transfer to a far-off, lower paying position. For private-sector claims based on discrete acts, the limitations period starts to run on the day the discriminatory act occurred and expires 180 or 300 days later. *Morgan*, 536 U. S., at 110. This means that an act done *with discriminatory intent*—not merely some act bearing on the claim—must have occurred within the limitations period. We therefore held in *Morgan* that "discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges," and that "a time-barred act [cannot] justify filing a charge concerning a termination that was *not independently discriminatory*." *Id.*, at 113 (emphasis added).

We spoke even more directly to the point in *Ledbetter*. There we described "discriminatory intent" as the "defining element" of a Title VII disparate-treatment claim, 550 U. S., at 624, and held that the plaintiff's claim of pay discrimination was untimely because she did not allege that any "intentionally discriminatory conduct occurred during the [limitations] period," *id.*, at 628. Although the plaintiff had suffered lower pay within the limitations period because of earlier alleged discrimination, we explained that under our precedents a new limitations period "does not commenc[e] upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination." *Ibid.* (discussing *Evans*, 431 U. S. 553, *Ricks*, 449 U. S. 250, *Lorance*, 490 U. S. 900, and *Morgan*, *supra*). Relying on nondiscriminatory acts to establish a timely claim, we reasoned, would impermissibly "shift intent from one act

(the act that consummates the discriminatory employment practice) to a later act that was not performed with bias or discriminatory motive. The effect of this shift would be to impose liability in the absence of the requisite intent." 550 U. S., at 629. At the same time, we recognized that when multiple acts that are each "intentionally discriminatory" occur, "a fresh violation takes place"—and thus a new limitations period starts running—"when each act is committed." *Id.*, at 628.[3]

C

These principles lead to the following rule for constructive discharge cases: An employee's resignation triggers a fresh limitations period if the resignation itself constitutes an "intentionally discriminatory" act of the employer. In my view, an employee's resignation in the face of intolerable working conditions can be considered a discriminatory act of the employer when the employer makes conditions intolerable *with the specific discriminatory intent of forcing the employee to resign*. If the employer lacks that intent, however, the limitations period runs from the discriminatory act that precipitated the resignation.

This approach reflects the fact that there are two kinds of constructive discharge. Much of the disagreement between the majority and dissent stems from their differing views of the nature of constructive discharge. To the majority, constructive discharge is always a standalone "claim distinct from the underlying discriminatory act." *Ante*, at 559. To JUSTICE THOMAS and the friend of the Court we appointed to defend the judgment below, constructive discharge is never

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[3] Congress has since abrogated *Ledbetter*'s precise holding in the context of "discrimination in compensation," Lilly Ledbetter Fair Pay Act of 2009, § 3, 123 Stat. 5, codified at 42 U. S. C. § 2000e–5(e)(3)(A), but it did not disturb the reasoning of the precedents on which *Ledbetter* was based. Cf. *Ledbetter*, *supra*, at 627, n. 2 (discussing similar amendment abrogating the precise holding of *Lorance* v. *AT&T Technologies, Inc.*, 490 U. S. 900 (1989)).

a separate claim, but merely "a counterdefense to an employer's contention that a resignation was voluntary" that allows the resigning employee to recover backpay and other relief unavailable to employees who quit voluntarily. *Post*, at 586. As I see it, each side is partly right. The label "constructive discharge" is best understood to refer to two different (though related) concepts, one a distinct claim and one not. This case requires us to distinguish between the two and to "identify with care the specific employment practice that is at issue." *Ledbetter*, *supra*, at 624 (citing *Morgan*, *supra*, at 110–111).

1

The first kind of constructive discharge occurs when an employer subjects an employee to intolerable conditions with the specific discriminatory *intent* of forcing the employee to quit. In this situation, the employer has deliberately terminated the employee—a discrete employment action. The discharge is termed "constructive," however, because it is formally effected by the employee's resignation rather than the employer's pink slip. The termination can nevertheless be considered a discriminatory act of the employer because the employer intends to terminate the employee and—through the imposition of intolerable conditions—forces the employee to "rubberstamp" that decision by resigning. Cf. *Staub* v. *Proctor Hospital*, 562 U. S. 411, 425 (2011) (ALITO, J., concurring in judgment); *id.*, at 419 (majority opinion) ("Animus and responsibility for [an] adverse action can both be attributed to [an] earlier agent . . . if the adverse action is the intended consequence of that agent's discriminatory conduct"). Because the resignation is the "act that consummates the discriminatory employment practice" of terminating the employee, *Ledbetter*, 550 U. S., at 629, it triggers a fresh limitations period. In such cases, the constructive discharge should, like a formal discharge, be treated as a distinct cause of action—what we might call a proper "constructive discharge claim."

The employer's discriminatory intent sometimes will manifest itself only outside the limitations period. Consider, for example, an employer that demotes an employee (say, from executive to office assistant) for discriminatory reasons and with the intent that the loss of prestige will force the employee to quit. By the time the employee finally cracks and resigns, the discriminatory *demotion* may be outside the limitations window and not independently actionable. But the employer's discriminatory intent to *terminate* the employee can carry forward to the eventual resignation. We recognized this possibility in *Ledbetter*. We explained that a plaintiff generally cannot create a timely Title VII claim by "attach[ing]" the discriminatory intent accompanying an act outside the limitations period to another act that occurred within the limitations period. 550 U. S., at 625, 629. At the same time, we acknowledged that "there may be instances where the elements forming a cause of action"—discriminatory intent and an employment action—"span more than 180 days" (that is, the applicable limitations period). *Id.*, at 631, n. 3. In such a case, we said, the limitations period would start to run when "the employment practice was executed," because that is when "[t]he act and intent had . . . been joined." *Ibid.* Under my example, then, the employer "forms an illegal discriminatory intent" to terminate the employee at the time of the demotion, but the termination is not "executed" or "consummate[d]" until the employee resigns some time later. *Ibid.*; *id.*, at 629. Only at that point have the discriminatory intent to terminate and the act of termination been "joined," and therefore only at that point does the limitations period for the wrongful discharge start to run.

2

The second kind of constructive discharge occurs when an employer imposes intolerable conditions for discriminatory reasons but does *not* intend to force an employee to resign.

This is quite different from an ordinary discharge because the critical element of intent is missing. The resignation cannot be considered an intentionally discriminatory act of the employer because it is not something the employer deliberately brought about; it is simply a later-arising consequence of the earlier discrimination. The resignation thus does not trigger a fresh limitations period or give rise to a separate cause of action. See *Evans*, 431 U. S., at 558 (A nondiscriminatory act that "gives present effect to a past act of discrimination" is not actionable); *Ricks*, 449 U. S., at 258 ("[T]he proper focus is upon the time of the *discriminatory acts*, not upon the time at which the *consequences* of the acts became most painful" (internal quotation marks and brackets omitted)); *Ledbetter*, *supra*, at 628 ("A new violation does not occur, and a new [limitations] period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination").

This does not let the employer off the hook. It is still liable for the acts of discrimination that precipitated the resignation, provided that the employee properly and timely challenges them. And in a suit brought on those underlying acts, the resignation—if reasonable—"is assimilated to a formal discharge *for remedial purposes*." *Pennsylvania State Police* v. *Suders*, 542 U. S. 129, 141 (2004) (emphasis added). The resigning employee can recover, as damages for the underlying discrimination, "all damages [that would be] available for formal discharge" but which are normally unavailable to employees who voluntarily quit. *Id.*, at 147, n. 8; see *post*, at 586 (THOMAS, J., dissenting). A resignation that is the reasonable but unintended result of the employer's discriminatory acts thus does not lead to a standalone "constructive discharge claim." Instead, it is a basis for increasing damages on the underlying discrimination claim—what we might call a "constructive discharge damages enhancement." See *Suders*, *supra*, at 148 (analogizing constructive

discharge to "an actual termination in damages-enhancing respects").[4]

The majority asserts that in *Suders* the Court "expressly held" that constructive discharge is always its own distinct claim. *Ante*, at 559. I do not think that the *Suders* Court would have taken such pains to qualify its statements that a constructive discharge is akin to an actual termination "for remedial purposes" and "in damages-enhancing respects," 542 U. S., at 141, 148, had that been its intention. Nor was it necessary for the Court to resolve whether constructive discharge is a separate cause of action or merely a basis for enhancing damages. The majority observes that *Suders* referred to a "claim" for constructive discharge. See *ante*, at 559. But the use of that term does not indicate that constructive discharge is (always) an independent cause of action any more than stray references to a "claim for punitive damages," *e. g.*, *BMW of North America, Inc.* v. *Gore*, 517 U. S. 559, 564 (1996); *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*, 514 U. S. 52, 58 (1995), mean that punitive damages are actionable independent of an underlying tort claim.

The majority also asserts that intent to cause a resignation is unnecessary for a constructive discharge cause of action because the "whole point" of constructive discharge is to treat the resignation like a firing. *Ante*, at 560. I had thought that the "whole point" of a Title VII disparate-treatment claim was to combat *intentional* discrimination. See, *e. g.*, *Watson* v. *Fort Worth Bank & Trust*, 487 U. S. 977, 1002 (1988) (Blackmun, J., joined by Brennan and Marshall, JJ., concurring in part and concurring in judgment) ("[A]

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[4] These enhanced damages would also be available in a suit based on the underlying discrimination where the employer intended to make the employee resign. Intent to force the resignation is necessary to pursue constructive discharge as a separate claim from the underlying discrimination, but it certainly does not prevent an employee from pursuing greater damages for the underlying discrimination on a constructive discharge theory.

disparate-treatment challenge focuses exclusively on the intent of the employer"). A resignation cannot be deemed the equivalent of an actionable intentional termination if the employer lacks intent to terminate. See *Staub*, 562 U. S., at 417–418 (holding that a person who "did not intend to cause [a] dismissal" cannot be deemed "responsible" for the dismissal, even if the dismissal was the "result" or "foreseeable consequence" of the person's actions); see also *id.*, at 417 ("Intentional torts such as this . . . generally require that the actor intend the *consequences* of an act, not simply the act itself" (internal quotation marks omitted)). But as I have explained, a resignation in those circumstances may still be treated like a firing for damages purposes. Our cases demand nothing more.

II

A

The framework I propose respects the fundamental rule that an act done with discriminatory intent must have occurred within the limitations period. It also comports with the default rule that limitations periods start to run when a cause of action accrues. When an employer intends to force an employee to resign, the resignation gives rise to a new cause of action for constructive discharge, with a limitations period that runs from the date of the resignation. But when an employer does not intend to force the employee to resign, the employee's only cause of action is based on the underlying discriminatory acts, and the limitations period runs from the time *that* claim accrued.[5] It is thus entirely unnecessary for the majority to abandon the discriminatory-intent requirement in service of the "standard" limitations rule.

[5] For example, if an unintended resignation was prompted by a discrete act like a humiliating demotion or transfer, the limitations period would run from the date of demotion or transfer. See *Morgan*, 536 U. S., at 110–113. If the resignation was prompted by an intolerable hostile work environment, the limitations period would run from any act that contributed to the hostile work environment. See *id.*, at 117–118.

These two rules fit together perfectly once one appreciates the dual nature of constructive discharge.

It is abundantly clear that the majority has abandoned the discriminatory-intent requirement and would deem a constructive discharge claim timely even if no discriminatory act occurred within the limitations period. The majority admits as much. It declares that the employer's discriminatory conduct and the employee's resignation are both "part of the 'matter alleged to be discriminatory,' " and therefore (in its view) the resignation may trigger the limitations period "*whatever* the role of discrimination in [the resignation] element." *Ante*, at 556–557 (emphasis added). To support this dubious proposition, the majority cites *Morgan*'s holding that an individual act contributing to a hostile work environment need not be independently actionable for the act to start a fresh limitations period. *Ante*, at 557. This analogy is particularly inapt because Green's constructive discharge claim is based on a discrete act, not a hostile work environment. See *supra*, at 568. Even setting that aside, *Morgan* held only that an act contributing to a hostile work environment need not be independently actionable by dint of its *severity*. That is because a hostile work environment claim is based on the "*cumulative* effect of individual acts" that may not " 'sufficiently affect the conditions of employment to implicate Title VII' " unless considered in the aggregate. 536 U. S., at 115 (emphasis added). Nothing in *Morgan* suggests that the limitations period for a hostile work environment claim can run from *an act that is not discriminatory*. To the contrary, the Court referred to individual "act[s] of *harassment*"—such as "racial jokes, . . . racially derogatory acts, . . . negative comments regarding the capacity of blacks to be supervisors, and . . . various racial epithets"—as triggering the limitations period. *Id.*, at 115, 120 (emphasis added).

B

The majority opines that its rule is better for employees because it prevents the limitations period from expiring be-

fore an employee resigns. *Ante*, at 557. Things are not that simple. The majority's rule benefits only those employees who can meet the demanding standard for constructive discharge, while setting a springe for those who cannot. Constructive discharge is an "aggravated" form of discrimination involving truly "intolerable" working conditions that leave an employee no choice but to resign. *Suders*, 542 U. S., at 146–147. This is an objective standard, *id.*, at 141, and what is subjectively intolerable to a particular employee may strike a court or jury as merely unpleasant.

So imagine an employee who is subjected to sexual harassment at her federal workplace but—relying on the majority's rule—does not pursue EEO counseling until 45 days after the harassment leads her to resign. Suppose too that the last act of harassment occurred the day before she resigned. If a court ultimately concludes that the harassment was objectively intolerable and the employee was justified in resigning, she can recover for the constructive discharge. But if it turns out that she has proved only "ordinary discrimination" without the "something more" needed to establish constructive discharge, *id.*, at 147 (internal quotation marks omitted), the employee is doubly out of luck: Not only does her constructive discharge fail on the merits, but any "lesser included" hostile work environment claim that she might have brought (and prevailed on), *id.*, at 149, is time barred. Encouraging employees to wait until after resigning to pursue discrimination claims thus may needlessly deprive unwary discrimination victims of relief.

The better approach is to encourage employees to seek EEO counseling (or, in the private sector, file an EEOC charge) at the earliest opportunity, based on the underlying discriminatory acts.[6] Every allegation of constructive discharge must be based on an actionable discriminatory prac-

[6] The majority seems to agree that employees should promptly challenge the underlying discrimination, see *ante*, at 563, so why it disparages the idea elsewhere in its opinion, see *ante*, at 557, is beyond me.

tice, see *ibid.*; 1 B. Lindemann, P. Grossman, & C. Weirich, Employment Discrimination Law 21–49 (5th ed. 2012), for which the employee can immediately seek counseling and pursue a discrimination claim. If the employee later resigns, he or she can seek damages from the resignation as part of that timely claim. See *supra*, at 572–573, and n. 4. Under the framework I have set forth, an employee who fails to pursue the underlying discrimination claim can still pursue a standalone constructive discharge claim so long as there is sufficient evidence that the employer acted with intent to force the employee to resign. This will often be the case when working conditions are so intolerable that a reasonable employee would be compelled to quit. The employer will usually be aware that conditions are terrible, and "[p]roof that a defendant acted knowingly very often gives rise to a reasonable inference that the defendant also acted purposely." *Loughrin* v. *United States*, 573 U. S. 351, 371 (2014) (ALITO, J., concurring in part and concurring in judgment).[7] But the possibility of recovering damages for only the constructive discharge, and not for discrimination suffered before the resignation, will be an unsatisfactory alternative for many employees who have suffered through unendurable working conditions.

III

It remains to apply the foregoing principles to this case. The Tenth Circuit held that the Postal Service was entitled to summary judgment on its limitations defense. The question therefore is whether Green adduced sufficient evidence

[7] Given this inference, it is hard to see why the majority thinks that it "would often be difficult to allege plausibly" that such an employer intended to force the employee to resign. *Ante*, at 560. It is not inherently more difficult (and it will often be easier) to allege and prove that an employer intended the foreseeable consequences of its actions than it is to allege and prove that an employer acted because of discriminatory animus against an employee's race, sex, religion, or other protected characteristic—a burden every Title VII plaintiff must carry.

from which a jury could reasonably conclude that the Postal Service *intended* to force his resignation when it presented him with the settlement agreement. If so, then the limitations period ran from the date of Green's resignation.

I have little trouble concluding that Green has carried his burden. Indeed, the Postal Service virtually concedes the point. It observes that the agreement expressly stated that Green *would* retire, and provided for his reporting to duty in Wamsutter, Wyoming, only in the event that the retirement fell through. App. 60–61; Brief for Respondent 33. A jury could reasonably conclude that the Postal Service, by offering Green a choice between retiring and taking a lower paying job hundreds of miles away, intended to make him choose retirement. Accordingly, for summary judgment purposes, the 45-day window for contacting an EEO counselor ran from the date on which Green resigned—or, more precisely, the date on which he gave the Postal Service notice of his retirement, see *ante*, at 564.

I am inclined to agree with Green that—viewing the evidence in the light most favorable to him—he did not give notice of his retirement until he submitted his retirement papers, making his claim timely. Although the settlement agreement provided that he would retire, it alternatively allowed him to transfer to Wyoming. Unless Green would have been turned away from the Wamsutter Post Office despite that language had he chosen to go there, it was not until Green submitted his retirement papers that one could say with certainty that his position would be terminated rather than transferred. That said, like the majority I am content to leave this question for the Tenth Circuit to tackle on remand. I accordingly concur in the judgment.

JUSTICE THOMAS, dissenting.

Title VII of the Civil Rights Act of 1964 prohibits employers from engaging in discriminatory acts against their employees. Under a 1992 Equal Employment Opportunity

Commission (EEOC) regulation implementing Title VII, federal employees "who believe they have been discriminated against" "must consult a[n] [EEOC] Counselor prior to filing a complaint in order to try to informally resolve the matter." 29 CFR § 1614.105(a) (2015). In particular, the aggrieved employee "must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory." § 1614.105(a)(1).

Today, the Court holds that a "matter alleged to be discriminatory" includes a matter that is not "discriminatory" at all: a federal employee's decision to quit his job. *Ante*, at 553–554. The majority reaches this conclusion by adopting an atextual reading of the regulation that expands the constructive-discharge doctrine. Consistent with the text of the regulation and history of the constructive-discharge doctrine, I would hold that only an employer's actions may constitute a "matter alleged to be discriminatory." Because the only employer action alleged to be discriminatory here took place more than 45 days before petitioner Marvin Green contacted EEOC, his claims are untimely. I therefore respectfully dissent.

I

The meaning of a "matter alleged to be discriminatory" refers to actions taken by the employer, not the employee. This follows from the ordinary meaning of "matter" and "discriminatory," as well as this Court's precedents.

A

I begin with "'the language [of the regulation] itself and the specific context in which that language is used.'" *McNeill* v. *United States*, 563 U. S. 816, 819 (2011) (brackets omitted). When a word or phrase is left undefined—as "matter alleged to be discriminatory" is—we consider its "ordinary meaning." *Asgrow Seed Co.* v. *Winterboer*, 513 U. S. 179, 187 (1995). A "matter" is "a subject under consideration, esp. involving a dispute or litigation" or "[s]omething

that is to be tried or proved; an allegation forming the basis of a claim or defense." Black's Law Dictionary 992 (7th ed. 1999); 9 Oxford English Dictionary 481 (2d ed. 1989) ("matter" means "[a]n event, circumstance, fact, question, state or course of things, etc., which may be an object of consideration or practical concern; a subject, affair, business"); see *ante*, at 553 (embracing this view). The term "discriminatory" means characterized by differential treatment that lacks a sound justification. See Random House Dictionary of the English Language 564 (2d ed. 1987) ("discriminatory" means "characterized by or showing prejudicial treatment, esp. as an indication of racial, religious, or sexual bias"); B. Garner, A Dictionary of Modern Legal Usage 191 (1987) ("discriminatory" means "applying discrimination in treatment, esp. on ethnic grounds"); Black's Law Dictionary, at 479 ("discrimination" means characterized by "[d]ifferential treatment; esp., a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored"). Thus, a "matter alleged to be discriminatory" means an employee's allegation that he was treated in an unjustifiably differential manner.

In the context of employment discrimination, only an employer can discriminate against—or apply unjustifiable differential treatment to—an employee.[1] An employee cannot plausibly be said to discriminate against himself. It therefore makes no sense to say that an employee's act of quitting constitutes an action in which he was treated in a differential manner that lacked a sound justification.

And, it does not make any more sense to say that an employee's decision to quit is itself "discriminatory" simply because it may result from antecedent discriminatory conduct. As two of our precedents—*National Railroad Passenger Corporation* v. *Morgan*, 536 U. S. 101 (2002), and *Delaware State College* v. *Ricks*, 449 U. S. 250 (1980)—illustrate, the

[1] Title VII defines the term "employer" to include "agent[s]" of the employer. 42 U. S. C. § 2000e(b).

"matter alleged to be discriminatory" is the *reason* the employee quit, and not the quitting itself.

In *Morgan*, we rejected the argument that a phrase similar to "matter alleged to be discriminatory"—namely, an " 'alleged unlawful employment practice' "—"connotes an ongoing violation that can endure or recur over a period of time." 536 U. S., at 109–111. We held that discrete discriminatory acts of the employer occurring outside a filing period were not actionable, even if connected to other acts within the period. *Id.*, at 113. The word "practice," we explained, did not "conver[t] related discrete acts into a single unlawful practice for the purposes of timely filing." *Id.*, at 111. The same is true of the word "matter." See, *e. g.*, EEOC Compliance Manual: Threshold Issues §2–IV(C)(1), n. 179 (equating "matter alleged to be discriminatory" with "the alleged discriminatory employment practice"), online at http://www.eeoc.gov/policy/docs/threshold.html (as last visited Mar. 29, 2016).

Ricks complements *Morgan* by holding that discrimination occurs when an employer takes some adverse action against the employee, and not when the employee feels the consequences of that action. 449 U. S., at 257–258. In *Ricks*, we considered the timeliness of an EEOC complaint that a professor filed after he was allegedly denied tenure on account of his national origin. *Id.*, at 252–254. The employer offered him a contract to teach one more year after it denied tenure. *Id.*, at 255. The professor contended that his claim did not accrue until his 1-year contract expired, because the offer of the contract constituted a " 'continuing violation.' " *Id.*, at 257. We rejected that argument and explained that "[m]ere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination." *Ibid.*; see also *Chardon* v. *Fernandez*, 454 U. S. 6, 8 (1981) (*per curiam*) (holding that claims of administrators of the Puerto Rican Department of Education were untimely because their claims accrued when they received

notice that they would be fired and not on the effective date of their terminations).

The alleged employer conduct that most immediately prompted Green's decision to quit was the Postal Service's request on or about December 15, 2009, that he sign a settlement agreement. See App. 17, ¶72; *id.*, at 19, ¶83. It is irrelevant whether Green's decision to quit "g[a]v[e] present effect to the past illegal act[s] and therefore perpetuate[d] the consequences of forbidden discrimination." *Ricks*, *supra*, at 258 (internal quotation marks omitted). Because the Postal Service's December 15 request is the "matter alleged to be discriminatory," Green had 45 days from December 15 to initiate contact with EEOC.[2] Because he was 52 days late in doing so, his claim was untimely.

B

The majority reaches the opposite conclusion for three reasons. None withstands scrutiny.

First, the majority observes that the text of the regulation is "not particularly helpful" because the word "matter" simply means "'an allegation forming the basis of a claim or defense,'" which "could readily apply to a discrimination-precipitated resignation." *Ante*, at 553. Thus, the majority contends, "matter" could "reasonably be interpreted to include the factual basis for a claim," which, in its view, includes Green's decision to resign. *Ante*, at 558. But, as explained, that interpretation does not grapple with the entire phrase, "matter *alleged to be discriminatory*," which does

[2] Title VII does not provide federal employees with a cause of action for retaliation. *Ante*, at 551, n. 1. Title VII's federal-sector provision incorporates certain private-sector provisions related to discrimination but does not incorporate the provision prohibiting retaliation in the private sector. See 42 U. S. C. §2000e–16(d) (incorporating §§2000e–5(f) to (k) but not §2000e–3(a), which forbids private-sector retaliation). In light of this text, I have grave doubts that Green—as a federal employee—has a claim for retaliation. But because the parties do not raise this issue, and the majority leaves it open, I need not resolve it.

not encompass the subsequent nondiscriminatory actions that the employee takes.

Second, the majority contends that the "standard rule for limitations periods" informs its understanding of 29 CFR § 1614.105. *Ante*, at 554 (internal quotation marks omitted). Under this rule, the majority contends, a limitations period does not begin to run until there is a "complete and present cause of action." *Ibid.* (internal quotation marks omitted). The majority concludes that there is no "complete and present cause of action" for constructive discharge until "an employee resigns." *Ibid.* (internal quotation marks omitted).

Even assuming that an employee's resignation was an essential part of a constructive-discharge "claim" (but see Part II, *infra*) the "standard rule" is merely a "default" rule. *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 545 U. S. 409, 418 (2005). That "default rule" does not apply, however, where—as here—the text confirms that the limitations period begins to run *before* the cause of action accrues.

Pillsbury v. *United Engineering Co.*, 342 U. S. 197 (1952), confirms this point. In that case, the Court considered a statute that provided that "'[t]he right to compensation for disability . . . shall be barred unless a claim therefor is filed within one year after the injury.'" *Id.*, at 197 (quoting 33 U. S. C. § 913(a) (1952 ed.)). The Court held that the 1-year period began at the time of injury, not when the employee later became disabled as a result of the injury, and concluded that "Congress meant what it said when it limited recovery to one year from date of injury, and 'injury' does not mean 'disability.'" 342 U. S., at 200. Although that reading meant that "an employee [could] be barred from filing his claim before his right to file it arises," the Court refused to "rewrite the statute of limitations" to avoid that result. *Id.*, at 199–200; see also, *e. g.*, *Dodd* v. *United States*, 545 U. S. 353, 357–360 (2005) (giving effect to the clear text of a limitations provision even though that reading "ma[de] it difficult"

for certain movants "to obtain relief" and could lead to "harsh results").

Like the limitations provision in *Pillsbury*, 29 CFR § 1614.105 makes clear that the limitations period could begin before any constructive-discharge claim accrues, lest "what was intended to be a limitation [be] no limitation at all." 342 U. S., at 200. The regulation instructs that the limitations period begins to run when the "matter alleged to be discriminatory" occurs—*i. e.*, the discriminatory conduct of the employer. To say that this includes Green's resignation could "have the effect of extending the limitation indefinitely." *Ibid.*; see Part I–A, *supra*.

Finally, the majority downplays *Morgan* and *Ricks* by claiming that Green's resignation was "not merely an inevitable consequence of the discrimination he suffered; it is an essential part of his constructive-discharge claim." *Ante*, at 561. "[A] claim that an employer constructively discharged an employee," the majority contends, "is no different from a claim that an employer actually discharged an employee." *Ante*, at 555. This reasoning cannot be reconciled with the regulatory text and fails to grapple with our precedents. By isolating Green's late response to the settlement agreement rather than his employer's alleged coercion of Green to sign that agreement, the majority ignores the discriminatory act and bestows on Green an advantage that other employees subject to wrongful discrimination do not have. Had Green signed termination papers rather than settlement papers, there would be no question about the untimeliness of his claims. As in *Ricks*, the time for Green's claim would have begun to run when his employer discriminated against him, even if the termination was not effective until months later. 449 U. S., at 257; see also *Chardon*, 454 U. S., at 8 (same). But today, the majority decides that Green's claim is different. In doing so, the majority elevates constructive discharge to the status of a super termination capable of ex-

tending a limitations period far beyond the time the employer acted discriminatorily.

II

The majority's error is not merely one of regulatory misinterpretation. By misreading the regulation, the majority expands the constructive-discharge doctrine beyond its original bounds. In particular, the majority cements the (mistaken) notion that constructive discharge is an independent cause of action—and not a mere counterdefense—by unjustifiably focusing on an employee's response to an employer's conduct. See, *e. g.*, *ante*, at 555–562. In doing so, the majority exacerbates the problems that *Pennsylvania State Police* v. *Suders*, 542 U. S. 129 (2004), first created in adopting a capacious definition of "constructive discharge."

A

In holding that a discrimination claim based on constructive discharge accrues when an employee resigns, the majority wrongly assumes that constructive discharge is a separate claim equivalent to an actual discharge under Title VII. *Ante*, at 558–559. But the constructive-discharge doctrine is best understood as "a counter-defense to the employer[']s defense that the worker [voluntarily] quit," and not a separate claim. *EEOC* v. *R. J. Gallagher Co.*, 959 F. Supp. 405, 408 (SD Tex. 1997), vacated in part on other grounds, 181 F. 3d 645 (CA5 1999).

The National Labor Relations Board (NLRB) developed the constructive-discharge doctrine in the 1930's "to address situations in which employers coerced employees to resign, often by creating intolerable working conditions, in retaliation for employees' engagement in collective activities." *Suders*, *supra*, at 141; see also Shuck, Comment, That's It, I Quit: Returning to First Principles in Constructive Discharge Doctrine, 23 Berkeley J. Empl. & Lab. L. 401, 406–

407 (2002). An employee who voluntarily quit usually lost the right to backpay and other remedies, whereas an employee who was fired for discriminatory reasons did not. See *id.*, at 403. The constructive-discharge doctrine enabled courts to provide a remedy to those employees who voluntarily quit based on the fiction that their decision to quit was not actually voluntary. See *ibid.*; *Suders*, *supra*, at 147, n. 8. Thus, as it was originally conceived, constructive discharge was not an independent cause of action but instead a counter-defense to an employer's contention that a resignation was voluntary and, thus, should "factor into the damages." *Knabe* v. *Boury Corp.*, 114 F. 3d 407, 408, n. 1 (CA3 1997); see also *Russ* v. *Van Scoyoc Assoc., Inc.*, 122 F. Supp. 2d 29, 35–36 (DC 2000) (collecting cases). So understood, an employee's resignation does not complete any cause of action, and thus does not trigger the limitations period.

The majority contends that *Suders* marked a departure from this original conception of constructive discharge by "expressly h[o]ld[ing] that constructive discharge is a claim distinct from the underlying discriminatory act." *Ante*, at 559. But, that case does not resolve the issue one way or the other. To be sure, *Suders* contains a few statements suggesting that constructive discharge is a claim. As the majority points out, for example, *Suders* states that a hostile work environment claim is less "grav[e]" than a "*claim* of hostile-environment constructive discharge," and "a claim for constructive discharge lies under Title VII." *Ante*, at 559 (citing *Suders*, 542 U. S., at 142, 149; emphasis added); see also *id.*, at 133 (referring to "sexual harassment/constructive discharge claim"); *id.*, at 143 (referring to "constructive discharge claims"). At the same time, however, the question at issue in *Suders* was the availability of affirmative defenses. In that vein, *Suders* held only that employers could avail themselves of those defenses if an "official act" of the company "d[id] not underlie the constructive discharge." *Id.*, at 148. There are also statements throughout the *Su-*

ders opinion that are flatly inconsistent with the reading that the majority suggests. For example, it points out that an employee's resignation is "assimilated to a formal discharge" for "*remedial purposes*," without mentioning liability. *Id.*, at 141 (emphasis added); see also *id.*, at 147, n. 8 (noting that "a prevailing constructive discharge plaintiff is entitled to all damages available for formal discharge," including "backpay" and sometimes "frontpay"); *id.*, at 148 ("[A] constructive discharge is functionally the same as an actual termination in *damages-enhancing respects*" (emphasis added)). In short, *Suders* does not resolve whether constructive discharge depends on the underlying discriminatory act. And, it does not hold that constructive discharge is a cause of action that is distinct from the underlying discrimination claim.

B

The majority today not only exploits *Suders*' imprecision about whether constructive discharge is an independent claim, but also takes advantage of that opinion's ambiguity as to what an employee must establish to invoke the doctrine. In *Suders*, I objected to the Court's statement that the constructive-discharge doctrine encompasses those situations in which "working conditions become so intolerable that a reasonable person in the employee's position would have felt compelled to resign." *Id.*, at 141. That description does "not in the least resemble actual discharge" because it permits an employee "to allege a constructive discharge absent any adverse employment action" and absent any employer intent to cause a resignation. *Id.*, at 153–154 (THOMAS, J., dissenting).

Despite the *Suders* Court's overly broad description of the doctrine, the Court at least retained some focus on an employer's conduct. The Court in *Suders* explained that whether to "assimilat[e]" a constructive discharge "to a formal discharge for remedial purposes" entailed an "objective" inquiry that focused on the "working conditions" themselves.

Id., at 141. And, it held that an employer could raise certain affirmative defenses to stave off liability when no official action forced an employee to resign. *Id.*, at 147.

Today, the majority goes even further than *Suders* in eviscerating the limitations on the constructive-discharge doctrine. The majority's rule transforms constructive discharge into a claim focused on the employee's conduct, instead of the employer's. Green does not allege that, after he signed the settlement agreement, any other act—by a supervisor or even a co-worker—occurred or otherwise immediately precipitated his decision to quit. See App. 19, ¶¶83–85. The majority's holding—that Green's claim accrued when he resigned—must rest then on Green's own subjective feelings about the forced settlement. By ignoring the date on which an employer's discriminatory act occurred and instead focusing only on an employee's subjective response to that discriminatory act (see *ante*, at 560–562), the majority dispenses with the function of an employer's conduct. The effect of the majority's analysis, then, is that constructive discharge no longer involves any sort of objective inquiry.

I cannot agree. The concept of constructive discharge is already on tenuous footing. It is not based on the text of Title VII but instead on the fiction that an employee's resignation can be attributed to his employer in limited circumstances. As initially conceived by the NLRB, this fictitious attribution could be justified if an employer's unlawful employment practice, "*standing alone*, render[ed] an employee's resignation reasonable and [thus] entitle[d] the employee to backpay." Shuck, 23 Berkeley J. Empl. & Lab. L., at 409 (emphasis added); see, *e. g.*, *In re Waples-Platter Co.*, 49 N. L. R. B. 1156, 1174–1175 (1943) (concluding that it was reasonable *per se* for the employees to quit in light of the nature of the employer's intentional, discriminatory transfers). Such attribution cannot be justified, however, where—as here—the constructive discharge accrues based

solely on an employee's subjective response to alleged discrimination.

* * *

Because Green has not proffered any evidence that discrimination continued to occur after he signed the settlement agreement, his contact with EEOC was untimely under 29 CFR § 1614.105. Accordingly, I would affirm the judgment of the Court of the Appeals.

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UNITED STATES ARMY CORPS OF ENGINEERS *v.* HAWKES CO., INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 15–290. Argued March 30, 2016—Decided May 31, 2016

The Clean Water Act regulates "the discharge of any pollutant" into "the waters of the United States." 33 U. S. C. §§ 1311(a), 1362(7), (12). When property contains such waters, landowners who discharge pollutants without a permit from the Army Corps of Engineers risk substantial criminal and civil penalties, §§ 1319(c), (d), while those who do apply for a permit face a process that is often arduous, expensive, and long. It can be difficult to determine in the first place, however, whether "waters of the United States" are present. During the time period relevant to this case, for example, the Corps defined that term to include all wetlands, the "use, degradation or destruction of which could affect interstate or foreign commerce." 33 CFR § 328.3(a)(3). Because of that difficulty, the Corps allows property owners to obtain a standalone "jurisdictional determination" (JD) specifying whether a particular property contains "waters of the United States." § 331.2. A JD may be either "preliminary," advising a property owner that such waters "may" be present, or "approved," definitively "stating the presence or absence" of such waters. *Ibid.* An "approved" JD is considered an administratively appealable "final agency action," §§ 320.1(a)(6), 331.2, and is binding for five years on both the Corps and the Environmental Protection Agency, 33 CFR pt. 331, App. C; EPA, Memorandum of Agreement: Exemptions Under Section 404(F) of the Clean Water Act § VI–A.

Respondents, three companies engaged in mining peat, sought a permit from the Corps to discharge material onto wetlands located on property that respondents own and hope to mine. In connection with the permitting process, respondents obtained an approved JD from the Corps stating that the property contained "waters of the United States" because its wetlands had a "significant nexus" to the Red River of the North, located some 120 miles away. After exhausting administrative remedies, respondents sought review of the approved JD in Federal District Court under the Administrative Procedure Act (APA), but the District Court dismissed for want of jurisdiction, holding that the revised JD was not a "final agency action for which there is no other adequate remedy in a court," 5 U. S. C. § 704. The Eighth Circuit reversed.

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Held: The Corps' approved JD is a final agency action judicially reviewable under the APA. Pp. 597–602.

(a) In general, two conditions must be satisfied for an agency action to be "final" under the APA: "First, the action must mark the consummation of the agency's decisionmaking process," and "second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett* v. *Spear*, 520 U. S. 154, 177–178. Pp. 597–600.

(1) An approved JD satisfies *Bennett*'s first condition. It clearly "mark[s] the consummation" of the Corps' decisionmaking on the question whether a particular property does or does not contain "waters of the United States." It is issued after extensive factfinding by the Corps regarding the physical and hydrological characteristics of the property, see U. S. Army Corps of Engineers, Jurisdictional Determination Form Instructional Guidebook 47–60, and typically remains valid for a period of five years, see 33 CFR pt. 331, App. C. The Corps itself describes approved JDs as "final agency action." *Id.* § 320.1(a)(6). Pp. 597–598.

(2) The definitive nature of approved JDs also gives rise to "direct and appreciable legal consequences," thereby satisfying *Bennett*'s second condition as well. 520 U. S., at 178. A "negative" JD—*i. e.*, an approved JD stating that property does not contain jurisdictional waters—creates a five-year safe harbor from civil enforcement proceedings brought by the Government and limits the potential liability a property owner faces for violating the Clean Water Act. See 33 U. S. C. §§ 1319, 1365(a). Each of those effects is a legal consequence. It follows that an "affirmative" JD, like the one issued here, also has legal consequences: It deprives property owners of the five-year safe harbor that "negative" JDs afford. This conclusion tracks the "pragmatic" approach the Court has long taken to finality. *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 149. Pp. 598–600.

(b) A "final" agency action is reviewable under the APA only if there are no adequate alternatives to APA review in court. The Corps contends that respondents have two such alternatives: They may proceed without a permit and argue in a Government enforcement action that a permit was not required, or they may complete the permit process and then seek judicial review, which, the Corps suggests, is what Congress envisioned. Neither alternative is adequate. Parties need not await enforcement proceedings before challenging final agency action where such proceedings carry the risk of "serious criminal and civil penalties." *Abbott*, 387 U. S., at 153. And the permitting process is not only costly and lengthy, but also irrelevant to the finality of the approved JD and its suitability for judicial review. Furthermore, because the Clean

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Water Act makes no reference to standalone jurisdictional determinations, there is little basis for inferring anything from it concerning their reviewability. Given "the APA's presumption of reviewability for all final agency action," *Sackett* v. *EPA*, 566 U. S. 120, 129, "[t]he mere fact" that permitting decisions are reviewable is insufficient to imply "exclusion as to other[ ]" agency actions, such as approved JDs, *Abbott*, 387 U. S., at 141. Pp. 600–602.

782 F. 3d 994, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which KENNEDY, THOMAS, BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. KENNEDY, J., filed a concurring opinion, in which THOMAS and ALITO, JJ., joined, *post*, p. 602. KAGAN, J., filed a concurring opinion, *post*, p. 603. GINSBURG, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 604.

Deputy Solicitor General Stewart argued the cause for petitioner. With him on the briefs were *Solicitor General Verrilli*, *Assistant Attorney General Cruden*, *Ginger D. Anders*, *Aaron P. Avila*, *Jennifer Scheller Neumann*, *Robert J. Lundman*, and *David R. Cooper*.

M. Reed Hopper argued the cause for respondents. With him on the brief were *Mark Miller*, *Nancy Quattlebaum Burke*, and *Gregory R. Mertz*.*

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*Briefs of *amici curiae* urging affirmance were filed for the State of North Dakota et al. by *Wayne Stenehjem*, Attorney General of North Dakota, *Jennifer L. Verleger* and *Margaret I. Olson*, Assistant Attorneys General, and *Paul M. Seby*, Special Assistant Attorney General, and by the Attorneys General and other officials for their respective States as follows: *Craig W. Richards* of Alaska, *Cynthia H. Coffman* of Colorado, *Lawrence G. Wasden* of Idaho, and *Douglas M. Conde*, Deputy Attorney General, *Douglas J. Peterson* of Nebraska, *Dave Bydalek*, Deputy Attorney General, and *Justin D. Lavene*, Assistant Attorney General, and *Marty J. Jackley* of South Dakota; for the State of West Virginia et al. by *Patrick Morrisey*, Attorney General of West Virginia, *Elbert Lin*, Solicitor General, and *Erica N. Peterson* and *J. Zak Ritchie*, Assistant Attorneys General, by *Mike DeWine*, Attorney General of Ohio, and *Eric E. Murphy*, State Solicitor, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Mark Brnovich* of Arizona, *Leslie Rutledge* of Arkansas, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *Gregory F. Zoeller* of Indiana, *Derek Schmidt* of Kansas, *Andy*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Clean Water Act regulates the discharge of pollutants into "the waters of the United States." 33 U. S. C. §§ 1311(a), 1362(7), (12). Because it can be difficult to determine whether a particular parcel of property contains such waters, the U. S. Army Corps of Engineers will issue to property owners an "approved jurisdictional determination" stating the agency's definitive view on that matter. See 33 CFR § 331.2 and pt. 331, App. C (2015). The question presented is whether that determination is final agency action judicially reviewable under the Administrative Procedure Act, 5 U. S. C. § 704.

Beshear of Kentucky, *Bill Schuette* of Michigan, *Jim Hood* of Mississippi, *Chris Koster* of Missouri, *Timothy C. Fox* of Montana, *Adam Paul Laxalt* of Nevada, *Roy Cooper* of North Carolina, *E. Scott Pruitt* of Oklahoma, *Alan Wilson* of South Carolina, *Herbert H. Slatery III* of Tennessee, *Ken Paxton* of Texas, *Sean D. Reyes* of Utah, *Brad D. Schimel* of Wisconsin, and *Peter K. Michael* of Wyoming; for the American Farm Bureau Federation et al. by *Timothy S. Bishop, Michael B. Kimberly, Ellen Steen, Michael E. Kennedy,* and *Quentin Riegel*; for the California Farm Bureau Federation et al. by *Peter Prows*; for the Cato Institute by *Ilya Shapiro*; for the Cause of Action Institute by *Alfred J. Lechner, Jr.*; for the Chamber of Commerce of the United States of America by *Michael H. Park, William S. Consovoy, J. Michael Connolly, Kate Comerford Todd,* and *Warren Postman*; for the Council of State Governments et al. by *Joseph W. Jacquot, Lisa E. Soronen,* and *Michael D. Leffel*; for the Foundation for Environmental and Economic Progress et al. by *Virginia S. Albrecht, Deidre G. Duncan, Andrew J. Turner, Karma B. Brown,* and *Kristy A. N. Bulleit*; for the Mountain States Legal Foundation by *Steven J. Lechner*; for the National Association of Home Builders et al. by *Thomas J. Ward, Jeffrey B. Augello,* and *Ralph Holmen*; for the National Federation of Independent Business Small Business Legal Center by *Karen R. Harned* and *Luke A. Wake*; for the Ohio Chamber of Commerce et al. by *J. Van Carson, Karen A. Winters,* and *Douglas A. McWilliams*; for the Southeastern Legal Foundation by *Kimberly S. Hermann*; and for Ernest M. Park et al. by *Martin S. Kaufman.*

John C. Eastman and *Anthony T. Caso* filed a brief for the Center for Constitutional Jurisprudence as *amicus curiae.*

I

A

The Clean Water Act prohibits "the discharge of any pollutant" without a permit into "navigable waters," which it defines, in turn, as "the waters of the United States." 33 U. S. C. §§ 1311(a), 1362(7), (12). During the time period relevant to this case, the U. S. Army Corps of Engineers defined the waters of the United States to include land areas occasionally or regularly saturated with water—such as "mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, [and] playa lakes"—the "use, degradation or destruction of which could affect interstate or foreign commerce." 33 CFR § 328.3(a)(3) (2012). The Corps has applied that definition to assert jurisdiction over "270-to-300 million acres of swampy lands in the United States—including half of Alaska and an area the size of California in the lower 48 States." *Rapanos* v. *United States*, 547 U. S. 715, 722 (2006) (plurality opinion).[1]

It is often difficult to determine whether a particular piece of property contains waters of the United States, but there are important consequences if it does. The Clean Water Act imposes substantial criminal and civil penalties for discharging any pollutant into waters covered by the Act without a permit from the Corps. See 33 U. S. C. §§ 1311(a), 1319(c), (d), 1344(a). The costs of obtaining such a permit are significant. For a specialized "individual" permit of the sort at issue in this case, for example, one study found that the average applicant "spends 788 days and $271,596 in completing the process," without "counting costs of mitigation or design

[1] In 2015, the Corps adopted a new rule modifying the definition of the scope of waters covered by the Clean Water Act in light of scientific research and decisions of this Court interpreting the Act. See Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37054, 37055–37056. That rule is currently stayed nationwide, pending resolution of claims that the rule is arbitrary, capricious, and contrary to law. See *In re EPA*, 803 F. 3d 804, 807–809 (CA6 2015).

changes." *Rapanos*, 547 U. S., at 721. Even more readily available "general" permits took applicants, on average, 313 days and $28,915 to complete. *Ibid.* See generally 33 CFR § 323.2(h) (limiting "general" permits to activities that "cause only minimal individual and cumulative environmental impacts").

The Corps specifies whether particular property contains "waters of the United States" by issuing "jurisdictional determinations" (JDs) on a case-by-case basis. § 331.2. JDs come in two varieties: "preliminary" and "approved." *Ibid.* While preliminary JDs merely advise a property owner "that there *may* be waters of the United States on a parcel," approved JDs definitively "stat[e] the presence or absence" of such waters. *Ibid.* (emphasis added). Unlike preliminary JDs, approved JDs can be administratively appealed and are defined by regulation to "constitute a Corps final agency action." §§ 320.1(a)(6), 331.2. They are binding for five years on both the Corps and the Environmental Protection Agency, which share authority to enforce the Clean Water Act. See 33 U. S. C. §§ 1319, 1344(s); 33 CFR pt. 331, App. C; EPA, Memorandum of Agreement: Exemptions Under Section 404(F) of the Clean Water Act § VI–A (1989) (Memorandum of Agreement).

B

Respondents are three companies engaged in mining peat in Marshall County, Minnesota. Peat is an organic material that forms in waterlogged grounds, such as wetlands and bogs. See Xuehui & Jinming, Peat and Peatlands, in 2 Coal, Oil Shale, Natural Bitumen, Heavy Oil and Peat 267–272 (G. Jinsheng ed. 2009) (Peat and Peatlands). It is widely used for soil improvement and burned as fuel. *Id.*, at 277. It can also be used to provide structural support and moisture for smooth, stable greens that leave golfers with no one to blame but themselves for errant putts. See Monteith & Welton, Use of Peat and Other Organic Materials on Golf Courses, 13 Bulletin of the United States Golf Association

Green Section 90, 95–100 (1933). At the same time, peat mining can have significant environmental and ecological impacts, see Peat and Peatlands 280–281, and therefore is regulated by both federal and state environmental protection agencies, see, *e. g.*, Minn. Stat. § 103G.231 (2014).

Respondents own a 530-acre tract near their existing mining operations. The tract includes wetlands, which respondents believe contain sufficient high quality peat, suitable for use in golf greens, to extend their mining operations for 10 to 15 years. App. 8, 14–15, 31.

In December 2010, respondents applied to the Corps for a Section 404 permit for the property. *Id.*, at 15. A Section 404 permit authorizes "the discharge of dredged or fill material into the navigable waters at specified disposal sites." 33 U. S. C. § 1344(a). Over the course of several communications with respondents, Corps officials signaled that the permitting process would be very expensive and take years to complete. The Corps also advised respondents that, if they wished to pursue their application, they would have to submit numerous assessments of various features of the property, which respondents estimate would cost more than $100,000. App. 16–17, 31–35.

In February 2012, in connection with the permitting process, the Corps issued an approved JD stating that the property contained "water of the United States" because its wetlands had a "significant nexus" to the Red River of the North, located some 120 miles away. *Id.*, at 13, 18, 20. Respondents appealed the JD to the Corps' Mississippi Valley Division Commander, who remanded for further factfinding. On remand, the Corps reaffirmed its original conclusion and issued a revised JD to that effect. *Id.*, at 18–20; App. to Pet. for Cert. 44a–45a.

Respondents then sought judicial review of the revised JD under the Administrative Procedure Act (APA), 5 U. S. C. § 500 *et seq.* The District Court dismissed for want of subject matter jurisdiction, holding that the revised JD was not

"final agency action for which there is no other adequate remedy in a court," as required by the APA prior to judicial review, 5 U. S. C. § 704. 963 F. Supp. 2d 868, 872, 878 (Minn. 2013). The Court of Appeals for the Eighth Circuit reversed, 782 F. 3d 994, 1002 (2015), and we granted certiorari, 577 U. S. 1046 (2015).

II

The Corps contends that the revised JD is not "final agency action" and that, even if it were, there are adequate alternatives for challenging it in court. We disagree at both turns.

A

In *Bennett* v. *Spear*, 520 U. S. 154 (1997), we distilled from our precedents two conditions that generally must be satisfied for agency action to be "final" under the APA. "First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Id.*, at 177–178 (internal quotation marks and citation omitted).[2]

The Corps does not dispute that an approved JD satisfies the first *Bennett* condition. Unlike preliminary JDs—which are "advisory in nature" and simply indicate that "there may be waters of the United States" on a parcel of property, 33 CFR § 331.2—an approved JD clearly "mark[s] the consummation" of the Corps' decisionmaking process on that question, *Bennett*, 520 U. S., at 178 (internal quotation marks omitted). It is issued after extensive factfinding by the Corps regarding the physical and hydrological characteristics of the property, see U. S. Army Corps of Engineers,

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[2] Because we determine that a JD satisfies both prongs of *Bennett*, we need not consider respondents' argument that an agency action that satisfies only the first may also constitute final agency action. See Brief for Respondents 19–20.

Jurisdictional Determination Form Instructional Guidebook 47–60 (2007), and is typically not revisited if the permitting process moves forward. Indeed, the Corps itself describes approved JDs as "final agency action," see 33 CFR § 320.1(a)(6), and specifies that an approved JD "will remain valid for a period of five years," Corps, Regulatory Guidance Letter No. 05–02, § 1(a), p. 1 (June 14, 2005) (2005 Guidance Letter); see also 33 CFR pt. 331, App. C.

The Corps may revise an approved JD within the five-year period based on "new information." 2005 Guidance Letter § 1(a), at 1. That possibility, however, is a common characteristic of agency action, and does not make an otherwise definitive decision nonfinal. See *Sackett* v. *EPA*, 566 U. S. 120, 127 (2012); see also *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 981 (2005). By issuing respondents an approved JD, the Corps for all practical purposes "has ruled definitively" that respondents' property contains jurisdictional waters. *Sackett*, 566 U. S., at 131 (GINSBURG, J., concurring).

The definitive nature of approved JDs also gives rise to "direct and appreciable legal consequences," thereby satisfying the second prong of *Bennett*. 520 U. S., at 178. Consider the effect of an approved JD stating that a party's property does *not* contain jurisdictional waters—a "negative" JD, in Corps parlance. As noted, such a JD will generally bind the Corps for five years. See 33 CFR pt. 331, App. C; 2005 Guidance Letter § 1. Under a longstanding memorandum of agreement between the Corps and EPA, it will also be "binding on the Government and represent the Government's position in any subsequent Federal action or litigation concerning that final determination." Memorandum of Agreement §§ IV–C–2, VI–A. A negative JD thus binds the two agencies authorized to bring civil enforcement proceedings under the Clean Water Act, see 33 U. S. C. § 1319, creating a five-year safe harbor from such proceedings for a property owner. Additionally, although the property owner may

still face a citizen suit under the Act, such a suit—unlike actions brought by the Government—cannot impose civil liability for wholly past violations. See §§ 1319(d), 1365(a); *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation, Inc.*, 484 U. S. 49, 58–59 (1987). In other words, a negative JD both narrows the field of potential plaintiffs and limits the potential liability a landowner faces for discharging pollutants without a permit. Each of those effects is a "legal consequence[ ]" satisfying the second *Bennett* prong. 520 U. S., at 178; see also *Sackett*, 566 U. S., at 126.

It follows that affirmative JDs have legal consequences as well: They represent the denial of the safe harbor that negative JDs afford. See 5 U. S. C. § 551(13) (defining "agency action" to include an agency "rule, order, license, sanction, relief, or the equivalent," or the "denial thereof"). Because "legal consequences . . . flow" from approved JDs, they constitute final agency action. *Bennett*, 520 U. S., at 178 (internal quotation marks omitted).[3]

This conclusion tracks the "pragmatic" approach we have long taken to finality. *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 149 (1967). For example, in *Frozen Food Express* v. *United States*, 351 U. S. 40 (1956), we considered the finality of an order specifying which commodities the Interstate Commerce Commission believed were exempt by statute from regulation, and which it believed were not. Although the order "had no authority except to give notice of how the Commission interpreted" the relevant statute, and "would have effect only if and when a particular action was brought

[3] The Corps asserts that the memorandum of agreement addresses only "special case" JDs, rather than "mine-run" ones "of the sort at issue here." Reply Brief 12, n. 3. But the memorandum plainly makes binding "[a]ll final determinations," whether in "[s]pecial" or "[n]on-special" cases. Memorandum of Agreement §§ IV–C, VI–A; see also Corps, Memorandum of Understanding Geographical Jurisdiction of the Section 404 Program, 45 Fed. Reg. 45019, n. 1 (1980) ("[U]nder this [memorandum], except in special cases previously agreed to, the [Corps] is authorized to make a final determination . . . and such determination shall be binding.").

against a particular carrier," *Abbott*, 387 U. S., at 150, we held that the order was nonetheless immediately reviewable, *Frozen Food*, 351 U. S., at 44–45. The order, we explained, "warns every carrier, who does not have authority from the Commission to transport those commodities, that it does so at the risk of incurring criminal penalties." *Id.*, at 44. So too here, while no administrative or criminal proceeding can be brought for failure to conform to the approved JD itself, that final agency determination not only deprives respondents of a five-year safe harbor from liability under the Act, but warns that if they discharge pollutants onto their property without obtaining a permit from the Corps, they do so at the risk of significant criminal and civil penalties.

B

Even if final, an agency action is reviewable under the APA only if there are no adequate alternatives to APA review in court. 5 U. S. C. § 704. The Corps contends that respondents have two such alternatives: either discharge fill material without a permit, risking an EPA enforcement action during which they can argue that no permit was required, or apply for a permit and seek judicial review if dissatisfied with the results. Brief for Petitioner 45–51.

Neither alternative is adequate. As we have long held, parties need not await enforcement proceedings before challenging final agency action where such proceedings carry the risk of "serious criminal and civil penalties." *Abbott*, 387 U. S., at 153. If respondents discharged fill material without a permit, in the mistaken belief that their property did not contain jurisdictional waters, they would expose themselves to civil penalties of up to $37,500 for each day they violated the Act, to say nothing of potential criminal liability. See 33 U. S. C. §§ 1319(c), (d); *Sackett*, 566 U. S., at 123, n. 1 (citing 74 Fed. Reg. 626, 627 (2009)). Respondents need not assume such risks while waiting for EPA to "drop the hammer" in order to have their day in court. *Sackett*, 566 U. S., at 127.

Nor is it an adequate alternative to APA review for a landowner to apply for a permit and then seek judicial review in the event of an unfavorable decision. As Corps officials indicated in their discussions with respondents, the permitting process can be arduous, expensive, and long. See *Rapanos*, 547 U. S., at 721 (plurality opinion). On top of the standard permit application that respondents were required to submit, see 33 CFR §325.1(d) (detailing contents of permit application), the Corps demanded that they undertake, among other things, a "hydrogeologic assessment of the rich fen system including the mineral/nutrient composition and pH of the groundwater; groundwater flow spatially and vertically; discharge and recharge areas"; a "functional/resource assessment of the site including a vegetation survey and identification of native fen plan communities across the site"; an "inventory of similar wetlands in the general area (watershed), including some analysis of their quality"; and an "inventory of rich fen plant communities that are within sites of High and Outstanding Biodiversity Significance in the area." App. 33–34. Respondents estimate that undertaking these analyses alone would cost more than $100,000. *Id.*, at 17. And whatever pertinence all this might have to the issuance of a permit, none of it will alter the finality of the approved JD, or affect its suitability for judicial review. The permitting process adds nothing to the JD.

The Corps nevertheless argues that Congress made the "evident[]" decision in the Clean Water Act that a coverage determination would be made "as part of the permitting process, and that the property owner would obtain any necessary judicial review of that determination at the conclusion of that process." Brief for Petitioner 46. But as the Corps acknowledges, the Clean Water Act makes no reference to standalone jurisdictional determinations, *ibid.*, so there is little basis for inferring anything from it concerning the reviewability of such distinct final agency action. And given "the APA's presumption of reviewability for all final agency

action," *Sackett*, 566 U. S., at 129, "[t]he mere fact" that permitting decisions are "reviewable should not suffice to support an implication of exclusion as to other[ ]" agency actions, such as approved JDs, *Abbott*, 387 U. S., at 141 (internal quotation marks omitted); see also *Sackett*, 566 U. S., at 129 ("[I]f the express provision of judicial review in one section of a long and complicated statute were alone enough to overcome the APA's presumption of reviewability . . . , it would not be much of a presumption at all").

Finally, the Corps emphasizes that seeking review in an enforcement action or at the end of the permitting process would be the only available avenues for obtaining review "[i]f the Corps had never adopted its practice of issuing standalone jurisdictional determinations upon request." Reply Brief 3; see also *id.*, at 4, 23. True enough. But such a "count your blessings" argument is not an adequate rejoinder to the assertion of a right to judicial review under the APA.

The judgment of the Court of Appeals for the Eighth Circuit is affirmed.

It is so ordered.

JUSTICE KENNEDY, with whom JUSTICE THOMAS and JUSTICE ALITO join, concurring.

My join extends to the Court's opinion in full. The following observation seems appropriate not to qualify what the Court says but to point out that, based on the Government's representations in this case, the reach and systemic consequences of the Clean Water Act remain a cause for concern. As JUSTICE ALITO has noted in an earlier case, the Act's reach is "notoriously unclear" and the consequences to landowners even for inadvertent violations can be crushing. See *Sackett* v. *EPA*, 566 U. S. 120, 132 (2012) (concurring opinion).

An approved jurisdictional determination (JD) gives a landowner at least some measure of predictability, so long as the agency's declaration can be relied upon. Yet, the Government has represented in this litigation that a JD has

no legally binding effect on the Environmental Protection Agency's (EPA) enforcement decisions. It has stated that the memorandum of agreement between the EPA and the Army Corps of Engineers, which today's opinion relies on, does not have binding effect and can be revoked or amended at the EPA's unfettered discretion. Reply Brief 12; Tr. of Oral Arg. 16. If that were correct, the Act's ominous reach would again be unchecked by the limited relief the Court allows today. Even if, in an ordinary case, an agency's internal agreement with another agency cannot establish that its action is final, the Court is right to construe a JD as binding in light of the fact that in many instances it will have a significant bearing on whether the Clean Water Act comports with due process.

The Act, especially without the JD procedure were the Government permitted to foreclose it, continues to raise troubling questions regarding the Government's power to cast doubt on the full use and enjoyment of private property throughout the Nation.

JUSTICE KAGAN, concurring.

I join the Court's opinion in full. I write separately to note that for me, unlike for JUSTICE GINSBURG, see *post*, at 604 (opinion concurring in part and concurring in judgment), the memorandum of agreement between the Army Corps of Engineers and the Environmental Protection Agency is central to the disposition of this case. For an agency action to be final, "the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett* v. *Spear*, 520 U. S. 154, 178 (1997). As the Court states, the memorandum of agreement establishes that jurisdictional determinations (JDs) are "binding on the Government and represent the Government's position in any subsequent Federal action or litigation concerning that final determination." Memorandum of Agreement §§ IV–C–2, VI–A; *ante*, at 598 (majority opinion).

A negative JD thus prevents the Corps and EPA—the two agencies with authority to enforce the Clean Water Act—from bringing a civil action against a property owner for the JD's entire 5-year lifetime. *Ante*, at 598–599, and n. 3. The creation of that safe harbor, which binds the agencies in any subsequent litigation, is a "direct and appreciable legal consequence[ ]" satisfying the second prong of *Bennett*. 520 U. S., at 178.

JUSTICE GINSBURG, concurring in part and concurring in the judgment.

I join the Court's opinion, save for its reliance upon the memorandum of agreement between the Army Corps of Engineers and the Environmental Protection Agency. *Ante*, at 598–599, and n. 3 (construing the memorandum to establish that Corps jurisdictional determinations (JDs) are binding on the Federal Government in litigation for five years). The Court received scant briefing about this memorandum, and the United States does not share the Court's reading of it. See Reply Brief 12, n. 3 (memorandum "does not address mine-run Corps jurisdictional determinations of the sort at issue here"); Tr. of Oral Arg. 7 (same); *id.*, at 9 (reading of the memorandum to establish that JDs have binding effect in litigation does not "reflec[t] current government policy"). But the JD at issue is "definitive," not "informal" or "tentative," *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 151 (1967), and has "an immediate and practical impact," *Frozen Food Express* v. *United States*, 351 U. S. 40, 44 (1956). See also *ante*, at 599–600.*

Accordingly, I agree with the Court that the JD is final.

**Bennett* v. *Spear*, 520 U. S. 154, 178 (1997), contrary to JUSTICE KAGAN's suggestion, *ante*, at 603 and this page (concurring opinion), does not displace or alter the approach to finality established by *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 149–151 (1967), and *Frozen Food Express* v. *United States*, 351 U. S. 40, 44 (1956). *Bennett* dealt with finality quickly, and did not cite those pathmarking decisions.

Syllabus

JOHNSON, WARDEN *v.* LEE

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15–789. Decided May 31, 2016

Under California's "*Dixon* bar," a defendant procedurally defaults a claim raised for the first time on state collateral review if he could have raised it earlier on direct appeal. Respondent Lee was convicted of first-degree murder. She sought federal habeas review, raising mostly new claims that she had not raised on direct appeal in state court. The District Court stayed the proceedings to allow Lee to pursue the new claims in a state habeas petition. The California Supreme Court denied her petition in a summary order citing *Dixon*. Lee returned to the District Court, which dismissed her new claims as procedurally defaulted. Lee then challenged the *Dixon* bar's adequacy, citing 9 cases out of 210 summary denials on a single day in which the California Supreme Court failed to cite *Dixon* where it should have been applied. The Ninth Circuit reversed and remanded to permit the warden to submit contrary evidence. The warden submitted a study analyzing more than 4,700 summary habeas denials showing that the California Supreme Court cited *Dixon* in nearly 12% of all denials. Based on this evidence, the District Court found the *Dixon* bar adequate. The Ninth Circuit again reversed, holding that the *Dixon* bar was irregularly applied.

Held: Because California's *Dixon* bar is both "firmly established and regularly followed," *Beard* v. *Kindler*, 558 U. S. 53, 60, it is an "'adequate' procedural ground" capable of barring federal habeas review, *Walker* v. *Martin*, 562 U. S. 307, 316. It is "firmly established" because it was decided decades before Lee's procedural default and reaffirmed in two other cases. And the State Supreme Court's repeated *Dixon* citations prove that the bar is "regularly followed." Nine purportedly missing *Dixon* citations in a 1-day sample of summary orders hardly support an inference of inconsistency. California's rule is not unique. Federal and state habeas courts across the country follow the same rule. And nothing suggests that California courts apply the rule in a way that disfavors federal claims.

The Ninth Circuit's contrary reasoning is unpersuasive and inconsistent with this Court's precedents. The bar's simplicity of application does not imply that missing citations reflect state-court inconsistency. Since the bar has several exceptions, the State Supreme Court can

hardly be faulted for failing to cite *Dixon* whenever a petitioner raises a claim that he could have raised on direct appeal. And California courts need not address procedural default before reaching the merits, so the purportedly missing citations show nothing. The Ninth Circuit's attempt to distinguish *Martin* and *Kindler* on the ground that California's *Dixon* bar is "mandatory" rather than discretionary also fails.

Certiorari granted; 788 F. 3d 1124, reversed and remanded.

PER CURIAM.

Federal habeas courts generally refuse to hear claims "defaulted . . . in state court pursuant to an independent and adequate state procedural rule." *Coleman* v. *Thompson*, 501 U. S. 722, 750 (1991). State rules count as "adequate" if they are "firmly established and regularly followed." *Walker* v. *Martin*, 562 U. S. 307, 316 (2011) (internal quotation marks omitted). Like all States, California requires criminal defendants to raise available claims on direct appeal. Under the so-called "*Dixon* bar," a defendant procedurally defaults a claim raised for the first time on state collateral review if he could have raised it earlier on direct appeal. See *In re Dixon*, 41 Cal. 2d 756, 759, 264 P. 2d 513, 514 (1953). Yet, in this case, the Ninth Circuit held that the *Dixon* bar is inadequate to bar federal habeas review. Because California's procedural bar is longstanding, oft-cited, and shared by habeas courts across the Nation, this Court now summarily reverses the Ninth Circuit's judgment.

I

Respondent Donna Kay Lee and her boyfriend Paul Carasi stabbed to death Carasi's mother and his ex-girlfriend. A California jury convicted the pair of two counts each of first-degree murder. Carasi received a death sentence, and Lee received a sentence of life without the possibility of parole. In June 1999, Lee unsuccessfully raised four claims on direct appeal. After the California appellate courts affirmed, Lee skipped state postconviction review and filed the federal habeas petition at issue. See 28 U. S. C. § 2254(a). The peti-

tion raised mostly new claims that Lee failed to raise on direct appeal. Because Lee had not exhausted available state-court remedies, however, the District Court temporarily stayed federal proceedings to allow Lee to pursue her new claims in a state habeas petition. The California Supreme Court denied Lee's petition in a summary order citing *Dixon*.

Having exhausted state remedies, Lee returned to federal court to litigate her federal habeas petition. The District Court dismissed her new claims as procedurally defaulted. Then, for the first time on appeal, Lee challenged the *Dixon* bar's adequacy. In her brief, Lee presented a small sample of the California Supreme Court's state habeas denials on a single day about six months after her default. Lee claimed that out of the 210 summary denials on December 21, 1999, the court failed to cite *Dixon* in 9 cases where it should have been applied. The court instead denied the nine petitions without any citation at all. In Lee's view, these missing citations proved that the California courts inconsistently applied the *Dixon* bar. Without evaluating this evidence, the Ninth Circuit reversed and remanded "to permit the Warden to submit evidence to the contrary, and for consideration by the district court in the first instance." *Lee* v. *Jacquez*, 406 Fed. Appx. 148, 150 (2010).

On remand, the warden submitted a study analyzing more than 4,700 summary habeas denials during a nearly 2-year period around the time of Lee's procedural default. From August 1998 to June 2000, the study showed, the California Supreme Court cited *Dixon* in approximately 12% of all denials—more than 500 times. In light of this evidence, the District Court held that the *Dixon* bar is adequate.

The Ninth Circuit again reversed. *Lee* v. *Jacquez*, 788 F. 3d 1124 (2015). Lee's 1-day sample proved the *Dixon* bar's inadequacy, the court held, because the "failure to cite *Dixon* where *Dixon* applies . . . reflects [its] irregular application." 788 F. 3d, at 1130. The general 12% citation rate

proved nothing, the court reasoned, because the warden "d[id] not purport to show to how many cases the *Dixon* bar *should* have been applied." *Id.*, at 1133. In the Ninth Circuit's view, without this "baseline number" the warden's 2-year study was "entirely insufficient" to prove *Dixon*'s adequacy. 788 F. 3d, at 1133.

II

The Ninth Circuit's decision profoundly misapprehends what makes a state procedural bar "adequate." That question is a matter of federal law. *Lee* v. *Kemna*, 534 U. S. 362, 375 (2002). "To qualify as an 'adequate' procedural ground," capable of barring federal habeas review, "a state rule must be 'firmly established and regularly followed.' " *Martin*, *supra*, at 316 (quoting *Beard* v. *Kindler*, 558 U. S. 53, 60 (2009)).

California's *Dixon* bar satisfies both adequacy criteria. It is "firmly established" because, decades before Lee's June 1999 procedural default, the California Supreme Court warned defendants in plain terms that, absent "special circumstances," habeas "will not lie where the claimed errors could have been, but were not, raised upon a timely appeal from a judgment of conviction." *Dixon*, *supra*, at 759, 264 P. 2d, at 514. And the California Supreme Court eliminated any arguable ambiguity surrounding this bar by reaffirming *Dixon* in two cases decided before Lee's default. See *In re Harris*, 5 Cal. 4th 813, 825, n. 3, 829–841, 855 P. 2d 391, 395, n. 3, 398–407 (1993); *In re Robbins*, 18 Cal. 4th 770, 814–815, and n. 34, 959 P. 2d 311, 340–341, and n. 34 (1998).

The California Supreme Court's repeated *Dixon* citations also prove that the bar is "regularly followed." *Martin* recently held that another California procedural bar—a rule requiring prisoners to file state habeas petitions promptly—met that requirement because "[e]ach year, the California Supreme Court summarily denies hundreds of habeas petitions by citing" the timeliness rule. 562 U. S., at 318. The same goes for *Dixon*. Nine purportedly missing *Dixon*

citations from Lee's 1-day sample of summary orders hardly support an inference of inconsistency. See *Dugger* v. *Adams*, 489 U. S. 401, 410, n. 6 (1989) (holding that the Florida Supreme Court applied its similar procedural bar "consistently and regularly" despite "address[ing] the merits in several cases raising [new] claims on postconviction review"). Indeed, all nine orders in that sample were denials. None ignored the *Dixon* bar to *grant* relief, so there is no sign of inconsistency.

Nor is California's rule unique. Federal and state habeas courts across the country follow the same rule as *Dixon*. "The general rule in federal habeas cases is that a defendant who fails to raise a claim on direct appeal is barred from raising the claim on collateral review." *Sanchez-Llamas* v. *Oregon*, 548 U. S. 331, 350–351 (2006). Likewise, state postconviction remedies generally "may not be used to litigate claims which were or could have been raised at trial or on direct appeal." 1 D. Wilkes, State Postconviction Remedies and Relief Handbook § 1:2, p. 3 (2015–2016 ed.). It appears that every State shares this procedural bar in some form. See Brief for State of Alabama et al. as *Amici Curiae* 1, n. 2 (collecting citations). For such well-established and ubiquitous rules, it takes more than a few outliers to show inadequacy. Federal habeas courts must not lightly "disregard state procedural rules that are substantially similar to those to which we give full force in our own courts." *Kindler*, 558 U. S., at 62. And it would be "[e]ven stranger to do so with respect to rules in place in nearly every State." *Ibid.* Nothing suggests, moreover, that California courts apply the *Dixon* bar in a way that disfavors federal claims. The Court therefore holds that it qualifies as adequate to bar federal habeas review.

III

The Ninth Circuit's contrary reasoning is unpersuasive and inconsistent with this Court's precedents. Applying the *Dixon* bar may be a "straightforward" or "mechanica[l]"

task for state courts. 788 F. 3d, at 1130. But simplicity does not imply that missing citations reflect state-court inconsistency. To begin with, since the *Dixon* bar has several exceptions, see *Robbins*, *supra*, at 814–815, and n. 34, 959 P. 2d, at 340–341, and n. 34, the California Supreme Court can hardly be faulted for failing to cite *Dixon* whenever a petitioner raises a claim that he could have raised on direct appeal.

More importantly, California courts need not address procedural default before reaching the merits, so the purportedly missing citations show nothing. Cf. *Bell* v. *Cone*, 543 U. S. 447, 451, n. 3 (2005) (*per curiam*) (declining to address the warden's procedural-default argument); *Lambrix* v. *Singletary*, 520 U. S. 518, 525 (1997) (explaining that "[j]udicial economy might counsel" bypassing a procedural-default question if the merits "were easily resolvable against the habeas petitioner"). Ordinarily, "procedural default . . . is not a jurisdictional matter." *Trest* v. *Cain*, 522 U. S. 87, 89 (1997). As a result, the appropriate order of analysis for each case remains within the state courts' discretion. Such discretion will often lead to "seeming inconsistencies." *Martin*, 562 U. S., at 320, and n. 7. But that superficial tension does not make a procedural bar inadequate. "[A] state procedural bar may count as an adequate and independent ground for denying a federal habeas petition even if the state court had discretion to reach the merits despite the default." *Id.*, at 311; see *Kindler*, *supra*, at 60–61.

The Ninth Circuit's attempt to get around *Martin* and *Kindler* fails. The Court of Appeals distinguished those cases on the ground that California's *Dixon* bar is "mandatory" rather than discretionary because it involves a discretion-free general rule, notwithstanding exceptions that might involve discretion. 788 F. 3d, at 1130. The Court assumes, without deciding, that this description is accurate and the *Dixon* bar's exceptions leave some room for discretion. Even so, there is little difference between discretion exer-

cised through an otherwise adequate procedural bar's exceptions and discretion that is a part of the bar itself. In any event, the Ninth Circuit's reasoning ignores the state courts' discretion to assume, without deciding, that a claim is not procedurally defaulted and instead hold that the claim lacks merit.

The Ninth Circuit was accordingly wrong to dismiss the 500-plus summary denials citing *Dixon* simply because they do not reveal which cases potentially implicate the bar. 788 F. 3d, at 1133. *Martin* already rejected this precise reasoning. There, the habeas petitioner unsuccessfully argued that "[u]se of summary denials makes it impossible to tell why the California Supreme Court decides some delayed petitions on the merits and rejects others as untimely." 562 U. S., at 319 (internal quotation marks omitted). So too here, "[w]e see no reason to reject California's [procedural] bar simply because a court may opt to bypass the [*Dixon*] assessment and summarily dismiss a petition on the merits, if that is the easier path." *Ibid.*

By treating every missing citation as a sign of inconsistency, the Court of Appeals "pose[d] an unnecessary dilemma" for California. *Kindler*, 558 U. S., at 61. The court forced the State to choose between the "finality of [its] judgments" and a burdensome opinion-writing requirement. *Ibid.*; see *Martin*, *supra*, at 312–313 (noting that the California Supreme Court "rules on a staggering number of habeas petitions each year"); *Harrington* v. *Richter*, 562 U. S. 86, 99 (2011) (discussing the advantages of summary dispositions). "[F]ederal courts have no authority," however, "to impose mandatory opinion-writing standards on state courts" as the price of federal respect for their procedural rules. *Johnson* v. *Williams*, 568 U. S. 289, 300 (2013). The Ninth Circuit's decision is thus fundamentally at odds with the "federalism and comity concerns that motivate the adequate state ground doctrine in the habeas context." *Kindler*, *supra*, at 62.

Per Curiam

* * *

"A State's procedural rules are of vital importance to the orderly administration of its criminal courts; when a federal court permits them to be readily evaded, it undermines the criminal justice system." *Lambrix*, *supra*, at 525. Here, the Ninth Circuit permitted California prisoners to evade a well-established procedural bar that is adequate to bar federal habeas review. The petition for a writ of certiorari and respondent's motion to proceed *in forma pauperis* are granted. The judgment of the Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Per Curiam

LYNCH *v.* ARIZONA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

No. 15–8366. Decided May 31, 2016

Petitioner Lynch was convicted of first-degree murder and other crimes. In seeking the death penalty, Arizona moved to prevent Lynch from informing the jury that the only alternative sentence to death was life without the possibility of parole. The court granted the motion, and Lynch was eventually sentenced to death. On appeal, Lynch argued that the trial court had violated *Simmons* v. *South Carolina*, 512 U. S. 154, in which this Court held that where a capital defendant's future dangerousness is at issue and state law prohibits his release on parole, due process entitles him to inform the sentencing jury that he is parole ineligible. The Arizona Supreme Court found that the State had put Lynch's future dangerousness at issue during the penalty phase and had acknowledged that Lynch's only alternative sentence was life imprisonment without parole. Nonetheless, the court affirmed, holding that the failure to give the *Simmons* instruction was not error.

Held: Lynch was entitled to inform the jury that he was parole ineligible. The Arizona Supreme Court's contrary conclusion conflicts with *Simmons* and its progeny. Under Arizona law, the only kind of release for which Lynch would have been eligible is executive clemency, and *Simmons* expressly rejected the argument that the possibility of clemency diminishes a capital defendant's right to inform a jury of his parole ineligibility. See 512 U. S., at 166. *Simmons* also forecloses the argument that the potential for the state legislature to create a parole system in the future, thus rendering Lynch parole eligible, justifies refusing a parole-ineligibility instruction. *Ibid.*

Certiorari granted; 238 Ariz. 84, 357 P. 3d 119, reversed and remanded.

PER CURIAM.

Under *Simmons* v. *South Carolina*, 512 U. S. 154 (1994), and its progeny, "where a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death available to the jury is life imprisonment without possibility of parole," the Due Process Clause "entitles the defendant 'to inform the jury of [his] parole ineligibility, either

by a jury instruction or in arguments by counsel.' " *Shafer* v. *South Carolina*, 532 U. S. 36, 39 (2001) (quoting *Ramdass* v. *Angelone*, 530 U. S. 156, 165 (2000) (plurality opinion)). In the decision below, the Arizona Supreme Court found that the State had put petitioner Shawn Patrick Lynch's future dangerousness at issue during his capital sentencing proceeding and acknowledged that Lynch's only alternative sentence to death was life imprisonment without parole. 238 Ariz. 84, 103, 357 P. 3d 119, 138 (2015). But the court nonetheless concluded that Lynch had no right to inform the jury of his parole ineligibility. *Ibid.* The judgment is reversed.

A jury convicted Lynch of first-degree murder, kidnaping, armed robbery, and burglary for the 2001 killing of James Panzarella. The State sought the death penalty. Before Lynch's penalty phase trial began, Arizona moved to prevent his counsel from informing the jury that the only alternative sentence to death was life without the possibility of parole. App. K to Pet. for Cert. The court granted the motion.

Lynch's first penalty phase jury failed to reach a unanimous verdict. A second jury was convened and sentenced Lynch to death. On appeal, the Arizona Supreme Court vacated the sentence because the jury instructions improperly described Arizona law. The court did not address Lynch's alternative argument that the trial court had violated *Simmons*. On remand, a third penalty phase jury sentenced Lynch to death.

The Arizona Supreme Court affirmed, this time considering and rejecting Lynch's *Simmons* claim. The court agreed that, during the third penalty phase, "[t]he State suggested . . . that Lynch could be dangerous." 238 Ariz., at 103, 357 P. 3d, at 138. The court also recognized that Lynch was parole ineligible: Under Arizona law, "parole is available only to individuals who committed a felony before January 1, 1994," and Lynch committed his crimes in 2001. *Ibid.* (citing Ariz. Rev. Stat. Ann. § 41–1604.09(I) (1999)). Nevertheless,

while "[a]n instruction that parole is not currently available would be correct," the court held that "the failure to give the *Simmons* instruction was not error." 238 Ariz., at 103, 357 P. 3d, at 138.

That conclusion conflicts with this Court's precedents. In *Simmons*, as here, a capital defendant was ineligible for parole under state law. 512 U. S., at 156 (plurality opinion). During the penalty phase, the State argued that the jurors should consider the defendant's future dangerousness when determining the proper punishment. *Id.*, at 157. But the trial court refused to permit defense counsel to tell the jury that the only alternative sentence to death was life without parole. *Id.*, at 157, 160. The Court reversed, reasoning that due process entitled the defendant to rebut the prosecution's argument that he posed a future danger by informing his sentencing jury that he is parole ineligible. *Id.*, at 161–162; *id.*, at 178 (O'Connor, J., concurring in judgment). The Court's opinions reiterated that holding in *Ramdass*, *Shafer*, and *Kelly* v. *South Carolina*, 534 U. S. 246 (2002).

The Arizona Supreme Court thought Arizona's sentencing law sufficiently different from the others this Court had considered that *Simmons* did not apply. It relied on the fact that, under state law, Lynch could have received a life sentence that would have made him eligible for "release" after 25 years. 238 Ariz., at 103–104, 357 P. 3d, at 138–139; § 13–751(A). But under state law, the only kind of release for which Lynch would have been eligible—as the State does not contest—is executive clemency. See Pet. for Cert. 22; 238 Ariz., at 103–104, 357 P. 3d, at 138–139. And *Simmons* expressly rejected the argument that the possibility of clemency diminishes a capital defendant's right to inform a jury of his parole ineligibility. There, South Carolina had argued that the defendant need not be allowed to present this information to the jury "because future exigencies," including "commutation [and] clemency," could one day "allow [him] to

be released into society." 512 U. S., at 166 (plurality opinion). The Court disagreed: "To the extent that the State opposes even a simple parole-ineligibility instruction because of hypothetical future developments, the argument has little force." *Ibid.*; *id.*, at 177 (opinion of O'Connor, J.) (explaining that the defendant had a right "to bring his parole ineligibility to the jury's attention" and that the State could respond with "truthful information regarding the availability of commutation, pardon, and the like").

The State responds that *Simmons* "'applies only to instances where, as a legal matter, there is *no possibility* of parole.'" Brief in Opposition 11 (quoting *Ramdass*, *supra*, at 169 (plurality opinion)). Notwithstanding the fact that Arizona law currently prevents all felons who committed their offenses after 1993 from obtaining parole, 238 Ariz., at 103, 357 P. 3d, at 138, Arizona reasons that "nothing prevents the legislature from creating a parole system in the future for which [Lynch] would have been eligible had the court sentenced him to life with the possibility of release after 25 years." Brief in Opposition 12.

This Court's precedents also foreclose that argument. *Simmons* said that the potential for future "legislative reform" could not justify refusing a parole-ineligibility instruction. 512 U. S., at 166 (plurality opinion). If it were otherwise, a State could always argue that its legislature might pass a law rendering the defendant parole eligible. Accordingly, as this Court later explained, "the dispositive fact in *Simmons* was that the defendant conclusively established his parole ineligibility under state law at the time of his trial." *Ramdass*, 530 U. S., at 171 (plurality opinion). In this case, the Arizona Supreme Court confirmed that parole was unavailable to Lynch under its law. *Simmons* and its progeny establish Lynch's right to inform his jury of that fact.

The petition for writ of certiorari and the motion for leave to proceed *in forma pauperis* are granted. The judgment

of the Arizona Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting.

Petitioner Shawn Patrick Lynch and his co-conspirator, Michael Sehwani, met their victim, James Panzarella, at a Scottsdale bar on March 24, 2001. The three went back to Panzarella's house early the next morning. Around 5 a.m., Sehwani called an escort service. The escort and her bodyguard arrived soon after. Sehwani paid her $300 with two checks from Panzarella's checkbook after spending an hour with her in the bedroom. Lynch and Sehwani then left the house with Panzarella's credit and debit cards and embarked on a spending spree.

The afternoon of March 25, someone found Panzarella's body bound to a metal chair in his kitchen. His throat was slit. Blood surrounded him on the tile floor. The house was in disarray. Police discovered a hunting knife in the bedroom. A knife was also missing from the kitchen's knife-block. And there were some receipts from Lynch and Sehwani's spending spree.

Police found Lynch and Sehwani at a motel two days after the killing. They had spent the days with Panzarella's credit and debit cards buying cigarettes, matches, gas, clothing, and Everlast shoes, renting movies at one of the motels where they spent an afternoon, and making cash withdrawals. When police found the pair, Sehwani wore the Everlast shoes, and Lynch's shoes were stained with Panzarella's blood. A sweater, also stained with his blood, was in the back seat of their truck, as were Panzarella's car keys.

A jury convicted Lynch of first-degree murder, kidnaping, armed robbery, and burglary, and ultimately sentenced him

to death.* But today, the Court decides that sentence is no good because the state trial court prohibited the parties from telling the jury that Arizona had abolished parole. *Ante*, at 613–614; see Ariz. Rev. Stat. Ann. § 41–1604.09(I) (1999). The Court holds that this limitation on Lynch's sentencing proceeding violated *Simmons* v. *South Carolina*, 512 U. S. 154 (1994). Under *Simmons*, "[w]here the State puts the defendant's future dangerousness in issue, and the only available alternative sentence to death is life imprisonment without possibility of parole, due process entitles the defendant to inform the capital sentencing jury—by either argument or instruction—that he is parole ineligible." *Id.*, at 178 (O'Connor, J., concurring in judgment).

Today's summary reversal perpetuates the Court's error in *Simmons*. See *Kelly* v. *South Carolina*, 534 U. S. 246, 262 (2002) (THOMAS, J., dissenting); *Shafer* v. *South Carolina*, 532 U. S. 36, 58 (2001) (THOMAS, J., dissenting). As in *Simmons*, it is the "sheer depravity of [the defendant's] crimes, rather than any specific fear for the future, which induced the . . . jury to conclude that the death penalty was justice." 512 U. S., at 181 (Scalia, J., dissenting). In *Simmons*, for example, the defendant beat and raped three elderly women—one of them his own grandmother—before brutally killing a fourth. See *ibid.* The notion that a jury's decision to impose a death sentence "would have been altered by information on the *current state of the law* concerning parole (which could of course be amended) is . . . farfetched," to say the least. *Id.*, at 184.

Worse, today's decision imposes a magic-words requirement. Unlike *Simmons*, in which there was "no instruction at all" about the meaning of life imprisonment except that the term should be construed according to its "'[plain] and ordinary meaning,'" *id.*, at 160, 166 (plurality opinion), here

*Sehwani ultimately pleaded guilty to first-degree murder and theft and received a sentence of natural life without the possibility of early release plus one year. See 225 Ariz. 27, 33, n. 4, 234 P. 3d 595, 601, n. 4 (2010).

there was an instruction about the nature of the alternative life sentences that the trial court could impose:

> "If your verdict is that the Defendant should be sentenced to death, he will be sentenced to death. If your verdict is that the Defendant should be sentenced to life, he will not be sentenced to death, and the court will sentence him to either life without the possibility of release until at least 25 calendar years in prison are served, or 'natural life,' which means the Defendant would never be released from prison." App. S to Pet. for Cert. 18.

That instruction parallels the Arizona statute governing Lynch's sentencing proceedings. That statute prescribed that defendants not sentenced to death could receive either a life sentence with the possibility of early release or a "natural life" sentence: "If the court does not sentence the defendant to natural life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years," but a defendant sentenced to "natural life" will "not be released on any basis for the remainder of the defendant's natural life." Ariz. Rev. Stat. Ann. § 13–703(A) (2001).

Even though the trial court's instruction was a correct recitation of Arizona law, the Court holds that *Simmons* requires more. The Court laments that (at least for now) Arizona's only form of early release in Arizona is executive clemency. *Ante,* at 615. So the Court demands that the Arizona instruction specify that "the possibility of release" does not (at least for now) include parole. Due process, the Court holds, requires the court to tell the jury that if a defendant sentenced to life with the possibility of early release *in 25 years* were to seek early release *today,* he would be ineligible for parole under Arizona law. *Ante,* at 616. Nonsense. The Due Process Clause does not compel such "micromanage[ment of] state sentencing proceedings." *Shafer*, *supra,* at 58 (THOMAS, J., dissenting).

Today's decision—issued without full briefing and argument and based on *Simmons*, a fractured decision of this Court that did not produce a majority opinion—is a remarkably aggressive use of our power to review the States' highest courts. The trial court accurately told the jury that Lynch could receive a life sentence with or without the possibility of early release, and that should suffice.

I respectfully dissent.

Syllabus

SIMMONS ET AL. *v.* HIMMELREICH

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 15–109. Argued March 22, 2016—Decided June 6, 2016

This case began with two suits filed by respondent Walter Himmelreich, a federal prisoner. He first filed suit against the United States, alleging that a severe beating he received from a fellow inmate was the result of negligence by prison officials. The Government treated the suit as a claim under the Federal Tort Claims Act (FTCA), which allows plaintiffs to seek damages from the United States for certain torts committed by federal employees, 28 U. S. C. § 1346(b), "[s]ubject to the provisions of chapter 171" of Title 28. But an "Exceptions" section of the FTCA dictates that "[t]he provisions of [Chapter 171] and section 1346(b) of this title shall not apply" to certain categories of claims. The Government moved to dismiss the action on the ground that the claim fell into the exception for "[a]ny claim based upon . . . the exercise or performance . . . [of] a discretionary function," namely, deciding where to house inmates, § 2680(a). While the motion was pending, Himmelreich filed a second suit: a constitutional tort suit against individual Bureau of Prison employees, again alleging that his beating was the result of prison officials' negligence. Ordinarily, the FTCA would have no bearing on that claim. But after the dismissal of Himmelreich's first suit, the individual employee defendants argued that Himmelreich's second suit was foreclosed by the FTCA's judgment bar provision, according to which a judgment in an FTCA suit forecloses any future suit against individual employees. Agreeing, the District Court granted summary judgment in favor of the individual prison employees. The Sixth Circuit reversed, however, holding that the judgment bar provision did not apply to Himmelreich's suit.

Held: The judgment bar provision does not apply to the claims dismissed for falling within the "Exceptions" section of the FTCA. Pp. 625–631.

(a) The FTCA explicitly excepts from its coverage certain categories of claims, including the one into which Himmelreich's first suit fell. If, as the Government maintains, Chapter 171's judgment bar provision applies to claims in that "Exceptions" category, it applied to Himmelreich's first suit and would preclude any future actions, including his second suit. On Himmelreich's reading, however, the provision does not apply and he may proceed with his second suit. Pp. 625–627.

(b) Himmelreich is correct. The FTCA's "Exceptions" section reads: "[T]he provisions of this chapter"—Chapter 171—"shall not apply to . . .

[a]ny claim based upon . . . the exercise or performance . . . [of] a discretionary function or duty." § 2680(a). The judgment bar is a provision of Chapter 171. The "Exceptions" section's plain text thus dictates that the judgment bar does "not apply" to cases that, like Himmelreich's first suit, are based on the performance of a discretionary function. Because the judgment bar provision does not apply to Himmelreich's first suit, his second suit—against individual prison employees—should be permitted to go forward. Nothing about the "Exceptions" section or the judgment bar provision gives this Court any reason to disregard the plain text of the statute. P. 627.

(c) *United States* v. *Smith*, 499 U. S. 160, does not require a different result. There, the Court found that the exclusive remedies provision of Chapter 171—which prevents a plaintiff from suing an employee where the FTCA would allow him to sue the United States instead, see § 2679(b)(1)—applied to a claim for injuries sustained at a hospital in Italy, even though that claim fell within the category of "[a]ny claim arising in a foreign country," one of the "Exceptions" to which "[t]he provisions of [Chapter 171] shall not apply," § 2680(k). *Smith*'s outcome, the Government argues, forecloses a literal reading of the "Exceptions" provision, but *Smith* does not control here. First, *Smith* does not even mention the "Exceptions" section's "shall not apply" language. Second, the exclusive remedies provision at issue there was enacted as part of the Federal Employees Liability Reform and Tort Compensation Act of 1988, which also contained a mechanism to convert tort suits against Government employees into FTCA suits "subject to the *limitations and exceptions* applicable to those actions." 499 U. S., at 166 (quoting § 2679(d)(4); emphasis in *Smith*). By taking note of those "limitations and exceptions," the *Smith* Court reasoned, the Liability Reform Act was intended to apply to the "Exceptions" categories of claims. Nothing in the text of the judgment bar provision compels the same result here. Pp. 627–629.

(d) The Government's remaining counterargument is a parade of horribles that it believes will come to pass if every provision of Chapter 171 "shall not apply" to the "Exceptions" categories of claims, but it raises few concerns about the judgment bar provision itself. If the Government is right about Chapter 171's other provisions, the Court may hold so in the appropriate case, see *Smith*, 499 U. S., at 175, but the reading adopted here yields utterly sensible results. Had the District Court in this case issued a judgment dismissing Himmelreich's first suit because, *e. g.*, the prison employees were not negligent, it would make sense that the judgment bar provision would prevent a second suit against the employees. But where an FTCA claim is dismissed because it falls within one of the "Exceptions," the dismissal signals merely that the United States cannot be held liable for a particular

claim; it has no logical bearing on whether an employee can be liable instead. Pp. 629–631.

766 F. 3d 576, affirmed and remanded.

SOTOMAYOR, J., delivered the opinion for a unanimous Court.

Roman Martinez argued the cause for petitioners. With him on the briefs were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Gershengorn*, *Mark B. Stern*, *Edward Himmelfarb*, and *Imran R. Zaidi*.

Christian G. Vergonis argued the cause for respondent. With him on the brief was *David T. Raimer*.*

JUSTICE SOTOMAYOR delivered the opinion of the Court.

The Federal Tort Claims Act (FTCA) allows plaintiffs to seek damages from the United States for certain torts committed by federal employees. 28 U. S. C. §§ 1346(b), 2674. Many of the FTCA's procedural provisions are contained in a single chapter of the United States Code, Chapter 171. See §§ 2671–2680. But an "Exceptions" section of the FTCA dictates that "[t]he provisions of [Chapter 171] shall not apply" to certain categories of claims. At issue in this case is whether one of the "provisions of [Chapter 171]"—the so-called judgment bar provision, § 2676—might nonetheless apply to one of the excepted claims. We conclude it does not.

I

A

This case began with two suits filed by Walter Himmelreich. In each, Himmelreich alleged that he had been severely beaten by a fellow inmate in federal prison and that the beating was the result of prison officials' negligence. At the time of the beating, Himmelreich was incarcerated for producing child pornography. His assailant had warned prison officials that

*Briefs of *amici curiae* urging affirmance were filed for Public Citizen, Inc., et al. by *Allison M. Zieve*, *Scott L. Nelson*, and *Steven R. Shapiro*; and for Gregory Sisk et al. by *Mr. Sisk*, *pro se*.

he would "'smash'" a pedophile if given the opportunity but was nonetheless released into the general prison population, where he assaulted Himmelreich. App. 46.

Himmelreich filed a first suit against the United States. The Government treated this first suit as a claim under the FTCA and moved to dismiss the action, arguing that the claim fell into one of the "Exceptions" to the FTCA for "[a]ny claim based upon . . . the exercise or performance . . . [of] a discretionary function," namely, deciding where to house inmates. § 2680(a). The District Court granted the Government's motion to dismiss. (Neither party here challenges the outcome of that first suit.)

But before the District Court dismissed that first suit, Himmelreich filed a second suit, this one a constitutional tort suit against individual Bureau of Prison employees rather than against the United States. Ordinarily, the FTCA would have nothing to say about such claims. But after the dismissal of Himmelreich's first suit, the individual employee defendants argued that Himmelreich's second suit was foreclosed by the FTCA's judgment bar provision, according to which a judgment in an FTCA suit forecloses any future suit against individual employees. See § 2676. As relevant here, the District Court agreed and granted summary judgment in favor of the individual prison employees.

Himmelreich appealed that ruling. The Sixth Circuit reversed, holding that the judgment bar provision did not apply to Himmelreich's suit. *Himmelreich* v. *Federal Bureau of Prisons*, 766 F. 3d 576 (2014) (*per curiam*).

We granted certiorari to resolve a Circuit split on whether the judgment bar provision applies to suits that, like Himmelreich's, are dismissed as falling within an "Exceptio[n]" to the FTCA.[1] 577 U. S. 971 (2015).

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[1] See *Hallock* v. *Bonner*, 387 F. 3d 147 (CA2 2004), vacated on other grounds *sub nom. Will* v. *Hallock*, 546 U. S. 345 (2006); *Pesnell* v. *Arsenault*, 543 F. 3d 1038 (CA9 2008); *Williams* v. *Fleming*, 597 F. 3d 820, 823–824 (CA7 2010).

B

The FTCA's provisions are contained in two areas of the United States Code. One, 28 U. S. C. § 1346(b), gives federal district courts exclusive jurisdiction over tort claims against the United States for the acts of its employees "[s]ubject to the provisions of chapter 171" of Title 28.[2] Chapter 171, in turn, is labeled "Tort Claims Procedure" and comprises the remaining provisions of the FTCA. §§ 2671–2680.

Chapter 171 contains an array of provisions. Some provisions govern how FTCA claims are to be adjudicated. See, *e. g.*, § 2674 (specifying scope of United States' liability); § 2675(a) (exhaustion requirement); § 2678 (restricting attorney's fees). Other provisions limit plaintiffs' remedies outside the FTCA. See, *e. g.*, § 2679(a) (cannot sue agency for claims within scope of FTCA); § 2679(d)(1) (suit against federal employee acting within scope of employment automatically converted to FTCA action).

The District Court in this case relied on one such remedies-limiting provision of Chapter 171, the judgment bar provision.[3] See § 2676. Under the judgment bar provision, once a plaintiff receives a judgment (favorable or not) in an FTCA suit, he generally cannot proceed with a suit against an individual employee based on the same underlying facts. The District Court below held that Himmelreich had received a judgment in the first suit (the FTCA suit against

[2] The precise claims at issue are "claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U. S. C. § 1346(b).

[3] It reads in full: "The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim." § 2676.

the United States) and so could not proceed with the second suit (the individual employee suit based on the same underlying facts).

The FTCA explicitly excepts from its coverage certain categories of claims, including the one into which Himmelreich's first suit fell:

> "Exceptions
>
> "The provisions of this chapter and section 1346(b) of this title shall not apply to—
>
> "(a) Any claim based upon . . . the exercise or performance or the failure to exercise or perform a discretionary function or duty . . . whether or not the discretion involved be abused." § 2680.

"The provisions of this chapter" referenced in the first line are the provisions of Chapter 171. "[S]ection 1346(b) of this title" is the provision giving district courts FTCA jurisdiction. And the "Exceptions" to which those portions of the FTCA "shall not apply" are 13 categories of claims, such as any claim that—like Himmelreich's first suit—arises from the performance of a "discretionary function," § 2680(a); "[a]ny claim arising in a foreign country," § 2680(k); and "[a]ny claim arising from the activities of the Tennessee Valley Authority," § 2680(*l*).

Both parties agree that district courts do not have jurisdiction over claims that fall into one of the 13 categories of "Exceptions" because "section 1346(b) of this title"—the provision conferring jurisdiction on district courts—does "not apply" to such claims. Both parties also agree that at least one of "[t]he provisions of [Chapter 171]"—the provision delimiting the United States' liability, § 2674—need "not apply" to claims in the "Exceptions" categories because no court will have jurisdiction to hold the United States liable on such claims in any event.

The parties disagree, however, about whether the judgment bar provision of Chapter 171 "shall not apply" to claims

in one of the "Exceptions" categories. The Government maintains that the judgment bar provision does apply to such claims. In that case, it applied to Himmelreich's first suit and would preclude any future actions, including his second suit. Himmelreich urges that it does not apply. On that reading, there is no reason he cannot proceed with his second suit.

II

Himmelreich is correct. The "Exceptions" section of the FTCA reads: "The provisions of this chapter"—Chapter 171—"shall not apply to . . . [a]ny claim based upon . . . the exercise or performance . . . [of] a discretionary function or duty." § 2680(a). The judgment bar is a provision of Chapter 171; the plain text of the "Exceptions" section therefore dictates that it does "not apply" to cases that, like Himmelreich's first suit, are based on the performance of a discretionary function. Because the judgment bar provision does not apply to Himmelreich's first suit, Himmelreich's second suit—the one against individual prison employees—should be permitted to go forward.

Absent persuasive indications to the contrary, we presume Congress says what it means and means what it says. Nothing about the "Exceptions" section or the judgment bar provision gives us any reason to doubt the plain-text result in this case.

III

A

Given the clarity of the "Exceptions" section's command, a reader might be forgiven for wondering how there could be any confusion about the statute's operation. The main source of uncertainty on this score, the Government submits, is *United States* v. *Smith*, 499 U. S. 160 (1991). In *Smith*, we considered another provision of Chapter 171, the exclusive remedies provision. *Id.*, at 162. Under the exclusive remedies provision, a plaintiff generally cannot sue an employee

where the FTCA would allow him to sue the United States instead. See § 2679(b)(1).[4]

The *Smith* Court held that this exclusive remedies provision applied to a claim for injuries sustained at an Army hospital in Italy, even though that claim fell within the category of "[a]ny claim arising in a foreign country," one of the "Exceptions" to which "[t]he provisions of [Chapter 171] shall not apply." § 2680(k). The Government argues that our literal reading of the "Exceptions" provision would foreclose *Smith*'s outcome because the *Smith* Court applied a provision of Chapter 171 (the exclusive remedies provision) to a claim falling within one of the "Exceptions" categories (a claim arising in a foreign country). *Smith*, the Government argues, thus establishes that we cannot read the command of the "Exceptions" section literally and that the judgment bar provision therefore should apply to Himmelreich's discretionary function claim.

The Government's position has some force. Nonetheless, *Smith* does not control this case. First, *Smith* does not even cite, let alone discuss, the "shall not apply" language "Exceptions" provision. Second, the exclusive remedies provision at issue in *Smith* was enacted as part of the Federal Employees Liability Reform and Tort Compensation Act of 1988, which contained a mechanism to reduce the number of tort suits against Government employees. As the *Smith* Court explained, if "the Attorney General . . . certif[ies] that a Government employee named as defendant was acting within the scope of his employment when he committed the alleged tort," the Liability Reform Act dictates that the United States be substituted as the sole defendant, and that the action "'shall proceed in the same manner'" as an FTCA action "'and shall be subject to the *limitations and exceptions*

[4] There is an exception to this provision for suits alleging constitutional violations. See § 2679(b)(2)(A). Himmelreich's second suit—the one against individual prison employees—alleged a violation of the Constitution and so was not foreclosed by the exclusive remedies provision.

applicable to those actions.'" 499 U. S., at 166 (quoting § 2679(d)(4); emphasis in *Smith*). The *Smith* Court held that the Liability Reform Act's reference to "limitations and exceptions" was most naturally read to refer to the "Exceptions" section of the FTCA. And by taking note of the "Exceptions" section, the *Smith* court reasoned, the Liability Reform Act was intended to apply to those "Exceptions."

In light of the unique language of the Liability Reform Act, *Smith* is distinguishable from this case. Nothing in the text of the judgment bar provision compels the same result.

B

The Government's remaining counterargument amounts to a parade of horribles that it believes will come to pass if *every* provision of Chapter 171 "shall not apply" to the "Exceptions" categories of claims. See Brief for Petitioners 52. If the Government is right about the other provisions of Chapter 171, the Court may hold so in the appropriate case. See *Smith*, 499 U. S., at 175. But this case deals only with the judgment bar provision, and, aside from a passing concern about duplicative litigation, the Government does not argue that any such cavalcade would follow if *that* provision does not apply to the excepted claims. It is enough for our purposes that the statute's clear directive would not lead to hard-to-explain results when applied to the judgment bar provision in particular.

To the contrary, our holding that the judgment bar provision "shall not apply" to the categories of claims in the "Exceptions" section in fact allows the statute to operate in an utterly sensible manner. Ordinarily, the judgment bar provision prevents unnecessarily duplicative litigation. If the District Court in this case had issued a judgment dismissing Himmelreich's first suit because the prison employees were not negligent, because Himmelreich was not harmed, or because Himmelreich simply failed to prove his claim, it would make little sense to give Himmelreich a second bite at the

money-damages apple by allowing suit against the employees: Himmelreich's first suit would have given him a fair chance to recover damages for his beating.

Where an FTCA claim is dismissed because it falls within one of the "Exceptions," by contrast, the judgment bar provision makes much less sense. The dismissal of a claim in the "Exceptions" section signals merely that the United States cannot be held liable for a particular claim; it has no logical bearing on whether an employee can be held liable instead.[5] To apply the judgment bar so as to foreclose a future suit against an employee thus would be passing strange.

The Government's reading would yield another strange result. According to the Government, the viability of a plain-

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[5] This conclusion is buttressed by analogy to the common-law doctrine of claim preclusion, which prevents duplicative litigation by barring one party from again suing the other over the same underlying facts. This Court has said that the judgment bar provision "functions in much the same way" as that doctrine. *Will*, 546 U. S., at 354. (The judgment bar provision supplements common-law claim preclusion by closing a narrow gap: At the time that the FTCA was passed, common-law claim preclusion would have barred a plaintiff from suing the United States after having sued an employee but not vice versa. See Restatement of Judgments §§ 99, 96(1)(a), Comments *b* and *d* (1942). The judgment bar provision applies where a plaintiff first sues the United States and then sues an employee.)

But claim preclusion principles would not foreclose a second suit where the first suit was dismissed under the "Exceptions" section. Dismissals for "personal immunity"—defenses that can be asserted by one party but not others—do not have claim-preclusive effect. See Restatement of Judgments § 96, Comment *g*; Restatement (Second) of Judgments § 51(1)(b), and Comment *c* (1980). The "Exceptions" section reflects the United States' decision not to accept liability for certain types of claims; like other "personal immunities," the "Exceptions" section is only a defense for—and can only be "taken advantage of" by—the United States. See Restatement of Judgments § 96, Comment *g*. A dismissal under the "Exceptions" section would not be entitled to claim-preclusive effect; just so, the roughly analogous judgment bar should not foreclose a second suit against individual employees.

tiff's meritorious suit against an individual employee should turn on the order in which the suits are filed (or the order in which the district court chooses to address motions). For example, had the District Court in this case addressed the individual employee suit first, there would be no FTCA judgment in the picture, and so the judgment bar provision would not affect the outcome of the suit. The Government's reading would thus encourage litigants to file suit against individual employees before suing the United States to avoid being foreclosed from recovery altogether. Yet this result is at odds with one of the FTCA's purposes, channeling liability away from individual employees and toward the United States. See *Dalehite* v. *United States*, 346 U. S. 15, 25 (1953).

We decline to ignore the text of the statute to achieve these imprudently restrictive results. Accordingly, we read "[t]he provisions of this chapter . . . shall not apply" as it was written. The judgment bar provision—one of the "provisions of this chapter"—does not apply to the categories of claims in the "Exceptions" sections of the FTCA. We therefore affirm the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

ROSS *v.* BLAKE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 15–339. Argued March 29, 2016—Decided June 6, 2016

Two guards—James Madigan and petitioner Michael Ross—undertook to move respondent Shaidon Blake, a Maryland inmate, to the prison's segregation unit. During the transfer, Madigan assaulted Blake, punching him several times in the face. Blake reported the incident to a corrections officer, who referred the matter to the Maryland prison system's Internal Investigative Unit (IIU). The IIU, which has authority under state law to investigate employee misconduct, issued a report condemning Madigan's actions. Blake subsequently sued both guards under 42 U. S. C. § 1983, alleging excessive force and failure to take protective action. A jury found Madigan liable. But Ross raised (as an affirmative defense) the exhaustion requirement of the Prison Litigation Reform Act of 1995 (PLRA), which demands that an inmate exhaust "such administrative remedies as are available" before bringing suit to challenge prison conditions. § 1997e(a). Ross argued that Blake had filed suit without first following the prison's prescribed procedures for obtaining an administrative remedy, while Blake argued that the IIU investigation was a substitute for those procedures. The District Court sided with Ross and dismissed the suit. The Fourth Circuit reversed, holding that "special circumstances" can excuse a failure to comply with administrative procedural requirements—particularly where the inmate reasonably, even though mistakenly, believed he had sufficiently exhausted his remedies.

Held:

1. The Fourth Circuit's unwritten "special circumstances" exception is inconsistent with the text and history of the PLRA. Pp. 638–642.

(a) The PLRA speaks in unambiguous terms, providing that "[n]o action shall be brought" absent exhaustion of available administrative remedies. § 1997e(a). Aside from one significant qualifier—that administrative remedies must indeed be "available"—the text suggests no limits on an inmate's obligation to exhaust. That mandatory language means a court may not excuse a failure to exhaust, even to take "special circumstances" into account. When it comes to statutory exhaustion provisions, courts have a role in creating exceptions only if Congress wants them to. So mandatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes, foreclosing judicial discretion.

See, *e. g.*, *McNeil* v. *United States*, 508 U. S. 106. Time and again, this Court has rejected every attempt to deviate from the PLRA's textual mandate. See *Booth* v. *Churner*, 532 U. S. 731; *Porter* v. *Nussle*, 534 U. S. 516; *Woodford* v. *Ngo*, 548 U. S. 81. All those precedents rebut the Fourth Circuit's "special circumstances" excuse for non-exhaustion. Pp. 638–640.

(b) The PLRA's history further underscores the mandatory nature of its exhaustion regime. The PLRA replaced a largely discretionary exhaustion scheme, see *Nussle*, 534 U. S., at 523, removing the conditions that administrative remedies be "plain, speedy, and effective," that they satisfy federal minimum standards, and that exhaustion be "appropriate and in the interests of justice." The Court of Appeals' exception, if applied broadly, would resurrect that discretionary regime, in which a court could look to all the particulars of a case to decide whether to excuse a failure to exhaust. And if the exception were confined to cases in which a prisoner makes a reasonable mistake about the meaning of a prison's grievance procedures, it would reintroduce the requirement that the remedial process be "plain." When Congress amends legislation, courts must "presume it intends [the change] to have real and substantial effect." *Stone* v. *INS*, 514 U. S. 386, 397. But the Court of Appeals acted as though no amendment had taken place. Pp. 640–642.

2. Blake's contention that the prison's grievance process was not in fact available to him warrants further consideration below. Pp. 642–649.

(a) Blake's suit may yet be viable. The PLRA contains its own, textual exception to mandatory exhaustion. Under § 1997e(a), an inmate's obligation to exhaust hinges on the "availab[ility]" of administrative remedies. A prisoner is thus required to exhaust only those grievance procedures that are "capable of use" to obtain "some relief for the action complained of." *Booth*, 532 U. S., at 738.

As relevant here, there are three kinds of circumstances in which an administrative remedy, although officially on the books, is not capable of use to obtain relief. First, an administrative procedure is unavailable when it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates. Next, an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use—*i. e.*, some mechanism exists to provide relief, but no ordinary prisoner can navigate it. And finally, a grievance process is rendered unavailable when prison administrators thwart inmates from taking advantage of it through machination, misrepresentation, or intimidation. Pp. 642–644.

(b) The facts of this case raise questions about whether, given these principles, Blake had an "available" administrative remedy to exhaust. Ross's exhaustion defense rests on Blake's failure to seek relief through

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Maryland's Administrative Remedy Procedure (ARP) process, which begins with a grievance to the warden. That process is the standard method for addressing inmate complaints in the State's prisons. But Maryland separately maintains the IIU to look into charges of prison staff misconduct, and the IIU did just that here. Blake urged in the courts below that once the IIU commences such an inquiry, a prisoner cannot obtain relief through the ARP process. And in this Court, the parties have lodged additional materials relating to the interaction between the IIU and the ARP. Both sides' submissions, although scattershot and in need of further review, lend some support to Blake's account.

Blake's filings include many administrative dispositions indicating that Maryland wardens routinely dismiss ARP grievances as procedurally improper when parallel IIU investigations are pending. In addition, Blake has submitted briefs of the Maryland attorney general specifically recognizing that administrative practice. And Ross's own submissions offer some confirmation of Blake's view: Ross does not identify a single case in which a warden considered the merits of an ARP grievance while an IIU inquiry was underway. On remand, the Fourth Circuit should perform a thorough review of such materials, and then address whether the remedies Blake did not exhaust were "available" under the legal principles set out here. Pp. 645–648.

787 F. 3d 693, vacated and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, ALITO, and SOTOMAYOR, JJ., joined. THOMAS, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 649. BREYER, J., filed an opinion concurring in part, *post*, p. 649.

Julia Doyle Bernhardt, Assistant Attorney General of Maryland, argued the cause for petitioner. With her on the briefs were *Brian E. Frosh*, Attorney General, *Thiruvendran Vignarajah*, Deputy Attorney General, *Matthew J. Fader*, and *Patrick B. Hughes*, *Stephanie Lane-Weber*, and *Dorianne A. Meloy*, Assistant Attorneys General.

Zachary D. Tripp argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Gershengorn*, *Barbara L. Herwig*, *Rupa Bhattacharyya*, and *Dana Kaersvang*.

Paul W. Hughes argued the cause for respondent. With him on the brief were *Reginald R. Goeke* and *Michael B. Kimberly.**

JUSTICE KAGAN delivered the opinion of the Court.

The Prison Litigation Reform Act of 1995 (PLRA) mandates that an inmate exhaust "such administrative remedies as are available" before bringing suit to challenge prison conditions. 42 U. S. C. § 1997e(a). The court below adopted an unwritten "special circumstances" exception to that provision, permitting some prisoners to pursue litigation even when they have failed to exhaust available administrative remedies. Today, we reject that freewheeling approach to exhaustion as inconsistent with the PLRA. But we also underscore that statute's built-in exception to the exhaustion

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*A brief of *amici curiae* urging reversal was filed for the State of West Virginia et al. by *Patrick Morrisey*, Attorney General of West Virginia, *Elbert Lin*, Solicitor General, *Julie Warren* and *Erica N. Peterson*, Assistant Attorneys General, by *Bruce R. Beemer*, First Deputy Attorney General of Pennsylvania, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Craig W. Richards* of Alaska, *Mark Brnovich* of Arizona, *Leslie Rutledge* of Arkansas, *Cynthia Coffman* of Colorado, *George Jepsen* of Connecticut, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *Douglas S. Chin* of Hawaii, *Lawrence G. Wasden* of Idaho, *Gregory Zoeller* of Indiana, *Tom Miller* of Iowa, *Derek Schmidt* of Kansas, *Andy Beshear* of Kentucky, *James D. "Buddy" Caldwell* of Louisiana, *Janet T. Mills* of Maine, *Bill Schuette* of Michigan, *Jim Hood* of Mississippi, *Tim Fox* of Montana, *Douglas J. Peterson* of Nebraska, *Adam Paul Laxalt* of Nevada, *Joseph A. Foster* of New Hampshire, *Hector Balderas of New Mexico*, *Roy Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *Mike DeWine* of Ohio, *E. Scott Pruitt* of Oklahoma, *Ellen F. Rosenblum* of Oregon, *Peter F. Kilmartin* of Rhode Island, *Alan Wilson* of South Carolina, *Herbert H. Slatery III* of Tennessee, *Ken Paxton* of Texas, *Sean D. Reyes* of Utah, *Mark R. Herring* of Virginia, *Robert W. Ferguson* of Washington, *Brad D. Schimel* of Wisconsin, and *Peter K. Michael* of Wyoming.

Briefs of *amici curiae* urging affirmance were filed for the Legal Aid Society of New York et al. by *John Boston*; and for the National Police Accountability Project et al. by *Christopher Wimmer.*

requirement: A prisoner need not exhaust remedies if they are not "available." The briefs and other submissions filed in this case suggest the possibility that the aggrieved inmate lacked an available administrative remedy. That issue remains open for consideration on remand, in light of the principles stated below.

I

Respondent Shaidon Blake is an inmate in a Maryland prison. On June 21, 2007, two guards—James Madigan and petitioner Michael Ross—undertook to move him from his regular cell to the facility's segregation unit. According to Blake's version of the facts, Ross handcuffed him and held him by the arm as they left the cell; Madigan followed close behind. Near the top of a flight of stairs, Madigan shoved Blake in the back. Ross told Madigan he had Blake under control, and the three continued walking. At the bottom of the stairs, Madigan pushed Blake again and then punched him four times in the face, driving his head into the wall. After a brief pause, Madigan hit Blake one last time. Ross kept hold of Blake throughout the assault. And when the blows subsided, Ross helped Madigan pin Blake to the ground until additional officers arrived.

Later that day, Blake reported the assault to a senior corrections officer. That officer thought Madigan at fault, and so referred the incident to the Maryland prison system's Internal Investigative Unit (IIU). Under state law, the IIU has authority to investigate allegations of employee misconduct, including the use of "excessive force." Code of Md. Regs., tit. 12, § 11.01.05(A)(3) (2006). After conducting a year-long inquiry into the beating, the IIU issued a final report condemning Madigan's actions, while making no findings with respect to Ross. See App. 191–195. Madigan resigned to avoid being fired.

Blake subsequently sued both guards under 42 U. S. C. § 1983, alleging that Madigan had used unjustifiable force and that Ross had failed to take protective action. The claim

against Madigan went to a jury, which awarded Blake a judgment of $50,000. But unlike Madigan, Ross raised the PLRA's exhaustion requirement as an affirmative defense, contending that Blake had brought suit without first following the prison's prescribed procedures for obtaining an administrative remedy. As set out in Maryland's Inmate Handbook, that process—called, not very fancifully, the Administrative Remedy Procedure (ARP)—begins with a formal grievance to the prison's warden; it may also involve appeals to the Commissioner of Correction and then the Inmate Grievance Office (IGO). See Maryland Div. of Correction, Inmate Handbook 30–31 (2007). Blake acknowledged that he had not sought a remedy through the ARP—because, he thought, the IIU investigation served as a substitute for that otherwise standard process. The District Court rejected that explanation and dismissed the suit, holding that "the commencement of an internal investigation does not relieve prisoners from the [PLRA's] exhaustion requirement." *Blake* v. *Maynard*, No. 8:09–cv–2367 (D Md., Nov. 14, 2012), App. to Pet. for Cert. 38, 2012 WL 5568940, *5.

The Court of Appeals for the Fourth Circuit reversed in a divided decision. Stating that the PLRA's "exhaustion requirement is not absolute," the court adopted an extratextual exception originally formulated by the Second Circuit. 787 F. 3d 693, 698 (2015). Repeated the Court of Appeals: "[T]here are certain 'special circumstances' in which, though administrative remedies may have been available[,] the prisoner's failure to comply with administrative procedural requirements may nevertheless have been justified." *Ibid.* (quoting *Giano* v. *Goord*, 380 F. 3d 670, 676 (CA2 2004)). In particular, that was true when a prisoner "reasonably"—even though mistakenly—"believed that he had sufficiently exhausted his remedies." 787 F. 3d, at 695. And Blake, the court concluded, fit within that exception because he reasonably thought that "the IIU's investigation removed his complaint from the typical ARP process." *Id.*, at 700. Judge

Agee dissented, stating that the PLRA's mandatory exhaustion requirement is not "amenable" to "[j]udge-made exceptions." *Id.*, at 703. This Court granted certiorari. 577 U. S. 1045 (2015).

II

The dispute here concerns whether the PLRA's exhaustion requirement, § 1997e(a), bars Blake's suit. Statutory text and history alike foreclose the Fourth Circuit's adoption of a "special circumstances" exception to that mandate. But Blake's suit may yet be viable. Under the PLRA, a prisoner need exhaust only "available" administrative remedies. And Blake's contention that the prison's grievance process was not in fact available to him warrants further consideration below.

A

Statutory interpretation, as we always say, begins with the text, see, *e. g.*, *Hardt* v. *Reliance Standard Life Ins. Co.*, 560 U. S. 242, 251 (2010)—but here following that approach at once distances us from the Court of Appeals. As Blake acknowledges, that court made no attempt to ground its analysis in the PLRA's language. See 787 F. 3d, at 697–698; Brief for Respondent 47–48, n. 20 (labeling the Court of Appeals' rule an "extra-textual exception to the PLRA's exhaustion requirement"). And that failure makes a difference, because the statute speaks in unambiguous terms opposite to what the Fourth Circuit said.

Section 1997e(a) provides: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." As we have often observed, that language is "mandatory": An inmate "shall" bring "no action" (or said more conversationally, may not bring any action) absent exhaustion of available administrative remedies. *Woodford* v. *Ngo*, 548 U. S. 81, 85

(2006); accord, *Jones* v. *Bock*, 549 U. S. 199, 211 (2007) ("There is no question that exhaustion is mandatory under the PLRA"). As later discussed, that edict contains one significant qualifier: The remedies must indeed be "available" to the prisoner. See *infra*, at 642–644. But aside from that exception, the PLRA's text suggests no limits on an inmate's obligation to exhaust—irrespective of any "special circumstances."

And that mandatory language means a court may not excuse a failure to exhaust, even to take such circumstances into account. See *Miller* v. *French*, 530 U. S. 327, 337 (2000) (explaining that "[t]he mandatory 'shall' . . . normally creates an obligation impervious to judicial discretion"). No doubt, judge-made exhaustion doctrines, even if flatly stated at first, remain amenable to judge-made exceptions. See *McKart* v. *United States*, 395 U. S. 185, 193 (1969) ("The doctrine of exhaustion of administrative remedies . . . is, like most judicial doctrines, subject to numerous exceptions"). But a statutory exhaustion provision stands on a different footing. There, Congress sets the rules—and courts have a role in creating exceptions only if Congress wants them to. For that reason, mandatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes, foreclosing judicial discretion. See, *e. g.*, *McNeil* v. *United States*, 508 U. S. 106, 111, 113 (1993) ("We are not free to rewrite the statutory text" when Congress has strictly "bar[red] claimants from bringing suit in federal court until they have exhausted their administrative remedies"). Time and again, this Court has taken such statutes at face value—refusing to add unwritten limits onto their rigorous textual requirements. See, *e. g.*, *id.*, at 111; *Shalala* v. *Illinois Council on Long Term Care, Inc.*, 529 U. S. 1, 12–14 (2000); see also 2 R. Pierce, Administrative Law Treatise § 15.3, p. 1241 (5th ed. 2010) (collecting cases).

We have taken just that approach in construing the PLRA's exhaustion provision—rejecting every attempt to

deviate (as the Fourth Circuit did here) from its textual mandate. In *Booth* v. *Churner*, 532 U. S. 731 (2001), for example, the prisoner argued that exhaustion was not necessary because he wanted a type of relief that the administrative process did not provide. But § 1997e(a), we replied, made no distinctions based on the particular "forms of relief sought and offered," and that legislative judgment must control: We would not read "exceptions into statutory exhaustion requirements where Congress has provided otherwise." *Id.*, at 741, n. 6. The next year, in *Porter* v. *Nussle*, 534 U. S. 516, 520 (2002), the Court rejected a proposal to carve out excessive-force claims (like Blake's) from the PLRA's exhaustion regime, viewing that approach too as inconsistent with the uncompromising statutory text. And most recently, in *Woodford*, we turned aside a requested exception for constitutional claims. 548 U. S., at 91, n. 2. Our explanation was familiar: "We are interpreting and applying" not a judge-made doctrine but a "statutory requirement," and therefore must honor Congress's choice. *Ibid.*[1] All those precedents rebut the Court of Appeals' adoption of a "special circumstances" excuse for non-exhaustion.

So too, the history of the PLRA underscores the mandatory nature of its exhaustion regime. Section 1997e(a)'s precursor, enacted in the Civil Rights of Institutionalized Persons Act (CRIPA), § 7, 94 Stat. 352 (1980), was a "weak exhaustion provision." *Woodford*, 548 U. S., at 84. Under CRIPA, a court would require exhaustion only if a State pro-

[1] We note that our adherence to the PLRA's text runs both ways: The same principle applies regardless of whether it benefits the inmate or the prison. We have thus overturned judicial rulings that imposed extra-statutory limitations on a prisoner's capacity to sue—reversing, for example, decisions that required an inmate to demonstrate exhaustion in his complaint, permitted suit against only defendants named in the administrative grievance, and dismissed an entire action because of a single unexhausted claim. See *Jones* v. *Bock*, 549 U. S. 199, 203 (2007). "[T]hese rules," we explained, "are not required by the PLRA," and "crafting and imposing them exceeds the proper limits on the judicial role." *Ibid.*

vided "plain, speedy, and effective" remedies meeting federal minimum standards—and even then, only if the court believed exhaustion "appropriate and in the interests of justice." § 7(a), 94 Stat. 352. That statutory scheme made exhaustion "in large part discretionary." *Nussle*, 534 U. S., at 523. And for that reason (among others), CRIPA proved inadequate to stem the then-rising tide of prisoner litigation. In enacting the PLRA, Congress thus substituted an "invigorated" exhaustion provision. *Woodford*, 548 U. S., at 84. "[D]iffer[ing] markedly from its predecessor," the new § 1997e(a) removed the conditions that administrative remedies be "plain, speedy, and effective" and that they satisfy minimum standards. *Nussle*, 534 U. S., at 524. Still more, the PLRA prevented a court from deciding that exhaustion would be unjust or inappropriate in a given case. As described earlier, see *supra*, at 638–639, all inmates must now exhaust all available remedies: "Exhaustion is no longer left to the discretion of the district court." *Woodford*, 548 U. S., at 85.

The PLRA's history (just like its text) thus refutes a "special circumstances" exception to its rule of exhaustion. That approach, if applied broadly, would resurrect CRIPA's scheme, in which a court could look to all the particulars of a case to decide whether to excuse a failure to exhaust available remedies. But as we have observed, such wide-ranging discretion "is now a thing of the past." *Booth*, 532 U. S., at 739. And the conflict with the PLRA's history (as again with its text) becomes scarcely less stark if the Fourth Circuit's exception is confined, as the court may have intended, to cases in which a prisoner makes a reasonable mistake about the meaning of a prison's grievance procedures. Understood that way, the exception reintroduces CRIPA's requirement that the remedial process be "plain"—that is, not subject to any reasonable misunderstanding or disagreement. § 7(a), 94 Stat. 352. When Congress amends legislation, courts must "presume it intends [the change] to have

real and substantial effect." *Stone* v. *INS*, 514 U. S. 386, 397 (1995). The Court of Appeals instead acted as though the amendment—from a largely permissive to a mandatory exhaustion regime—had not taken place.[2]

B

Yet our rejection of the Fourth Circuit's "special circumstances" exception does not end this case—because the PLRA contains its own, textual exception to mandatory exhaustion. Under § 1997e(a), the exhaustion requirement hinges on the "availab[ility]" of administrative remedies: An inmate, that is, must exhaust available remedies, but need not exhaust unavailable ones. And that limitation on an inmate's duty to exhaust—although significantly different from the "special circumstances" test or the old CRIPA standard—has real content. As we explained in *Booth*, the ordinary meaning of the word "available" is "'capable of use for the accomplishment of a purpose,' and that which 'is accessible or may be obtained.'" 532 U. S., at 737–738 (quoting Webster's Third New International Dictionary 150 (1993)); see also Random House Dictionary of the English Language 142 (2d ed. 1987) ("suitable or ready for use"); 1 Oxford English Dictionary 812 (2d ed. 1989) ("capable of being made use of, at one's disposal, within one's reach"); Black's Law Dictionary 135 (6th ed. 1990) ("useable"; "present or ready for immediate use"). Accordingly, an inmate is required to exhaust those, but only those, grievance procedures that are "capable of use" to obtain "some relief for the action complained of." *Booth*, 532 U. S., at 738.

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[2] Of course, an exhaustion provision with a different text and history from § 1997e(a) might be best read to give judges the leeway to create exceptions or to itself incorporate standard administrative-law exceptions. See 2 R. Pierce, Administrative Law Treatise § 15.3, p. 1245 (5th ed. 2010). The question in all cases is one of statutory construction, which must be resolved using ordinary interpretive techniques.

To state that standard, of course, is just to begin; courts in this and other cases must apply it to the real-world workings of prison grievance systems. Building on our own and lower courts' decisions, we note as relevant here three kinds of circumstances in which an administrative remedy, although officially on the books, is not capable of use to obtain relief. See Tr. of Oral Arg. 27–29 (Solicitor General as *amicus curiae* acknowledging these three kinds of unavailability). Given prisons' own incentives to maintain functioning remedial processes, we expect that these circumstances will not often arise. See *Woodford*, 548 U. S., at 102. But when one (or more) does, an inmate's duty to exhaust "available" remedies does not come into play.

First, as *Booth* made clear, an administrative procedure is unavailable when (despite what regulations or guidance materials may promise) it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates. See 532 U. S., at 736, 738. Suppose, for example, that a prison handbook directs inmates to submit their grievances to a particular administrative office—but in practice that office disclaims the capacity to consider those petitions. The procedure is not then "capable of use" for the pertinent purpose. In *Booth*'s words: "[S]ome redress for a wrong is presupposed by the statute's requirement" of an "available" remedy; "where the relevant administrative procedure lacks authority to provide any relief," the inmate has "nothing to exhaust." *Id.*, at 736, and n. 4. So too if administrative officials have apparent authority, but decline ever to exercise it. Once again: "[T]he modifier 'available' requires the possibility of some relief." *Id.*, at 738. When the facts on the ground demonstrate that no such potential exists, the inmate has no obligation to exhaust the remedy.

Next, an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use. In this

situation, some mechanism exists to provide relief, but no ordinary prisoner can discern or navigate it. As the Solicitor General put the point: When rules are "so confusing that . . . no reasonable prisoner can use them," then "they're no longer available." Tr. of Oral Arg. 23. That is a significantly higher bar than CRIPA established or the Fourth Circuit suggested: The procedures need not be sufficiently "plain" as to preclude any reasonable mistake or debate with respect to their meaning. See § 7(a), 94 Stat. 352; 787 F. 3d, at 698–699; *supra*, at 637, 640–642. When an administrative process is susceptible of multiple reasonable interpretations, Congress has determined that the inmate should err on the side of exhaustion. But when a remedy is, in Judge Carnes's phrasing, essentially "unknowable"—so that no ordinary prisoner can make sense of what it demands—then it is also unavailable. See *Goebert* v. *Lee County*, 510 F. 3d 1312, 1323 (CA11 2007); *Turner* v. *Burnside*, 541 F. 3d 1077, 1084 (CA11 2008) ("Remedies that rational inmates cannot be expected to use are not capable of accomplishing their purposes and so are not available"). Accordingly, exhaustion is not required.

And finally, the same is true when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation. In *Woodford*, we recognized that officials might devise procedural systems (including the blind alleys and quagmires just discussed) in order to "trip[ ] up all but the most skillful prisoners." 548 U. S., at 102. And appellate courts have addressed a variety of instances in which officials misled or threatened individual inmates so as to prevent their use of otherwise proper procedures. As all those courts have recognized, such interference with an inmate's pursuit of relief renders the administrative process unavailable.[3] And then, once again, § 1997e(a) poses no bar.

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[3] See, *e. g.*, *Davis* v. *Hernandez*, 798 F. 3d 290, 295 (CA5 2015) ("Grievance procedures are unavailable . . . if the correctional facility's staff misled the inmate as to the existence or rules of the grievance process so as to

The facts of this case raise questions about whether, given these principles, Blake had an "available" administrative remedy to exhaust. As explained earlier, Ross's exhaustion defense rests on Blake's failure to seek relief through Maryland's ARP process, which begins with a grievance to the warden and may continue with appeals to the Commissioner of Correction and the IGO. See *supra*, at 637; Inmate Handbook, at 30–31. That process is the standard method for addressing inmate complaints in the State's prisons: The Inmate Handbook provides that prisoners may use the ARP for "all types" of grievances (subject to four exceptions not relevant here), including those relating to the use of force. *Id.*, at 30; see App. 312. But recall that Maryland separately maintains the IIU to look into charges of staff misconduct in prisons, and the IIU did just that here. See *supra*, at 636. Blake urged in the courts below that once the IIU commences such an inquiry, a prisoner *cannot* obtain relief through the standard ARP process—whatever the Handbook may say to the contrary. See 787 F. 3d, at 697; App. to Pet. for Cert. 38, 2012 WL 5568940, *5. And in this Court, that issue has taken on new life. Both Blake and Ross (as represented by the Maryland attorney general) have lodged additional materials relating to the interaction between the IIU and the ARP. And *both* sides' submissions, although scat-

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cause the inmate to fail to exhaust such process" (emphasis deleted)); *Schultz* v. *Pugh*, 728 F. 3d 619, 620 (CA7 2013) ("A remedy is not available, therefore, to a prisoner prevented by threats or other intimidation by prison personnel from seeking an administrative remedy"); *Pavey* v. *Conley*, 663 F. 3d 899, 906 (CA7 2011) ("[I]f prison officials misled [a prisoner] into thinking that . . . he had done all he needed to initiate the grievance process," then "[a]n administrative remedy is not 'available' "); *Tuckel* v. *Grover*, 660 F. 3d 1249, 1252–1253 (CA10 2011) ("[W]hen a prison official inhibits an inmate from utilizing an administrative process through threats or intimidation, that process can no longer be said to be 'available' "); *Goebert* v. *Lee County*, 510 F. 3d 1312, 1323 (CA11 2007) (If a prison "play[s] hide-and-seek with administrative remedies," then they are not "available").

tershot and in need of further review, lend some support to Blake's account—while also revealing Maryland's grievance process to have, at least at first blush, some bewildering features.

Blake's filings include many administrative dispositions (gleaned from the records of other prisoner suits) indicating that Maryland wardens routinely dismiss ARP grievances as procedurally improper when parallel IIU investigations are pending. One warden, for example, wrote in response to a prisoner's complaint: "Your Request for Administrative Remedy has been received and is hereby dismissed. This issue has been assigned to the Division of Correction's Internal Investigative Unit (Case #07–35–010621I/C), and will no longer be addressed through this process." Lodging of Respondent 1; see also, *e. g.*, *id.*, at 18 ("Admin. Dismiss Final: This is being investigated outside of the ARP process by I. I. U."). In addition, Blake has submitted briefs of the Maryland attorney general (again, drawn from former prisoner suits) specifically recognizing that administrative practice. As the attorney general stated in one case: "Wilkerson filed an ARP request," but "his complaint already was being investigated by the [IIU], superceding an ARP investigation." *Id.*, at 23–24; see also, *e. g.*, *id.*, at 5 (Bacon's grievance "was dismissed because the issue had been assigned to [the] IIU and would no longer be addressed through the ARP process").[4]

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[4] Blake further notes that in 2008, a year after his beating, Maryland amended one of its prison directives to state expressly that when the IIU investigates an incident, an ARP grievance may not proceed. See App. 367, Md. Div. of Correction, Directive 185–003, § VI(N)(4) (Aug. 27, 2008) (The warden "shall issue a final dismissal of [an ARP] request for procedural reasons when it has been determined that the basis of the complaint is the same basis of an investigation under the authority of the [IIU]"); Brief for Respondent 17–18. According to Blake, that amendment merely codified what his submissions show had long been the practice in Maryland prisons. See *ibid.*

And Ross's own submissions offer some confirmation of Blake's view. Ross does not identify a single case in which a warden considered the merits of an ARP grievance while an IIU inquiry was underway. See Tr. of Oral Arg. 6 (Maryland attorney general's office conceding that it had found none). To the contrary, his lodging contains still further evidence that wardens consistently dismiss such complaints as misdirected. See, *e. g.*, Lodging of Petitioner 15 (District Court noting that "Gladhill was advised that no further action would be taken through the ARP process because the matter had been referred to the [IIU]"). Indeed, Ross's materials suggest that some wardens use a rubber stamp specially devised for that purpose; the inmate, that is, receives a reply stamped with the legend: "Dismissed for procedural reasons . . . . This issue is being investigated by IIU case number: ——. No further action shall be taken within the ARP process." *Id.*, at 25, 32, 38; see Tr. of Oral Arg. 8–9 (Maryland attorney general's office conceding the stamp's existence and use).

Complicating the picture, however, are several cases in which an inmate refused to take a warden's jurisdictional "no" for an answer, resubmitted his grievance up the chain to the IGO, and there received a ruling on the merits, without any discussion of the ARP/IIU issue. We confess to finding these few cases perplexing in relation to normal appellate procedure. See *id.*, at 3–10, 13–15, 18–20 (multiple Justices expressing confusion about Maryland's procedures). If the IGO thinks the wardens wrong to dismiss complaints because of pending IIU investigations, why does it not say so and stop the practice? Conversely, if the IGO thinks the wardens right, how can it then issue merits decisions? And if that really is Maryland's procedure—that when an IIU investigation is underway, the warden (and Commissioner of Correction) cannot consider a prisoner's complaint, but the IGO can—why does the Inmate Handbook not spell this out? Are there, instead, other materials provided to prisoners

that communicate how this seemingly unusual process works and how to navigate it so as to get a claim heard?

In light of all these lodgings and the questions they raise about Maryland's grievance process, we remand this case for further consideration of whether Blake had "available" remedies to exhaust. The materials we have seen are not conclusive; they may not represent the complete universe of relevant documents, and few have been analyzed in the courts below. On remand, in addition to considering any other arguments still alive in this case, the court must perform a thorough review of such materials, and then address the legal issues we have highlighted concerning the availability of administrative remedies. First, did Maryland's standard grievance procedures potentially offer relief to Blake or, alternatively, did the IIU investigation into his assault foreclose that possibility? Second, even if the former, were those procedures knowable by an ordinary prisoner in Blake's situation, or was the system so confusing that no such inmate could make use of it? And finally, is there persuasive evidence that Maryland officials thwarted the effective invocation of the administrative process through threats, game-playing, or misrepresentations, either on a system-wide basis or in the individual case? If the court accepts Blake's probable arguments on one or more of these scores, then it should find (consistent this time with the PLRA) that his suit may proceed even though he did not file an ARP complaint.

III

Courts may not engraft an unwritten "special circumstances" exception onto the PLRA's exhaustion requirement. The only limit to § 1997e(a)'s mandate is the one baked into its text: An inmate need exhaust only such administrative remedies as are "available." On remand, the court below must consider how that modifying term affects Blake's case—that is, whether the remedies he failed to exhaust were "available" under the principles set out here. We

therefore vacate the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, concurring in part and concurring in the judgment.

I join the Court's opinion except for the discussion of Maryland's prison-grievance procedures, *ante*, at 645–648, which needlessly wades into respondent Shaidon Blake's questionable lodgings of new documents in this Court. Those documents are not part of the appellate record. See Fed. Rule App. Proc. 10(a). We have "consistently condemned" attempts to influence our decisions by submitting "additional or different evidence that is not part of the certified record." S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice § 13.11(k), p. 743 (10th ed. 2013). Perhaps Blake's newfound documents are subject to judicial notice as public records. See Fed. Rule Evid. 201. But I would not take such notice for the first time in this Court. It appears that Blake had a chance to submit many of his documents to the lower courts and failed to do so. Taking notice of the documents encourages gamesmanship and frustrates our review. I would let the Court of Appeals decide on remand whether to supplement the record, see Fed. Rule App. Proc. 10(e), or take notice of Blake's lodgings.

JUSTICE BREYER, concurring in part.

I join the opinion of the Court, with the exception that I described in *Woodford* v. *Ngo*, 548 U. S. 81 (2006). There, I agreed that "Congress intended the term 'exhausted' to 'mean what the term means in administrative law, where exhaustion means proper exhaustion.'" *Id.*, at 103 (opinion concurring in judgment). Though that statutory term does not encompass "freewheeling" exceptions for any "'special

circumstanc[e],'" *ante*, at 635, it does include administrative law's "well-established exceptions to exhaustion," *Woodford*, *supra*, at 103 (opinion of BREYER, J.). I believe that such exceptions, though not necessary to the Court's disposition of this case, may nevertheless apply where appropriate.

Reporter's Note

The next page is purposely numbered 901. The numbers between 650 and 901 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR MARCH 29 THROUGH
JUNE 6, 2016

MARCH 29, 2016

Miscellaneous Order

No. 14–1418. ZUBIK ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 3d Cir.;

No. 14–1453. PRIESTS FOR LIFE ET AL. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. D. C. Cir.;

No. 14–1505. ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. D. C. Cir.;

No. 15–35. EAST TEXAS BAPTIST UNIVERSITY ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 5th Cir.;

No. 15–105. LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 10th Cir.;

No. 15–119. SOUTHERN NAZARENE UNIVERSITY ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 10th Cir.; and

No. 15–191. GENEVA COLLEGE *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 3d Cir. [Certiorari granted, 577 U. S. 971.] The parties are directed to file supplemental briefs that address whether and how contraceptive coverage may be obtained by petitioners' employees through petitioners' insurance companies, but in a way that does not require any involvement of petitioners beyond their own decision to provide health insurance without contraceptive coverage to their employees.

Petitioners with insured plans are currently required to submit a form either to their insurer or to the Federal Government (naming petitioners' insurance company), stating that petitioners object on religious grounds to providing contraceptive coverage. The parties are directed to address whether contraceptive coverage could be provided to petitioners' employees, through peti-

tioners' insurance companies, without any such notice from petitioners.

For example, the parties should consider a situation in which petitioners would contract to provide health insurance for their employees, and in the course of obtaining such insurance, inform their insurance company that they do not want their health plan to include contraceptive coverage of the type to which they object on religious grounds. Petitioners would have no legal obligation to provide such contraceptive coverage, would not pay for such coverage, and would not be required to submit any separate notice to their insurer, to the Federal Government, or to their employees. At the same time, petitioners' insurance company—aware that petitioners are not providing certain contraceptive coverage on religious grounds—would separately notify petitioners' employees that the insurance company will provide cost-free contraceptive coverage, and that such coverage is not paid for by petitioners and is not provided through petitioners' health plan.

The parties may address other proposals along similar lines, avoiding repetition of discussion in prior briefing.

Briefs, limited to a single brief 25 pages in length for petitioners, and a single brief 20 pages in length for respondents, are to be filed simultaneously with the Clerk and served upon counsel for the other parties on or before April 12, 2016. Reply briefs, limited to a single brief 10 pages in length for petitioners and for respondents, are to be filed simultaneously with the Clerk and served upon opposing counsel for the other parties on or before April 20, 2016.

March 31, 2016

Dismissal Under Rule 46

No. 15–7092. Richter et al. *v.* United States. C. A. 10th Cir. Certiorari dismissed as to petitioner Brandon Richter under this Court's Rule 46. Reported below: 796 F. 3d 1173.

Certiorari Denied

No. 15–8771 (15A1012). Bishop *v.* Chatman, Warden. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to Justice Thomas, and by him referred to the Court, denied. Certiorari denied.

April 4, 2016

Dismissal Under Rule 46

No. 15–1114. First American Financial Corp. et al. *v.* Edwards. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 798 F. 3d 1172.

Certiorari Granted—Vacated and Remanded

No. 15–7290. Olivo *v.* United States. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Johnson* v. *United States*, 576 U. S. 591 (2015). Reported below: 597 Fed. Appx. 878.

Certiorari Granted—Reversed. (See No. 15–723, *ante*, p. 113.)

Certiorari Dismissed

No. 15–7964. Moore *v.* City of Chicago, Illinois. App. Ct. Ill., 1st Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

Miscellaneous Orders

No. 15M96. Udoinyion *v.* Guardian Security et al. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 15M97. Courtright *v.* United States; and

No. 15M98. Santos-Pineda et al. *v.* Axel et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 15M99. Jolley *v.* Merit Systems Protection Board et al. Motion for leave to proceed as a veteran granted. Justice Kagan took no part in the consideration or decision of this motion.

No. 14–1468. BIRCHFIELD *v.* NORTH DAKOTA. Sup. Ct. N. D.;
No. 14–1470. BERNARD *v.* MINNESOTA. Sup. Ct. Minn.; and
No. 14–1507. BEYLUND *v.* LEVI, DIRECTOR, NORTH DAKOTA DEPARTMENT OF TRANSPORTATION. Sup. Ct. N. D. [Certiorari granted, 577 U. S. 1045.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae*, for enlargement of time for oral argument, and for divided argument granted, and the time is divided as follows: 35 minutes for petitioners, 15 minutes for respondent North Dakota, 10 minutes for respondent Minnesota, and 10 minutes for the Solicitor General.

No. 15–674. UNITED STATES ET AL. *v.* TEXAS ET AL. C. A. 5th Cir. [Certiorari granted, 577 U. S. 1101.] Motion of Gonzalez Olivieri LLC et al. for leave to file brief as *amici curiae* out of time granted.

No. 15–7093. PHIFER *v.* SEVENSON ENVIRONMENTAL SERVICES, INC., ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [577 U. S. 1101] denied.

No. 15–7506. WATSON *v.* O'BRIEN, WARDEN. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [577 U. S. 1131] denied.

No. 15–7946. FLEMING *v.* SAINI ET AL. Ct. App. Tenn. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until April 25, 2016, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 15–8558. IN RE RANDALL. Petition for writ of habeas corpus denied.

No. 15–8531. IN RE DYE. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 15–7991. IN RE LOOK;
No. 15–8417. IN RE LOVETT; and
No. 15–8432. IN RE FOSTER. Petitions for writs of mandamus denied.

No. 15–7950. IN RE GRENADIER. Petition for writ of mandamus and/or prohibition denied.

No. 15–7892. In re Spencer. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of prohibition dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 15–606. Pena-Rodriguez *v.* Colorado. Sup. Ct. Colo. Certiorari granted. Reported below: 350 P. 3d 287.

Certiorari Denied

No. 14–1123. Wal-Mart Stores, Inc., et al. *v.* Braun, Individually and on Behalf of All Others Similarly Situated, et al. Super. Ct. Pa. Certiorari denied. Reported below: 24 A. 3d 875.

No. 14–1124. Wal-Mart Stores, Inc., et al. *v.* Braun, Individually and on Behalf of All Others Similarly Situated, et al. Sup. Ct. Pa. Certiorari denied. Reported below: 630 Pa. 292, 106 A. 3d 656.

No. 14–1230. Wells Fargo Bank, N. A. *v.* Gutierrez et al., Individually and on Behalf of All Others Similarly Situated. C. A. 9th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 824.

No. 15–166. Schlaud et al. *v.* International Union, UAW, et al. C. A. 6th Cir. Certiorari denied. Reported below: 785 F. 3d 1119.

No. 15–405. Katso *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 74 M. J. 273.

No. 15–550. Stackhouse *v.* Colorado. Sup. Ct. Colo. Certiorari denied. Reported below: 386 P. 3d 440.

No. 15–591. Retirement Capital Access Management Co., LLC *v.* U. S. Bancorp et al. C. A. Fed. Cir. Certiorari denied. Reported below: 611 Fed. Appx. 1007.

No. 15–682. Justice et al. *v.* Hosemann, Mississippi Secretary of State, et al. C. A. 5th Cir. Certiorari denied. Reported below: 771 F. 3d 285.

No. 15–898. Enriquez *v.* Smith. Sup. Ct. Guam. Certiorari denied. Reported below: 2015 Guam 29.

No. 15–954. PASTORE *v.* COUNTY OF SANTA CRUZ, CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 15–963. MORENO *v.* DONNA INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 677.

No. 15–965. WEISS *v.* SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 15–979. REICH *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 15–980. LAVOIE *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 158 Conn. App. 256, 118 A. 3d 708.

No. 15–984. CABAN *v.* EMPLOYEE SECURITY FUND OF THE ELECTRICAL PRODUCTS INDUSTRIES PENSION PLAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 139.

No. 15–985. DOUGLAS *v.* UNIVERSITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 556.

No. 15–1000. ELANSARI *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 615 Fed. Appx. 760.

No. 15–1007. LOVE *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 183 Wash. 2d 598, 354 P. 3d 841.

No. 15–1068. GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 630 Fed. Appx. 157.

No. 15–1073. VAUGHAN *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 15–1080. EVANS *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 517 S. W. 3d 528.

No. 15–1091. MICHEL-MORERA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–6566. SPENCE *v.* WILLIS. C. A. 4th Cir. Certiorari denied. Reported below: 602 Fed. Appx. 927.

No. 15–6567. SPENCE *v.* WILLIS. C. A. 11th Cir. Certiorari denied.

No. 15–7090. GIPSON *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 15–7126. RODRIGUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 799 F. 3d 1222.

No. 15–7132. LOPEZ-GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 607 Fed. Appx. 719.

No. 15–7165. BLANCHARD *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 15–7540. THETFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 798.

No. 15–7859. WILKINS *v.* DAVID-PAIGE MANAGEMENT SYSTEMS, LLC. C. A. 4th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 801.

No. 15–7866. ANDERSON *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 15–7868. JENKINS *v.* YOUNG ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 613 Fed. Appx. 135.

No. 15–7871. LEBLANC *v.* COOLEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 15–7872. LEWIS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 15–7880. MOORE *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 15–7882. PAUL *v.* PENNYWELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 453.

No. 15–7887. WESLEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 130710–U.

No. 15–7888. WAGNER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–7891. VINCENT *v.* CITY OF SULPHUR, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 3d 543.

No. 15–7893. MATTHISEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 15–7897. TORRES *v.* SCOTT, GOVERNOR OF FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 192 So. 3d 39.

No. 15–7900. ALTOONIAN *v.* STEWART, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7903. SLOAN *v.* OVERMYER, SUPERINTENDENT, FOREST STATE CORRECTIONAL FACILITY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–7907. CRUZ-GARCIA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 15–7909. RICHARD *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2015 WI App 37, 363 Wis. 2d 655, 862 N. W. 2d 903.

No. 15–7911. RICKMYER *v.* JUNGERS ET AL. C. A. 8th Cir. Certiorari denied.

No. 15–7919. ZABUSKI *v.* MONTGOMERY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–7923. MEJORADO *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 785.

No. 15–7927. MORRIS *v.* M. P. SANTINI, INC., ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 15–7932. RILEY *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2014 IL App (3d) 120880–U.

No. 15–7937. HAILEY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 15–7938. WATSON *v.* PIERCE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 15–7942. HILL *v.* ARKANSAS STATE CRIME LABORATORY ET AL. C. A. 8th Cir. Certiorari denied.

No. 15–7945. HENSLEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2014 IL App (1st) 120802, 22 N. E. 3d 1175.

No. 15–7948. FRYE *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 15–7949. GIRMA *v.* EMERY WORK BED PROGRAM. Ct. App. D. C. Certiorari denied.

No. 15–7954. HOOD *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 15–7955. GUEST *v.* FOUNTAIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 15–7957. HOLLAND *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 15–7965. MILAM *v.* SOUTHAVEN POLICE DEPARTMENT ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–7968. MCCREARY *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–7969. MCCORMICK *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2015 IL App (3d) 120842–U.

No. 15–7971. LAMAR *v.* COLORADO ET AL. Ct. App. Colo. Certiorari denied.

No. 15–7972. KARPIN *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–7977. WALDEN *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 15–7980. MASSEY *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–7982. PICKENS *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 15–7984. FOLTZ *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 224.

No. 15–7994. TYLER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 15–7999. Rogers *v.* Klee, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–8000. Sparks *v.* Clarke. C. A. 4th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 681.

No. 15–8002. Hofland *v.* Perkins et al. Sup. Jud. Ct. Me. Certiorari denied.

No. 15–8005. Davis *v.* McCollum, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 798 F. 3d 1317.

No. 15–8007. Curry *v.* South Carolina. Sup. Ct. S. C. Certiorari denied.

No. 15–8008. Grant *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 2015 Ark. 323, 469 S. W. 3d 356.

No. 15–8010. Holmes *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 15–8024. Hooks *v.* Luther, Superintendent, State Correctional Institution at Laurel Highlands, et al. C. A. 3d Cir. Certiorari denied.

No. 15–8027. Pedroso *v.* Nooth, Superintendent, Snake River Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 15–8032. Gunn *v.* Sparkman. C. A. 5th Cir. Certiorari denied.

No. 15–8033. Garcia *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 15–8036. Ibn-Sadiika *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied.

No. 15–8037. Howell *v.* Burt, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–8090. Watts *v.* Lee, Superintendent, Eastern New York Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 621 Fed. Appx. 60.

No. 15–8134. Riva *v.* Vidal, Superintendent, Souza-Baranowski Correctional Center. C. A. 1st Cir. Certiorari denied. Reported below: 803 F. 3d 77.

No. 15–8150. VERTER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 119 A. 3d 687.

No. 15–8153. GALLO *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8156. GLAGOLA *v.* MICHIGAN ADMINISTRATIVE HEARING SYSTEM ET AL. Ct. App. Mich. Certiorari denied.

No. 15–8158. ABAZARI *v.* ROSALIND FRANKLIN UNIVERSITY OF MEDICINE AND SCIENCE ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2015 IL App (2d) 140952, 40 N. E. 3d 264.

No. 15–8159. BANKS *v.* GEORGIA DEPARTMENT OF CORRECTIONS. Ct. App. Ga. Certiorari denied.

No. 15–8162. SHVETS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 631 Fed. Appx. 91.

No. 15–8163. KABEDE *v.* CALIFORNIA BOARD OF PRISON TERMS ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–8166. CAFFEY *v.* BUTLER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 802 F. 3d 884.

No. 15–8168. DJENASEVIC, AKA GENASE, AKA KRAJA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–8170. HILTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 754.

No. 15–8172. CISNEROS *v.* BAKER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 313.

No. 15–8174. TITTLE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 605 Fed. Appx. 961.

No. 15–8180. YOUNG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 863.

No. 15–8199. SAGUN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 15–8205. KRUG *v.* LORANTH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 599 Fed. Appx. 512.

No. 15–8207. FISHER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 805 F. 3d 982.

No. 15–8216. WILLIAMS *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL FACILITY. C. A. 9th Cir. Certiorari denied. Reported below: 606 Fed. Appx. 380.

No. 15–8236. FLORES *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 319 Conn. 218, 125 A. 3d 157.

No. 15–8241. AVERY *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 183 So. 3d 109.

No. 15–8257. RYAN *v.* LOPEZ. C. A. 9th Cir. Certiorari denied.

No. 15–8265. CROCKETT *v.* BUTLER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 807 F. 3d 160.

No. 15–8281. HENNEY *v.* PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING. Commw. Ct. Pa. Certiorari denied.

No. 15–8294. JIRAK *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA. C. A. 8th Cir. Certiorari denied.

No. 15–8325. OLIVER *v.* DELBALSO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT RETREAT, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8330. FUENTES *v.* SPEARMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 640.

No. 15–8353. PEGUES *v.* HAINES, WARDEN. Ct. App. Wis. Certiorari denied.

No. 15–8355. TROUT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 131418–U.

No. 15–8386. BRINSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–8400. JONASSEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 15–8406. BLAIR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 114 A. 3d 960.

No. 15–8408. HENDRIX *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 816.

No. 15–8411. CHI *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 15–8413. GARCIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 596 Fed. Appx. 24.

No. 15–8415. MARTINEZ-HARO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 255.

No. 15–8418. MADDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 706.

No. 15–8423. GROGANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 267.

No. 15–8427. RASHID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–8433. CALDERON-JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 295.

No. 15–8435. SISCO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 15–8439. BUFFINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 875.

No. 15–8449. VICENTE-ARIAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 809 F. 3d 686.

No. 15–8450. ALAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 742.

No. 15–8452. MEDA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 812 F. 3d 502.

No. 15–530. RATTIGAN *v.* LYNCH, ATTORNEY GENERAL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 780 F. 3d 413.

No. 15–712. KAKARALA *v.* WELLS FARGO BANK, N. A. C. A. 9th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 424.

JUSTICE THOMAS, dissenting.

The question presented by this petition is whether the Court should overrule *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336 (1976). *Thermtron* adopted an atextual reading of 28 U. S. C. § 1447(d), the federal law governing review of orders remanding a case from federal to state courts. Because I remain of the view that *Thermtron* was wrongly decided, I respectfully dissent from the denial of certiorari.

Congress has unambiguously deprived federal courts of jurisdiction to review an order remanding a case from federal to state court: "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." 28 U. S. C. § 1447(d). Underscoring the breadth of this prohibition, Congress has provided only one exception: "[A]n order remanding a case to . . . State court . . . pursuant to section . . . 1443 of this title [providing for the removal of certain civil rights cases] shall be reviewable by appeal or otherwise." *Ibid.**

Yet in *Thermtron*, this Court interpreted § 1447(d) to mean the opposite of what it says. The Court concluded that § 1447(d) bars review of only *some* remand orders—namely, orders issued pursuant to § 1447(c), which, at the time, required federal district courts to remand cases that were "removed 'improvidently and without jurisdiction'" whenever that defect is discovered. 423 U. S., at 343–344. As Members of this Court have noted, this interpretation of § 1447(d) defies established principles of statutory construction. *E. g.*, *id.*, at 355 (Rehnquist, J., dissenting) ("[T]he Court today holds that Congress did not mean what it so plainly said"); see *Osborn* v. *Haley*, 549 U. S. 225, 262–263 (2007) (Scalia, J., dissenting) ("Few statutes read more clearly than . . . § 1447(d) . . . . Yet beginning in 1976, this Court has repeatedly eroded § 1447(d)'s mandate and expanded the Court's jurisdiction"); *Carlsbad Technology, Inc.* v. *HIF Bio, Inc.*, 556 U. S. 635, 645 (2009) (BREYER, J., concurring) ("[S]omething is wrong" with the Court's view of § 1447(d)).

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*Congress later amended this provision to also provide for appellate review of orders involving the remand of certain cases involving federal officers and agencies. 28 U. S. C. § 1447(d).

Thermtron has also proved unworkable. It has spawned a number of divisions in the lower courts over whether certain remands are based on jurisdictional or nonjurisdictional grounds, and how to determine which is which. *E. g.*, *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 710–712 (1996) (resolving split over whether remands based on an abstention doctrine are nonjurisdictional and thus reviewable); see *Carlsbad*, *supra*, at 641 (resolving split over whether remands of supplemental state-law claims are not based on a lack of subject-matter jurisdiction). Later cases have compounded the confusion over how to interpret § 1447(d) by adding on more ancillary rules. For instance, the Court has suggested that remand orders putatively based on jurisdictional grounds may be reviewable if there is reason to think that they actually rested on a different ground. See *Kircher* v. *Putnam Funds Trust*, 547 U. S. 633, 641–644 (2006). And *Thermtron* continues to perplex Courts of Appeals today. See, *e. g.*, *Harvey* v. *Ute Indian Tribe of Uintah and Ouray Reservation*, 797 F. 3d 800, 804 (CA10 2015) (noting split on the question whether a remand based on waiver is subject to § 1447(d)'s bar).

Nor can *Thermtron* be reconciled with the broader principles we have identified to guide our interpretation of jurisdictional statutes. Since deciding *Thermtron*, we have recognized that "administrative simplicity is a major virtue in a jurisdictional statute," and that "[c]omplex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Hertz Corp.* v. *Friend*, 559 U. S. 77, 94 (2010).

I see no need to force Congress to fix a problem that this Court created. *Thermtron* has endured in no small part because the parties in many of our prior cases have failed to ask us to overrule it. *E. g.*, *Carlsbad*, *supra*, at 638, n. (declining to revisit *Thermtron* because no party asked for its overruling, nor did the parties in three preceding cases applying *Thermtron*). We should stop forcing parties and lower courts to guess when § 1447(d) will and will not apply, and should start applying the law as Congress enacted it. The petition in this case presents an opportunity to reconsider *Thermtron*. I would grant review in this case and any other that would allow us to revisit our mistaken approach to § 1447(d). I respectfully dissent from the denial of certiorari.

No. 15–1042. SMITH *v.* NEW YORK PRESBYTERIAN HOSPITAL ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 15–8312. SELLERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 616 Fed. Appx. 68.

No. 15–8401. MEDINA-CASTELLANOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 623 Fed. Appx. 611.

Rehearing Denied

No. 15–5758. OLIVE *v.* FLORIDA, 577 U. S. 959;

No. 15–6096. MORRIS *v.* COURT OF APPEALS OF TEXAS, 11TH DISTRICT, 577 U. S. 988;

No. 15–6496. MILLER *v.* OFFICE OF CHILDREN, YOUTH AND FAMILIES OF ALLEGHENY COUNTY, 577 U. S. 1051;

No. 15–6743. IN RE WEI ZHOU, 577 U. S. 1060;

No. 15–6796. TILLMAN *v.* GASTELO, ACTING WARDEN, 577 U. S. 1077;

No. 15–6885. KIDWELL *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL., 577 U. S. 1080;

No. 15–6922. THOMPKINS *v.* BROWN ET AL., 577 U. S. 1106;

No. 15–7019. WANNAMAKER *v.* BOULWARE, WARDEN, 577 U. S. 1084;

No. 15–7020. WILLIAMS *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL., 577 U. S. 1084;

No. 15–7079. THOMPSON *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., 577 U. S. 1122;

No. 15–7101. CONNER *v.* HUMPHREY, WARDEN, 577 U. S. 1146; and

No. 15–7239. IN RE JOHNSON, 577 U. S. 1060. Petitions for rehearing denied.

APRIL 6, 2016

Certiorari Denied

No. 15–8764 (15A1008). LUCIO VASQUEZ *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

April 8, 2016

Miscellaneous Orders

No. 15–375. Kirtsaeng, dba Bluechristine99 *v.* John Wiley & Sons, Inc. C. A. 2d Cir. [Certiorari granted, 577 U. S. 1098.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–415. Encino Motorcars, LLC *v.* Navarro et al. C. A. 9th Cir. [Certiorari granted, 577 U. S. 1098.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–458. Dietz *v.* Bouldin. C. A. 9th Cir. [Certiorari granted, 577 U. S. 1101.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–674. United States et al. *v.* Texas et al. C. A. 5th Cir. [Certiorari granted, 577 U. S. 1101.] Joint motion of petitioners and intervenor-respondents for enlargement of time for oral argument and for divided argument granted, and the time is divided as follows: 35 minutes for petitioners and 10 minutes for intervenor-respondents. Joint motion of respondents and *amicus curiae* United States House of Representatives for enlargement of time for oral argument and for divided argument granted, and the time is divided as follows: 30 minutes for respondents and 15 minutes for United States House of Representatives.

April 12, 2016

Dismissal Under Rule 46

No. 14–1458. MHN Government Services, Inc., et al. *v.* Zaborowski et al. C. A. 9th Cir. [Certiorari granted, 576 U. S. 1095.] Writ of certiorari dismissed under this Court's Rule 46. Reported below: 601 Fed. Appx. 461.

Miscellaneous Order

No. 15–8877 (15A1033). In re Fults. Application for stay of execution of sentence of death, presented to Justice Thomas, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

April 18, 2016

Dismissal Under Rule 46

No. 15–8726. Xiao-Ping Su *v.* United States. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 633 Fed. Appx. 635.

Certiorari Dismissed

No. 15–8161. Sneed *v.* Florida. Dist. Ct. App. Fla., 3d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 201 So. 3d 48.

No. 15–8221. Hall *v.* Thomas, Warden. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Justice Kagan took no part in the consideration or decision of this motion and this petition.

No. 15–8445. Madura et ux. *v.* Bank of America, N. A. C. A. 11th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 15A879. Taylor *v.* Taylor. Application to stay and recall the mandate, addressed to The Chief Justice and referred to the Court, denied.

No. D–2848. In re Gottesman. Lee Daniel Gottesman, of Toms River, N. J., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on November 2, 2015, [577 U. S. 953] is discharged.

No. D–2854. In re Cumberbatch. Lawrence S. Cumberbatch, of Brooklyn, N. Y., having requested to resign as a member

of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on November 2, 2015, [577 U. S. 953] is discharged.

No. D–2857. In re Disbarment of Rosabianca. Disbarment entered. [For earlier order herein, see 577 U. S. 1027.]

No. D–2858. In re Disbarment of Sepcich. Disbarment entered. [For earlier order herein, see 577 U. S. 1027.]

No. D–2859. In re Disbarment of Jefferson. Disbarment entered. [For earlier order herein, see 577 U. S. 1027.]

No. D–2860. In re Disbarment of Abadie. Disbarment entered. [For earlier order herein, see 577 U. S. 1027.]

No. D–2861. In re Disbarment of Trye. Disbarment entered. [For earlier order herein, see 577 U. S. 1027.]

No. D–2862. In re Disbarment of Zobrist. Disbarment entered. [For earlier order herein, see 577 U. S. 1027.]

No. D–2865. In re Disbarment of Rozenstrauch. Disbarment entered. [For earlier order herein, see 577 U. S. 1028.]

No. D–2866. In re Disbarment of Neely. Disbarment entered. [For earlier order herein, see 577 U. S. 1028.]

No. D–2867. In re Disbarment of McBeath. Disbarment entered. [For earlier order herein, see 577 U. S. 1028.]

No. D–2868. In re Disbarment of Brawley. Disbarment entered. [For earlier order herein, see 577 U. S. 1028.]

No. 15M100. Adderley *v.* Countrywide et al.;
No. 15M102. McFarland *v.* United States;
No. 15M104. Morris *v.* Silvestre et al.;
No. 15M106. Robinson *v.* Schneider et al.;
No. 15M107. Cunningham *v.* United States; and
No. 15M108. Ramirez *v.* Jones, Warden. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 15M101. Shukh *v.* Seagate Technology, LLC, et al. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 15M103. LANDELL *v.* DEPARTMENT OF DEFENSE; and
No. 15M105. IN RE HALL. Motions for leave to proceed as veterans denied.

No. 15M109. MINES *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 15–1031. HOWELL *v.* HOWELL. Sup. Ct. Ariz. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 15–7149. GONZALES *v.* INDUSTRIAL CLAIM APPEALS OFFICE OF COLORADO ET AL. Ct. App. Colo. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [577 U. S. 1135] denied.

No. 15–7591. IN RE KOCH. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [577 U. S. 1192] denied.

No. 15–8399. KIRBY *v.* NORTH CAROLINA STATE UNIVERSITY. C. A. 4th Cir.; and
No. 15–8513. SHERIDAN *v.* UNITED STATES. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until May 9, 2016, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 15–8609. IN RE WIMBUSH;
No. 15–8672. IN RE VISINTINE;
No. 15–8688. IN RE JOHNSON;
No. 15–8713. IN RE MCMILLAN; and
No. 15–8751. IN RE JAMERSON. Petitions for writs of habeas corpus denied.

No. 15–8567. IN RE DECARO. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 15–8124. IN RE SHOVE;
No. 15–8381. IN RE STROUSE; and
No. 15–8570. IN RE EDELEN. Petitions for writs of mandamus denied.

No. 15–8179. In re Ogeone. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) (*per curiam*).

Certiorari Denied

No. 15–209. Brumant *v.* Lynch, Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 594 Fed. Appx. 273.

No. 15–703. Bass *v.* Authors Guild, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 614 Fed. Appx. 564.

No. 15–739. Little *v.* Rummel et al. C. A. 8th Cir. Certiorari denied. Reported below: 605 Fed. Appx. 587.

No. 15–742. Shea *v.* Kerry, Secretary of State. C. A. D. C. Cir. Certiorari denied. Reported below: 796 F. 3d 42.

No. 15–795. Pitzer *v.* Tenorio. C. A. 10th Cir. Certiorari denied. Reported below: 802 F. 3d 1160.

No. 15–808. Herriman et al. *v.* Kindl. C. A. 6th Cir. Certiorari denied. Reported below: 798 F. 3d 391.

No. 15–838. Vermont *v.* MPHJ Technology Investments, LLC; and

No. 15–988. MPHJ Technology Investments, LLC *v.* Vermont. C. A. Fed. Cir. Certiorari denied. Reported below: 803 F. 3d 635.

No. 15–846. Drzewiecki *v.* Carlson, Personal Representative of the Estate of Carlson, et al.; and

No. 15–850. Fewins et al. *v.* Carlson, Personal Representative of the Estate of Carlson. C. A. 6th Cir. Certiorari denied. Reported below: 801 F. 3d 668.

No. 15–884. Guglielmelli *v.* State Farm Mutual Automobile Insurance Co. C. A. 3d Cir. Certiorari denied. Reported below: 628 Fed. Appx. 137.

No. 15–886. ALBEMARLE CORPORATION & SUBSIDIARIES *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 797 F. 3d 1011.

No. 15–892. BROOKER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 219 So. 3d 695.

No. 15–899. HABERSTROH *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 131 Nev. 1287.

No. 15–983. BARDES *v.* AULD, MAGISTRATE JUDGE, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 570.

No. 15–987. ZISUMBO *v.* OGDEN REGIONAL MEDICAL CENTER. C. A. 10th Cir. Certiorari denied. Reported below: 801 F. 3d 1185.

No. 15–992. TARASENKO *v.* UNIVERSITY OF ARKANSAS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 214.

No. 15–993. LIMELIGHT NETWORKS, INC. *v.* AKAMAI TECHNOLOGIES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 805 F. 3d 1368.

No. 15–1008. KNIT WITH *v.* KNITTING FEVER, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 625 Fed. Appx. 27.

No. 15–1010. LEWIS ET AL. *v.* ASCENSION PARISH SCHOOL BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 3d 344.

No. 15–1017. DITSCH ET AL. *v.* CARRILLO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 798 F. 3d 1210.

No. 15–1018. YOUNGBLOOD *v.* FORT BEND INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 602 Fed. Appx. 207.

No. 15–1019. DIXON *v.* FOOT LOCKER, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 594.

No. 15–1022. WELBORN *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 15–1023. AHMADI *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–1029. MUA *v.* BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY. Cir. Ct. Prince George's County, Md. Certiorari denied.

No. 15–1035. KINNEY *v.* CLARK. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 15–1040. VEASLEY *v.* FEDERAL NATIONAL MORTGAGE ASSOCIATION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 290.

No. 15–1046. WALWYN *v.* BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE (Reported below: 481 S. W. 3d 151); and REGULI *v.* BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE (489 S. W. 3d 408). Sup. Ct. Tenn. Certiorari denied.

No. 15–1048. PORWISZ *v.* LYNCH, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 625 Fed. Appx. 49.

No. 15–1057. LOPEZ-PEREZ *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 128 App. Div. 3d 1093, 8 N. Y. S. 3d 600.

No. 15–1059. SAN DIEGO UNIFIED SCHOOL DISTRICT *v.* T. B. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 806 F. 3d 451.

No. 15–1062. HEMOPET *v.* HILL'S PET NUTRITION, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 617 Fed. Appx. 997.

No. 15–1065. CHAPARRO ET UX. *v.* U. S. BANK N. A. Sup. Ct. Fla. Certiorari denied.

No. 15–1070. BODY *v.* MCDONALD, SECRETARY OF VETERANS AFFAIRS. C. A. 11th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 418.

No. 15–1071. BIERI *v.* GREENE COUNTY PLANNING AND ZONING DEPARTMENT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 440.

No. 15–1074. GOULD *v.* COUNCIL OF BRISTOL BOROUGH, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 615 Fed. Appx. 112.

No. 15–1077. MOORE ET AL. *v.* JPMORGAN CHASE BANK, N. A. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 142971–U.

No. 15–1082. BILOW *v.* MUCH SHELIST FREED DENENBERG AMENT & RUBENSTEIN, P. C. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 132839–U.

No. 15–1083. FUJISAKA *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 472 S. W. 3d 792.

No. 15–1087. CHAMBERLAIN *v.* HARRIS. C. A. 4th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 263.

No. 15–1089. TAS *v.* BEACHY ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 626 Fed. Appx. 999.

No. 15–1093. ADAMS *v.* DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied. Reported below: 618 Fed. Appx. 1.

No. 15–1096. PICKENS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 192 So. 3d 40.

No. 15–1098. KIM *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 172.

No. 15–1099. E. O. R. ENERGY, LLC, ET AL. *v.* ILLINOIS POLLUTION CONTROL BOARD ET AL. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2015 IL App (4th) 130443, 29 N. E. 3d 691.

No. 15–1102. GEMMINK *v.* JAY PEAK, INC. C. A. 2d Cir. Certiorari denied. Reported below: 807 F. 3d 46.

No. 15–1104. BURLEY *v.* NATIONAL PASSENGER RAILROAD CORPORATION, DBA AMTRAK. C. A. D. C. Cir. Certiorari denied. Reported below: 801 F. 3d 290.

No. 15–1106. RAHN ET AL. *v.* BOARD OF TRUSTEES OF NORTHERN ILLINOIS UNIVERSITY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 803 F. 3d 285.

No. 15–1108. HOOTSTEIN ET AL. *v.* MENTAL HEALTH ASSN. (MHA) INC. ET AL. C. A. 1st Cir. Certiorari denied.

No. 15–1116. UNICARE LIFE & HEALTH INSURANCE CO. *v.* WASKIEWICZ. C. A. 6th Cir. Certiorari denied. Reported below: 802 F. 3d 851.

No. 15–1124. SLUSHER *v.* SHELBYVILLE HOSPITAL CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 3d 211.

No. 15–1127. YOUNG-GIBSON *v.* BOARD OF EDUCATION OF THE CITY OF CHICAGO. Sup. Ct. Ill. Certiorari denied.

No. 15–1163. ENDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 1014.

No. 15–1175. KONOVER *v.* WELLS FARGO BANK, N. A. C. A. 2d Cir. Certiorari denied. Reported below: 630 Fed. Appx. 46.

No. 15–1176. MCCLAIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 805 F. 3d 795.

No. 15–6578. COLLIE *v.* SOUTH CAROLINA COMMISSION ON LAWYER CONDUCT ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 410 S. C. 556, 765 S. E. 2d 835.

No. 15–7017. MEZA-RODRIGUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 798 F. 3d 664.

No. 15–7133. KINNEY *v.* CLARK. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 15–7278. PENN *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 472 Mass. 610, 36 N. E. 3d 552.

No. 15–7350. BUTLER *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 641.

No. 15–7451. BECKWORTH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 15–7468. HOFELICH *v.* LACY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 310.

No. 15–7479. RONK *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 172 So. 3d 1112.

No. 15–7570. HOLBROOK *v.* RONNIES LLC, DBA RONNY'S RV PARK. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 15–7611. JACKSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 15–7804. CORDOVA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 62 Cal. 4th 104, 358 P. 3d 518.

No. 15–7828. WRIGHT *v.* WESTBROOKS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 793 F. 3d 670.

No. 15–7940. WILLIAMSON *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 805 F. 3d 1009.

No. 15–7988. HAMILTON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 793 F. 3d 1261.

No. 15–7993. WILLYARD *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 15–7995. VASQUEZ-MENDOZA *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–7998. FALTZ *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 15–8009. HAWKINS *v.* WINCHESTER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 15–8012. BOUMA *v.* HOWARD COUNTY, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 156.

No. 15–8019. BUI *v.* SINGH ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–8020. ABDULLAH-MALIK *v.* BRYANT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 339.

No. 15–8022. Ford *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 600 Fed. Appx. 896.

No. 15–8023. Guinn *v.* Colorado Attorney Regulation Counsel. C. A. 10th Cir. Certiorari denied. Reported below: 563 Fed. Appx. 652.

No. 15–8025. Hollins *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 130013–U.

No. 15–8028. Perez *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 15–8030. Fortune *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 593 Fed. Appx. 237.

No. 15–8031. Hardin *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 15–8034. Hardy *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 160 So. 3d 895.

No. 15–8038. Figgs *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 15–8039. Epshteyn *v.* Burr, Senior Judge, Court of Common Pleas of Pennsylvania, Delaware County. C. A. 3d Cir. Certiorari denied. Reported below: 610 Fed. Appx. 131.

No. 15–8040. Constant *v.* DTE Electric Co., aka Detroit Edison Co. Ct. App. Mich. Certiorari denied.

No. 15–8041. Gabriel *v.* Colorado Mountain Medical, P. C., et al. C. A. 10th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 598.

No. 15–8043. Williams *v.* North Carolina. C. A. 4th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 184.

No. 15–8045. Marino *v.* Martuscello, Superintendent, Coxsackie Correctional Facility. App. Div., Sup. Ct. N. Y.,

3d Jud. Dept. Certiorari denied. Reported below: 131 App. Div. 3d 749, 14 N. Y. S. 3d 589.

No. 15–8047. THORNTON *v.* HENS-GRECO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 251.

No. 15–8048. BROWN *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2015 IL App (5th) 140322–U.

No. 15–8051. BANKS *v.* AMERICAN HERITAGE LIFE INSURANCE CO., DBA ALLSTATE WORKPLACE DIVISION. C. A. 6th Cir. Certiorari denied.

No. 15–8056. SINCLAIR *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 207 So. 3d 241.

No. 15–8057. DICKERSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2014 IL App (1st) 120049–U.

No. 15–8060. MCCORMICK *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 15–8061. CAISON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 15–8062. THOMPSON *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8066. MEEKS *v.* SCHOFIELD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 697.

No. 15–8068. JOHNSON *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 2013–0343 (La. App. 4 Cir. 10/1/14), 151 So. 3d 683.

No. 15–8069. MAYFIELD *v.* MILES ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–8074. RHONE *v.* OVERMYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8077. OZORIO *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 294.

No. 15–8079. SMITH *v.* WALLACE ET AL. C. A. 8th Cir. Certiorari denied.

No. 15–8080. PARTHEMORE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 7. Certiorari denied.

No. 15–8085. MAGWOOD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–8086. LABRANCH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 15–8088. WARD *v.* COOKE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 83.

No. 15–8089. SAMRA *v.* PRICE, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 227.

No. 15–8091. STRAWS *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 168.

No. 15–8093. CHILTON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 15–8098. WALKER *v.* CITY OF MEMPHIS, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–8105. MEMMINGER *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8108. BANKS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–8109. LEWIS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied.

No. 15–8112. BROWN *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2015 IL App (4th) 130192–U.

No. 15–8113. THOMPSON *v.* GOWER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8117. ARMSTRONG *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 15–8120. JOHNSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 127 App. Div. 3d 451, 7 N. Y. S. 3d 106.

No. 15–8121. ARIAS-COREAS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 15–8123. BRODSKY *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 677.

No. 15–8126. SAYED *v.* BROMAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 698.

No. 15–8127. PRESCOTT *v.* GRIFFIN, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 634 Fed. Appx. 38.

No. 15–8130. PHINISEE, INDIVIDUALLY AND ON BEHALF OF A. P., A MINOR, AS HER PARENT AND NATURAL GUARDIAN *v.* LAYSER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 627 Fed. Appx. 118.

No. 15–8132. SAYED *v.* COLORADO DEPARTMENT OF CORRECTIONS. Ct. App. Colo. Certiorari denied.

No. 15–8133. DUNCAN *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 57.

No. 15–8138. MATIAS TORRES *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 15–8141. MCKNIGHT *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 15–8144. SCHUM *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 617 Fed. Appx. 5.

No. 15–8147. HERNANDEZ *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 15–8149. CHOW, AKA YI JING WONG CHOW, ET AL. *v.* CITY OF POMONA, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–8151. CROSS *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8152. WILLIAMS *v.* KERESTES. Super. Ct. Pa. Certiorari denied. Reported below: 121 A. 3d 1141.

No. 15–8160. McAdams *v.* Supreme Court of Washington. Ct. App. Wash. Certiorari denied.

No. 15–8164. Kostich *v.* McCollum, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 618.

No. 15–8165. Consiglio *v.* California Department of State Hospitals et al. C. A. 9th Cir. Certiorari denied.

No. 15–8167. Brown *v.* Michigan. Cir. Ct. Ingham County, Mich. Certiorari denied.

No. 15–8169. Lundstedt *v.* Deutsche Bank National Trust Co. App. Ct. Conn. Certiorari denied.

No. 15–8173. Wilson *v.* Paramo, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–8177. Barber *v.* District of Columbia Board on Professional Responsibility. Ct. App. D. C. Certiorari denied. Reported below: 128 A. 3d 637.

No. 15–8178. Menjivar *v.* Frauenheim. C. A. 9th Cir. Certiorari denied.

No. 15–8181. Sandoval *v.* Chino State Prison et al. C. A. 9th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 727.

No. 15–8186. Melillo *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 761.

No. 15–8195. Shea *v.* Colorado. Ct. App. Colo. Certiorari denied.

No. 15–8206. King *v.* South Carolina Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 600 Fed. Appx. 131.

No. 15–8208. Ervin *v.* Soto, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–8209. Quinn *v.* Deutsche Bank National Trust Co. et al. C. A. 11th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 937.

No. 15–8214. Altman *v.* Brewer, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–8215. VURIMINDI *v.* FEDER, CLERK, COURT OF COMMON PLEAS OF PENNSYLVANIA, FIRST JUDICIAL DISTRICT. Sup. Ct. Pa. Certiorari denied. Reported below: 633 Pa. 420, 125 A. 3d 773.

No. 15–8219. RICHARDSON *v.* INDUSTRIAL COMMISSION OF OHIO ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–8224. SMALL *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 175 So. 3d 316.

No. 15–8226. LEWIS *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 788.

No. 15–8228. CARLOS DIAZ *v.* LIZARRAGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8229. RODRIGUEZ *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 15–8230. BARNES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–8232. MURPHY *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8240. BENTON *v.* BEAR, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 667.

No. 15–8243. DRUMGO *v.* PIERCE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8245. DAVIS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 15–8246. HERNANDEZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2014 IL App (1st) 120212–U.

No. 15–8267. RIOS *v.* WOFFORD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8271. CARI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 631 Fed. Appx. 5.

No. 15–8274. CASTELAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 131638–U.

No. 15–8297. HUNT *v.* GRADY. C. A. 4th Cir. Certiorari denied. Reported below: 599 Fed. Appx. 531.

No. 15–8309. AIKENS *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2014–0539 (La. App. 1 Cir. 12/10/14).

No. 15–8315. SIERRA *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 15–8319. ABU-JEBREEL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–8320. CORDOVA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 15–8324. MCCRAY *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 15–8335. WOFFORD *v.* HOLLICKS ET AL. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 15–8337. HOOPER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2015 Ark. 108, 458 S. W. 3d 229.

No. 15–8338. HOLLOWAY *v.* MAGNESS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 602 Fed. Appx. 354.

No. 15–8350. RIVERA *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 173 So. 3d 984.

No. 15–8369. BAILEY *v.* DAIL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 111.

No. 15–8370. RICHARDSON *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 15–8380. ANTONIO HERRERA *v.* JARVIS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 596 Fed. Appx. 859.

No. 15–8382. SMITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 57.

No. 15–8383. KINCAID *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 276.

No. 15–8390. ANGEL ORDAZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 689.

No. 15–8391. MUNIZ-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 370.

No. 15–8393. WEEMS *v.* PFISTER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 15–8402. SANCHEZ *v.* RODEN, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied. Reported below: 808 F. 3d 85.

No. 15–8409. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 792 F. 3d 760.

No. 15–8420. JOHNSON *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 15–8422. PENNINGTON-THURMAN *v.* BANK OF AMERICA ET AL. C. A. 8th Cir. Certiorari denied.

No. 15–8428. GILZENE *v.* PFISTER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 15–8430. GIBSON *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 202.

No. 15–8436. SMITH *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–8442. JAMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 689.

No. 15–8451. BRUMMETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 15–8453. STEWART *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 15–8455. MONROE *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 192.

No. 15–8458. DAILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 75.

No. 15–8460. Cano-Flores *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 796 F. 3d 83.

No. 15–8461. Maday *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 799 F. 3d 776.

No. 15–8463. Weld *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 512.

No. 15–8467. Mateen *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 806 F. 3d 857.

No. 15–8469. Anillo Mango *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 588.

No. 15–8471. Santos *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 222.

No. 15–8473. Moody *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 392.

No. 15–8474. Puga-Rodriguez *v.* United States (Reported below: 624 Fed. Appx. 271); Rivera *v.* United States (624 Fed. Appx. 256); De La Vega-Adan *v.* United States (633 Fed. Appx. 627); Angel Delvalle *v.* United States (634 Fed. Appx. 134); Alberto Gonzalez *v.* United States (634 Fed. Appx. 981); and Ramos *v.* United States (634 Fed. Appx. 979). C. A. 5th Cir. Certiorari denied.

No. 15–8477. Bojorquez-Villalobos *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 466.

No. 15–8478. Borrero *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 630 Fed. Appx. 20.

No. 15–8481. Boyd *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 15–8490. Whitman *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied.

No. 15–8503. Wells *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 408.

No. 15–8506. Henderson *v.* Johnson, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 199.

No. 15–8507. HENRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 276.

No. 15–8508. IBARRA *v.* MCDOWELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8511. FERRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 617 Fed. Appx. 836.

No. 15–8512. BARRIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 541.

No. 15–8514. MICHAEL C. *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 15–8516. NICKENS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–8518. STAMBLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 104.

No. 15–8519. DAVIS *v.* FLORIDA (two judgments). Dist. Ct. App. Fla., 2d Dist. Reported below: 179 So. 3d 325 (both judgments).

No. 15–8521. KELLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–8522. ALOMIA-ANGULO *v.* UNITED STATES (Reported below: 624 Fed. Appx. 268); BUSTOS-OCHOA *v.* UNITED STATES (624 Fed. Appx. 310); DUQUE-ROJAS *v.* UNITED STATES (624 Fed. Appx. 283); ESCOBAR-PONCE *v.* UNITED STATES (624 Fed. Appx. 270); ESTRADA-VILLA *v.* UNITED STATES (624 Fed. Appx. 312); GARCIA-MAYORGA *v.* UNITED STATES (624 Fed. Appx. 305); GARCIA-MORENO *v.* UNITED STATES (624 Fed. Appx. 284); GOMEZ-MORA *v.* UNITED STATES (624 Fed. Appx. 285); ISALAS-SALTO *v.* UNITED STATES (624 Fed. Appx. 243); MARTINEZ-DUQUE *v.* UNITED STATES (624 Fed. Appx. 279); MENENDEZ-GUERRERO *v.* UNITED STATES (624 Fed. Appx. 305); NUNEZ-ROSALES *v.* UNITED STATES (624 Fed. Appx. 283); PIMENTEL-CASTRO *v.* UNITED STATES (624 Fed. Appx. 241); RUIZ-AGUILLON *v.* UNITED STATES (624 Fed. Appx. 273); SOLORZAO-SANCHEZ *v.* UNITED STATES (624 Fed. Appx. 268); VELASQUEZ-LOPEZ, AKA GARCIA-MORALES *v.* UNITED STATES (624 Fed. Appx. 303); ANGUIANO-MORALES *v.* UNITED STATES (634 Fed. Appx. 982); AVALOS-GUTIERREZ, AKA

GARZA-RAMIREZ *v.* UNITED STATES (634 Fed. Appx. 131); BANEGAS-VERONES *v.* UNITED STATES (634 Fed. Appx. 455); ESTRADA-EUGENIO *v.* UNITED STATES (634 Fed. Appx. 454); GONZALEZ-OCHOA *v.* UNITED STATES (634 Fed. Appx. 132); HERRERA-GARDUNO *v.* UNITED STATES (634 Fed. Appx. 980); MARTINEZ, AKA ANTONIO MARTINEZ, AKA MARTINEZ RANGEL, AKA MARTINEZ AGUILAR *v.* UNITED STATES (633 Fed. Appx. 625); RAMOS-GONZALEZ *v.* UNITED STATES (634 Fed. Appx. 455); ROBLES-VACA *v.* UNITED STATES (634 Fed. Appx. 133); and ZUNIGA-RAMIREZ *v.* UNITED STATES (635 Fed. Appx. 145). C. A. 5th Cir. Certiorari denied.

No. 15–8535. GARCIA-LOPEZ *v.* UNITED STATES (Reported below: 624 Fed. Appx. 255); MORALES-GALVEZ *v.* UNITED STATES (623 Fed. Appx. 284); PEREZ-RAMOS *v.* UNITED STATES (624 Fed. Appx. 259); LANDIN-MOYOA *v.* UNITED STATES (624 Fed. Appx. 240); ANTONIO MEJIA, AKA MEJIA SOTO *v.* UNITED STATES (624 Fed. Appx. 249); VILLARREAL-ESPINOZA *v.* UNITED STATES (624 Fed. Appx. 242); GOMEZ-RANGEL, AKA MONTEZ-GOMEZ *v.* UNITED STATES (634 Fed. Appx. 456); GONZALEZ-TORRES *v.* UNITED STATES (634 Fed. Appx. 458); and GERONIMO MENDOZA *v.* UNITED STATES (635 Fed. Appx. 147). C. A. 5th Cir. Certiorari denied.

No. 15–8538. FRANCO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 961.

No. 15–8539. HOCKETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 198.

No. 15–8540. DEMARCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 253.

No. 15–8541. DUSHANE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 332.

No. 15–8542. LAVERDURE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 609 Fed. Appx. 417.

No. 15–8543. VIALTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 287.

No. 15–8545. BENTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 321.

No. 15–8546. STEINGER, AKA STEINER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 915.

No. 15–8548. NAVARRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 809 F. 3d 243.

No. 15–8551. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 106.

No. 15–8552. ARELLANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 605 Fed. Appx. 959.

No. 15–8553. PEREZ-AYALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 263.

No. 15–8556. SAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 261.

No. 15–8557. MIRANDA-MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 628 Fed. Appx. 771.

No. 15–8559. DAMIAN LOPEZ, AKA CRUZ GUILLEN, AKA CHAVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 234.

No. 15–8561. SAINT-SURIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 1010.

No. 15–8562. GARVIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 263.

No. 15–8569. FENNELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 250.

No. 15–8571. GUEVARA-MORENO, AKA MORENO-GUEVARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 153.

No. 15–8576. KOH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 15–8577. VERGARA-TAPIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 236.

No. 15–8578. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 241.

No. 15–8579. LINDSEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 595.

No. 15–8581. SARACINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 796 F. 3d 176.

No. 15–8583. RAGAN-ARMSTRONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 15–8586. NYLANDER *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 86 Mass. App. 1120, 19 N. E. 3d 867.

No. 15–8587. CERVANTES-TORRES, AKA MANUEL CERVANTES, AKA CERVANTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 634.

No. 15–8588. ESTRADA-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 576.

No. 15–8594. BYERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 259.

No. 15–8598. BARROSO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 964.

No. 15–8599. MARCANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–8604. PASTOREK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 464.

No. 15–8607. DIMONDA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 15–8608. TERRELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 881.

No. 15–8617. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 847.

No. 15–8621. MULLINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 499.

No. 15–8628. ELEM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 628.

No. 15–8633. KIRCUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 936.

No. 15–8639. PAHUTSKI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 199.

No. 15–8640. BARRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 407.

No. 15–8655. CASTILLO-DE LA PORTILLA *v.* UNITED STATES (Reported below: 634 Fed. Appx. 472); BAUTISTA-VILLARREAL *v.* UNITED STATES (634 Fed. Appx. 459); MIRELES-VARGAS *v.* UNITED STATES (637 Fed. Appx. 138); and REYES-MARTINEZ *v.* UNITED STATES (635 Fed. Appx. 145). C. A. 5th Cir. Certiorari denied.

No. 15–8657. REDIFER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 548.

No. 15–8663. ELIOPOULOS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 122 A. 3d 945.

No. 15–8664. DEW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 72.

No. 15–8670. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 15–8671. TIKAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 426.

No. 15–8699. BATTAGLIA *v.* TEXAS. Crim. Dist. Ct. No. 1, Dallas County, Tex. Certiorari denied.

No. 15–463. WIERSUM *v.* U. S. BANK N. A. C. A. 11th Cir. Motion of National Employment Lawyers Association, Florida Chapter, for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 785 F. 3d 483.

No. 15–719. DICKEY'S BARBECUE RESTAURANTS, INC., ET AL. *v.* CHORLEY ENTERPRISES, INC., ET AL. C. A. 4th Cir. Motions of International Franchise Association and Atlantic Legal Foundation et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 807 F. 3d 553.

No. 15–786. NEW JERSEY *v.* SHANNON. Sup. Ct. N. J. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 222 N. J. 576, 120 A. 3d 924.

No. 15–849. AUTHORS GUILD ET AL. *v.* GOOGLE INC. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 804 F. 3d 202.

No. 15–880. SOUTH CAROLINA *v.* HUGHEY. Ct. Common Pleas of Abbeville County, S. C. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 15–881. SOUTH CAROLINA *v.* BINNEY. Ct. Common Pleas of Cherokee County, S. C. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 15–882. SOUTH CAROLINA *v.* EVANS. Ct. Common Pleas of Greenville County, S. C. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 15–940. BNSF RAILWAY CO. *v.* BOLEN. Ct. App. Mo., Eastern Dist. Motion of Association of American Railroads for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 473 S. W. 3d 152.

No. 15–1038. SEMPLE, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTIONS *v.* DAVIS. Sup. Ct. Conn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 319 Conn. 548, 126 A. 3d 538.

No. 15–8537. HARRELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 623 Fed. Appx. 278.

No. 15–8632. JORDAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 806 F. 3d 1244.

Rehearing Denied

No. 15–744. IN RE FLORIMONTE, 577 U. S. 1136;
No. 15–754. ADKINS *v.* ADKINS, 577 U. S. 1182;
No. 15–757. MACHALA *v.* ESTATE OF NEMEC, 577 U. S. 1140;
No. 15–793. GRAY-BROCK *v.* ILLINOIS AMERICAN WATER CO. ET AL., 577 U. S. 1141;
No. 15–819. CARTER ET UX. *v.* FIRST SOUTH FARM CREDIT, ACA, ET AL., 577 U. S. 1142;

No. 15–5225. PRICE *v.* UNITED STATES, 577 U. S. 888;
No. 15–6033. INGRAM *v.* JUST ENERGY, 577 U. S. 963;
No. 15–6660. RIVERA *v.* CREECH, 577 U. S. 1145;
No. 15–6734. BELL *v.* PEREZ ET AL., 577 U. S. 1075;
No. 15–6981. STUDY *v.* BROWN, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY, 577 U. S. 1107;
No. 15–7102. ROBERTS *v.* FLORIDA, 577 U. S. 1122;
No. 15–7119. EUSEBIO GONZALES *v.* FLORIDA, 577 U. S. 1147;
No. 15–7172. WITKIN *v.* FRAUENHEIM, WARDEN, 577 U. S. 1148;
No. 15–7187. KELLER *v.* UNITED STATES, 577 U. S. 1089;
No. 15–7274. WILLIAMS *v.* WINGARD, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL., 577 U. S. 1151;
No. 15–7302. CHUTE *v.* NIFTY-FIFTIES, INC., ET AL., 577 U. S. 1152;
No. 15–7465. ROBINSON *v.* NEW YORK, 577 U. S. 1156;
No. 15–7466. COLLINGTON, AKA CAVE *v.* OWENS ET AL., 577 U. S. 1156;
No. 15–7504. STURGIS *v.* WILLIS ET AL., 577 U. S. 1158;
No. 15–7514. COX *v.* STALLINGS, 577 U. S. 1158;
No. 15–7535. ADAMS-GATES *v.* BUSH ET AL., 577 U. S. 1160;
No. 15–7594. KNIEST *v.* CASSADY, WARDEN, 577 U. S. 1162;
No. 15–7852. IN RE SUTTON, 577 U. S. 1136; and
No. 15–8076. IN RE MOLESKI, 577 U. S. 1136. Petitions for rehearing denied.

No. 15–6330. VINSON *v.* MAIORANA, COMPLEX WARDEN, 577 U. S. 1183. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 15–7601. KARKENNY *v.* UNITED STATES, 577 U. S. 1183. Petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

APRIL 25, 2016

Certiorari Granted—Vacated and Remanded

No. 15–5980. ZAVALA *v.* UNITED STATES. C. A. 5th Cir. Reported below: 608 Fed. Appx. 268; and
No. 15–6107. DE SANTIAGO-GUILLEN *v.* UNITED STATES. C. A. 5th Cir. Reported below: 607 Fed. Appx. 377. Motions

of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Molina-Martinez* v. *United States*, *ante*, p. 189.

No. 15–7632. VIGIL *v.* COLORADO. Sup. Ct. Colo. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016). Reported below: 372 P. 3d 1045.

Certiorari Dismissed

No. 15–8302. CUNNINGHAM *v.* EIGERMAN ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–8346. BUTLER *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 15A853. BROWNLEE *v.* UNITED STATES. Application for certificate of appealability, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. 15M110. YI QING CHEN *v.* UNITED STATES; and

No. 15M111. SMITH *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 15–488. ORTIZ, AS NEXT FRIEND AND PARENT OF I. O., A MINOR *v.* UNITED STATES. C. A. 10th Cir. Joint motion to defer consideration of petition for writ of certiorari granted.

No. 15–7840. HANSEN *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [577 U. S. 1192] denied.

No. 15–8260. WILSON *v.* WILLIAMS. Sup. Ct. S. C.;

No. 15–8352. OGI *v.* LYNCH, ATTORNEY GENERAL. C. A. 4th Cir.; and

No. 15–8361. WATSON *v.* BANK OF AMERICA, N. A. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pau-*

peris denied. Petitioners are allowed until May 16, 2016, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 15–8762. In re Bookman;
No. 15–8763. In re Amir;
No. 15–8784. In re Cunningham; and
No. 15–8831. In re Moran. Petitions for writs of habeas corpus denied.

No. 15–8782. In re Clark. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 15–8808. In re Cox. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 15–5991. Shaw *v.* United States. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 781 F. 3d 1130.

No. 15–7250. Manrique *v.* United States. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 618 Fed. Appx. 579.

Certiorari Denied

No. 14–634. CPV Power Holdings, LP, Successor in Interest to CPV Power Development, Inc., et al. *v.* Talen Energy Marketing, LLC, fka PPL EnergyPlus, LLC, et al.; and
No. 14–694. Fiordaliso, Commissioner of the New Jersey Board of Public Utilities, et al. *v.* Talen Energy Market-

ING, LLC, FKA PPL ENERGYPLUS, LLC, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 766 F. 3d 241.

No. 15–623. MICHIGAN GAMING CONTROL BOARD ET AL. *v.* MOODY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 790 F. 3d 669.

No. 15–675. ZEPEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 792 F. 3d 1103.

No. 15–779. CROW ALLOTTEES ET AL. *v.* UNITED STATES ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 380 Mont. 168, 354 P. 3d 1217.

No. 15–821. BEVERLY ENTERPRISES INC. ET AL. *v.* CYR, ADMINISTRATOR OF THE ESTATE OF CAMPBELL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 924.

No. 15–824. BLANCHARD *v.* BROWN. C. A. 7th Cir. Certiorari denied. Reported below: 797 F. 3d 468.

No. 15–831. DALLAS MEXICAN CONSULATE GENERAL *v.* BOX, DBA BLAKE BOX CO. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 649.

No. 15–901. PIERCE *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 786 F. 3d 1027.

No. 15–917. ENCALADA *v.* BAYBRIDGE ENTERPRISES LTD. C. A. 2d Cir. Certiorari denied. Reported below: 612 Fed. Appx. 54.

No. 15–1032. PETERSON *v.* BELL HELICOPTER TEXTRON, INC. C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 3d 335.

No. 15–1043. Q. W., BY HIS NEXT FRIENDS AND PARENTS, M. W. ET AL. *v.* BOARD OF EDUCATION OF FAYETTE COUNTY, KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 580.

No. 15–1051. FROST *v.* SHEEHAN ET AL. Sup. Ct. N. H. Certiorari denied. Reported below: 168 N. H. 353, 128 A. 3d 663.

No. 15–1053. HEMPHILL *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 3d 535.

No. 15–1058. SABBAH ET AL. *v.* ROBERTSON ET AL. Sup. Ct. Ala. Certiorari denied.

No. 15–1061. KOROLYZEN *v.* ONEWEST BANK, FSB. Sup. Ct. Fla. Certiorari denied. Reported below: 192 So. 3d 39.

No. 15–1066. WING-SING CHAN *v.* SHARPE ET AL. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 15–1067. BOWDEN *v.* MEINBERG ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 807 F. 3d 877.

No. 15–1069. BREINHOLT ET AL. *v.* DEUTSCHE BANK NATIONAL TRUST CO. Ct. App. Idaho. Certiorari denied.

No. 15–1095. WYATT, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF WYATT, ET AL. *v.* GATES, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF ARMSTRONG, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 800 F. 3d 331.

No. 15–1097. MARTINEZ FUENMAYOR ET UX. *v.* LYNCH, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 717.

No. 15–1161. CLOUD SATCHEL, LLC *v.* BARNES & NOBLE, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 626 Fed. Appx. 1010.

No. 15–1173. KEELER *v.* CHANG ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 113.

No. 15–1212. FULLER ET AL. *v.* LANGSENKAMP ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 810 F. 3d 456.

No. 15–6202. WIDI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 15–7496. GILNER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 15–7602. READE *v.* GALVIN, SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS, ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 472 Mass. 573, 36 N. E. 3d 519.

No. 15–7610. JOHNSSON *v.* RITTMANIC. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 15–7695. DICKERSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 175 So. 3d 8.

No. 15–8185. LAM THANH NGUYEN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 61 Cal. 4th 1015, 354 P. 3d 90.

No. 15–8213. BARWICK *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 794 F. 3d 1239.

No. 15–8250. FRANKLIN *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2015 WI 47, 366 Wis. 2d 61, 862 N. W. 2d 901.

No. 15–8252. ROBERTSON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 224 Md. App. 730.

No. 15–8255. LAMAR *v.* HOUK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 798 F. 3d 405.

No. 15–8256. LESTER *v.* MACKIE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8258. TORNS ET AL. *v.* CITY OF JACKSON, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 414.

No. 15–8261. TURNER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 1. Certiorari denied.

No. 15–8263. PARKER *v.* BURRIS, SHERIFF, STANLY COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 82.

No. 15–8266. RODRIGUEZ *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 125 A. 3d 458.

No. 15–8268. COVARRUBIAS *v.* WALLACE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 701.

No. 15–8270. SMITH *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–8273. CLARK *v.* HOFFNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8279. TAYLOR *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 15–8282. NAILS *v.* MCEWEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 514.

No. 15–8284. NARAYAN *v.* WELLS FARGO BANK. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 15–8287. ORTIZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2014 IL App (1st) 112811–U.

No. 15–8292. LOVE *v.* SIEGLER (two judgments). C. A. 5th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 364 (first judgment).

No. 15–8299. KOPPI *v.* VALENZUELA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8300. HAMPTON *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 184 Wash. 2d 656, 361 P. 3d 734.

No. 15–8301. THOMPSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 131762–U.

No. 15–8303. CUNNINGHAM *v.* EIGERMAN. C. A. 2d Cir. Certiorari denied.

No. 15–8304. MALLOY *v.* GILMORE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8306. JELKS *v.* GREEN TREE CREDIT, LLC. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 120 App. Div. 3d 1299, 991 N. Y. S. 2d 903.

No. 15–8308. AMIR-SHARIF *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 15–8314. ALBERTO SOLERNORONA *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–8316. SWAIN *v.* MISSOURI DEPARTMENT OF CORRECTIONS. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 473 S. W. 3d 152.

No. 15–8318. BOTEO-PORTILLO *v.* LYNCH, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 304.

No. 15–8323. PARKER *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 15–8326. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 15–8331. GUGSA *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 15–8339. GREEN *v.* GOBER, SHERIFF, DREW COUNTY, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 858.

No. 15–8340. WILLIAMS *v.* LAW FIRM OF TURNBULL, NICHOLSON & SANDERS, P. A., ET AL. Cir. Ct. Baltimore County, Md. Certiorari denied.

No. 15–8342. ISKANDER *v.* DEPARTMENT OF THE NAVY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 211.

No. 15–8351. PAVLIC *v.* DISTRICT ATTORNEY, WASHINGTON COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8357. BREEDLOVE *v.* OKLAHOMA DEPARTMENT OF CORRECTIONS. Ct. Crim. App. Okla. Certiorari denied.

No. 15–8358. EDEN *v.* CITY OF SHOW LOW, ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 15–8373. GARDU *v.* LYNCH, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied.

No. 15–8410. SELLERS *v.* PLATTSMIER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 111.

No. 15–8419. LOUGHRY *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 696.

No. 15–8425. FLEMING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 223.

No. 15–8437. SHELLMAN *v.* COLVIN, ACTING COMMISSIONER, SOCIAL SECURITY ADMINISTRATION. C. A. 4th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 672.

No. 15–8459. D'AGOSTINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 638 Fed. Appx. 51.

No. 15–8484. QUARTERMAN *v.* ASHTON PARK TRACE APARTMENTS. Ct. App. Ga. Certiorari denied.

No. 15–8500. DAVIS *v.* ROUNDTREE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 265.

No. 15–8520. COLBERT *v.* UNITED STATES; and
No. 15–8646. ROLLINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 682.

No. 15–8525. SAGET *v.* KAUFFMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8584. CORBETT *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 204.

No. 15–8585. SHEKHEM EL BEY *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 15–8618. ZEIGLER *v.* REYNOLDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 224.

No. 15–8644. STRICKLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 906.

No. 15–8652. DINKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–8677. MONTGOMERY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 592 Fed. Appx. 411.

No. 15–8678. MOTE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–8679. PAUL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 806.

No. 15–8684. OLIVER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 257.

No. 15–8685. MUNERLYN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 464.

No. 15–8686. MILTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 81.

No. 15–631. ARRIGONI ENTERPRISES, LLC *v.* TOWN OF DURHAM, CONNECTICUT, ET AL. C. A. 2d Cir. Motions of National Federation of Independent Business Small Business Legal Center et al., Cato Institute, and Institute for Justice for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 629 Fed. Appx. 23.

JUSTICE THOMAS, with whom JUSTICE KENNEDY joins, dissenting.

The question presented by this petition is whether the Court should overrule *Williamson County Regional Planning Comm'n* v. *Hamilton Bank of Johnson City*, 473 U. S. 172 (1985). In *Williamson County*, the Court ruled that a plaintiff's allegation that local government action resulted in a taking is not "ripe" for review in federal court until the plaintiff "seek[s] compensation through the procedures the State has provided for doing so." *Id.*, at 194. In doing so, the Court superimposed a state-litigation requirement on the Fifth Amendment's Takings Clause. As Members of this Court have noted, the Constitution does not appear to compel this additional step before a property owner may vindicate a Takings Clause claim. *San Remo Hotel, L. P.* v. *City and County of San Francisco*, 545 U. S. 323, 349 (2005) (Rehnquist, C. J., joined by O'Connor, KENNEDY, and THOMAS, JJ., concurring in judgment).

I would grant certiorari in this case because "the justifications for [*Williamson County*'s] state-litigation requirement are suspect, while its impact on takings plaintiffs is dramatic." *Id.*, at 352. That requirement appears to be inconsistent with the text and original meaning of the Fifth Amendment's Takings Clause. It has also inspired gamesmanship in the lower courts. I therefore respectfully dissent from the denial of certiorari.

I

The Takings Clause states, "[N]or shall private property be taken for public use, without just compensation." U. S. Const., Amdt. 5. In *Williamson County*, the Court reasoned that this

language does not "require that just compensation be paid in advance of, or contemporaneously with, the taking; all that is required is that a reasonable, certain and adequate provision for obtaining compensation exist at the time of the taking." 473 U. S., at 194 (internal quotation marks omitted). This suspect reasoning led the Court to conclude that, "because the Constitution does not require pretaking compensation, and is instead satisfied by a reasonable and adequate provision for obtaining compensation after the taking, the State's action . . . is not 'complete' until the State fails to provide adequate compensation for the taking." *Id.*, at 195. In effect, *Williamson County* forces a property owner to shoulder the burden of securing compensation *after* the local government effects a taking.

This result seems at odds with the plain text and original meaning of the Takings Clause, which appear to make just compensation a prerequisite to taking property for public use. As critics of *Williamson County* have opined, the Takings Clause is more than a mere remedy. The requirement to pay just compensation "places a condition on the [government's] exercise of" the power to take private property in the first instance. *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U. S. 304, 314 (1987). This follows from the text's "mandate that there shall be no taking 'without just compensation.'" Breemer, Overcoming *Williamson County*'s Troubling State Procedures Rule: How the *England* Reservation, Issue Preclusion Exceptions, and the Inadequacy Exception Open the Federal Courthouse Door to Ripe Takings Claims, 18 J. Land Use & Env. L. 209, 219 (2003). The Clause is most naturally "read to mean that compensation must accompany the taking," and not that "the claimant shall have the opportunity to ask for the compensation remedy in a post-taking court action." *Ibid.* A purported exercise of the eminent-domain power is invalid, the Fifth Amendment suggests, unless the government pays just compensation before or at the time of its taking.

This understanding of the just-compensation requirement as a constraint on government power appears to comport with historical understandings of the Takings Clause and its state analogues. "During the century following the ratification of the Bill of Rights and parallel state provisions, courts held that compensation must be provided at the time of the act . . . alleged to be a taking." *Id.*, at 220; see also Brauneis, The First Constitutional Tort: The

Remedial Revolution in Nineteenth-Century State Just Compensation Law, 52 Vand. L. Rev. 57, 113 (1999). The Court has recognized that a property owner is at least "entitled to reasonable, certain and adequate provision for obtaining compensation *before* his occupancy is disturbed." *Cherokee Nation* v. *Southern Kansas R. Co.*, 135 U. S. 641, 659 (1890) (emphasis added).

In short, both the text of the Takings Clause and historical evidence cast doubt on *Williamson County*'s treatment of just compensation as a mere remedy, rather than a condition on the government's eminent-domain power.

II

The trouble did not stop with *Williamson County.* In *San Remo Hotel*, the Court exacerbated the effects of the *Williamson County* rule, and, together, the two cases have created an untenable situation for Takings Clause plaintiffs in the federal courts.

In *San Remo Hotel*, petitioners (hotel owners) challenged a city ordinance that required them to pay a conversion fee on Takings Clause grounds. 545 U. S., at 326. The petitioners first litigated their claims in state court, as *Williamson County* required them to do. After they lost, petitioners sought relief in federal court and asked the federal courts to consider the takings issues anew. 545 U. S., at 326. The District Court and Ninth Circuit, however, agreed that federal courts owed full faith and credit to the state courts' judgments, and so refused to consider the takings claims *de novo*. *Id.*, at 327. This Court affirmed. *Id.*, at 347.

San Remo Hotel dooms plaintiffs' efforts to obtain federal review of a federal constitutional claim even after the plaintiffs comply with *Williamson County*'s exhaustion requirement. The principles at work in those decisions serve as a "mechanism for keeping property owners out of federal court." Berger & Kanner, Shell Game! You Can't Get There From Here: Supreme Court Ripeness Jurisprudence in Takings Cases at Long Last Reaches the Self-parody Stage, 36 Urb. Law. 671, 687 (2004). "Once a property owner sues in state court, any attempt to follow *Williamson County*'s directive to *then* litigate the 'ripened' Fifth Amendment case in federal court is met by one or more of the preclusion doctrines and the case is summarily dismissed by giving 'full faith and credit' to the state court judgment." *Ibid.* (footnote omitted). The rules thus operate to "ensur[e] that litigants who go to state court to seek compensation [under *William-*

son County] will likely be unable later to assert their federal takings claims in federal court." *San Remo Hotel*, *supra*, at 351 (Rehnquist, C. J., concurring in judgment). "State courts thus get first bite at these actions under *Williamson County*—and they get the only bite under *San Remo*." Bloom & Serkin, Suing Courts, 79 U. Chi. L. Rev. 553, 605 (2012).

Moreover, employing the rules announced in *Williamson County* and *San Remo Hotel*, clever state-government attorneys have rendered a nullity even the chance at review in *state* court. When a plaintiff files a suit in state court to exhaust his remedies as *Williamson County* instructs, state-government entities and officials may remove that suit to federal court under 28 U. S. C. § 1441. Once in federal court, some state defendants have moved to dismiss on the ground that "the plaintiff did not litigate first in the state court." Berger, *supra*, at 673. And some federal judges have dismissed the claims, rather than remanding them. See, *e. g.*, *Koscielski* v. *Minneapolis*, 435 F. 3d 898, 903 (CA8 2006) (approving of the dismissal of a removed takings claim for lack of finished state-court procedures). This gamesmanship leaves plaintiffs with *no* court in which to pursue their claims despite *Williamson County*'s assurance that property owners are guaranteed access to court at some point.

Along these lines, *Williamson County* has downgraded the protection afforded by the Takings Clause to second-class status. Plaintiffs alleging violations of other enumerated constitutional rights ordinarily may do so in federal court without first availing themselves of state court. But the same is not true for a Takings Clause plaintiff. The other "notable exception" is "for prisoner plaintiffs." Samaha, On Law's Tiebreakers, 77 U. Chi. L. Rev. 1661, 1722 (2010). We should consider overturning *Williamson County* because there is "no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation." *Dolan* v. *City of Tigard*, 512 U. S. 374, 392 (1994).

III

Finally, we should reconsider *Williamson County* because our attempts to ameliorate the effects of its state-litigation rule have spawned only more confusion in the lower courts. As early as 1992, the Court began to recast the state-litigation rule as a "prudential" rather than jurisdictional requirement. *Lucas* v.

South Carolina Coastal Council, 505 U. S. 1003, 1012, and n. 3 (1992); *Suitum* v. *Tahoe Regional Planning Agency*, 520 U. S. 725, 733–734 (1997). We have also explained—in no uncertain terms—that the state-litigation rule is not "jurisdictional," and have therefore determined that a plaintiff's failure to exhaust state remedies was "waived" because neither party addressed the issue. *Stop the Beach Renourishment, Inc.* v. *Florida Dept. of Environmental Protection*, 560 U. S. 702, 729 (2010); see also *Horne* v. *Department of Agriculture*, 569 U. S. 513, 526 (2013) (explaining that the state-litigation rule is "not, strictly speaking, jurisdictional"); see also Crocker, Justifying a Prudential Solution to the *Williamson County* Ripeness Puzzle, 49 Ga. L. Rev. 163, 179–181 (2014) (noting that these cases have "put an end to th[e] [jurisdictional versus non-jurisdictional] debate by declaring the compensation prong non-jurisdictional and expressly endorsing the possibility of waiver or forfeiture"). Nevertheless, several Courts of Appeals continue to treat the *Williamson County* rule as a jurisdictional rule limiting the courts' power to consider federal takings claims until the plaintiffs exhaust state-law remedies. See *Marek* v. *Rhode Island*, 702 F. 3d 650, 653–654 (CA1 2012) (explaining that a federal court cannot exercise "jurisdiction" over a "takings claim" until a plaintiff pursues state remedies); *Snaza* v. *St. Paul*, 548 F. 3d 1178, 1182 (CA8 2008) (rejecting plaintiff's argument that the *Williamson County* doctrine was merely "prudential" and insisting that it was "jurisdictional"); *Busse* v. *Lee County*, 317 Fed. Appx. 968, 972 (CA11 2009) (holding that plaintiff's takings claim was not ripe because he had not exhausted state remedies and concluding that the District Court therefore "did not err in finding that it lacked subject matter jurisdiction"); cf. *Perfect Puppy, Inc.* v. *East Providence*, 807 F. 3d 415, 421, n. 6 (CA1 2015) (recognizing the split). Even those courts that have cast the state-litigation rule as "prudential" are divided over whether the rule may be waived. Compare *Peters* v. *Clifton*, 498 F. 3d 727, 734 (CA7 2007) (holding that "[t]he prudential character of the *Williamson* requirements do not . . . give the lower federal courts license to disregard them"), with *Sansotta* v. *Nags Head*, 724 F. 3d 533, 545 (CA4 2013) (courts may "determine that in some instances, the rule should not apply"); *MHC Financing Ltd. Partnership* v. *San Rafael*, 714 F. 3d 1118, 1130 (CA9 2013) (same). In short, the Court's efforts to bring clarity have failed. The quagmire that the Court has created in the lower courts

is yet another reason to grant the petition. See this Court's Rule 10(a).

* * *

In the 30 years since the Court decided *Williamson County*, individual Justices have expressed grave doubts about the validity of that decision and have called for reconsideration. This case presents the opportunity to consider whether there are any justifications for the ahistorical, atextual, and anomalous state-litigation rule, and if not, to overrule *Williamson County*. I respectfully dissent from the denial of certiorari.

No. 15–853. WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* WASHINGTON. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 801 F. 3d 160.

No. 15–991. GRYNBERG, INDIVIDUALLY AND AS TRUSTEE ON BEHALF OF THE RACHEL SUSAN TRUST ET AL., ET AL. *v.* KINDER MORGAN ENERGY PARTNERS, L. P., ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 805 F. 3d 901.

No. 15–7426. HARRIMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari before judgment denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 15–8311. HAMILTON *v.* BIRD ET AL. C. A. 10th Cir. Certiorari before judgment denied.

No. 15–8341. HALE *v.* KING, SUPERINTENDENT, SOUTHERN MISSISSIPPI CORRECTIONAL INSTITUTION, ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 15–6176. HOEVER *v.* PORTER, WARDEN, ET AL., 577 U. S. 1011;

No. 15–6370. JACKSON *v.* WHITE, ILLINOIS SECRETARY OF STATE, ET AL., 577 U. S. 1120;

No. 15–7154. RHODES *v.* BECKWITH, WARDEN, 577 U. S. 1089;

No. 15–7408. THOMAS *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. (two judgments), 577 U. S. 1154;

No. 15–7448. CONSTANT *v.* UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE, 577 U. S. 1156;

No. 15–7493. BARKSDALE *v.* MAHALLY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL., 577 U. S. 1157;

No. 15–7571. HAMILTON *v.* BIRD ET AL., 577 U. S. 1208; and

No. 15–8018. IN RE BRACKEN, 577 U. S. 1136. Petitions for rehearing denied.

APRIL 27, 2016

Dismissal Under Rule 46

No. 15–948. MICHIGAN *v.* EDWARDS. Ct. App. Mich. Certiorari dismissed under this Court's Rule 46.

Certiorari Denied

No. 15–9107 (15A1116). LUCAS *v.* CHATMAN, WARDEN. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

APRIL 28, 2016

Dismissal Under Rule 46

No. 15–872. EM LTD. ET AL. *v.* BANCO CENTRAL DE LA REPUBLICA ARGENTINA ET AL. C. A. 2d Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 800 F. 3d 78.

Miscellaneous Orders. (For the Court's orders prescribing amendments to the Federal Rules of Appellate Procedure, see *post*, p. 1031; amendments to the Federal Rules of Bankruptcy Procedure, see *post*, p. 1051; amendments to the Federal Rules of Civil Procedure, see *post*, p. 1061; and amendments to the Federal Rules of Criminal Procedure, see *post*, p. 1067.)

APRIL 29, 2016

Miscellaneous Order

No. 15A999. VEASEY ET AL. *v.* ABBOTT, GOVERNOR OF TEXAS, ET AL. Application to vacate the stay entered by the United States Court of Appeals for the Fifth Circuit on October 14, 2014, presented to JUSTICE THOMAS, and by him referred to the Court,

denied. The Court recognizes the time constraints the parties confront in light of the scheduled elections in November 2016. If, on or before July 20, 2016, the Court of Appeals has neither issued an opinion on the merits of the case nor issued an order vacating or modifying the current stay order, an aggrieved party may seek interim relief from this Court by filing an appropriate application. An aggrieved party may also seek interim relief if any change in circumstances before that date supports further arguments respecting the stay order.

May 2, 2016

Certiorari Granted—Vacated and Remanded

No. 15–7091. Johnson *v.* Alabama. Ct. Crim. App. Ala. Petition for rehearing granted. The order entered January 11, 2016, [577 U. S. 1087] denying petition for writ of certiorari is vacated. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hurst* v. *Florida*, 577 U. S. 92 (2016).

Miscellaneous Orders

No. 15A1016. Sibley *v.* United States District Court for the District of Columbia. D. C. D. C. Application for stay, addressed to Justice Thomas and referred to the Court, denied.

No. 15M112. Burgess *v.* Reddix et al. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 15–7719. Laslie *v.* Chicago Transit Authority. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [577 U. S. 1215] denied.

No. 15–8360. Fleming *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until May 23, 2016, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 15–8915. In re Sarras. Petition for writ of habeas corpus denied.

No. 15–8389. In re GwanJun Kim. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

No. 15–8790. In re Arca Reclusado. Petition for writ of prohibition denied.

Certiorari Granted

No. 15–927. SCA Hygiene Products Aktiebolag et al. *v.* First Quality Baby Products, LLC, et al. C. A. Fed. Cir. Certiorari granted. Reported below: 807 F. 3d 1311.

No. 15–866. Star Athletica, L. L. C. *v.* Varsity Brands, Inc., et al. C. A. 6th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 799 F. 3d 468.

Certiorari Denied

No. 15–949. Plambeck et al. *v.* Allstate Insurance Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 802 F. 3d 665.

No. 15–952. Ludlow et al. *v.* BP, P. L. C., et al. C. A. 5th Cir. Certiorari denied. Reported below: 800 F. 3d 674.

No. 15–958. International Franchise Assn., Inc., et al. *v.* City of Seattle, Washington, et al. C. A. 9th Cir. Certiorari denied. Reported below: 803 F. 3d 389.

No. 15–968. Mallards Cove, LLP *v.* Florida Department of Transportation et al. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 159 So. 3d 927.

No. 15–971. Alves et al. *v.* Board of Regents of the University System of Georgia et al. C. A. 11th Cir. Certiorari denied. Reported below: 804 F. 3d 1149.

No. 15–973. Cole *v.* Town of Morristown, New Jersey, et al. C. A. 3d Cir. Certiorari denied. Reported below: 627 Fed. Appx. 102.

No. 15–999. Knight et al. *v.* Thompson et al. C. A. 11th Cir. Certiorari denied. Reported below: 796 F. 3d 1289.

No. 15–1107. Howard *v.* Trustmark National Bank. Sup. Ct. Ala. Certiorari denied. Reported below: 224 So. 3d 156.

No. 15–1119. ABREU-VELEZ *v.* BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 888.

No. 15–1120. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 877.

No. 15–1125. MARRUFO MORALES *v.* LYNCH, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 727.

No. 15–1128. CAGHAN *v.* CAGHAN ET AL. Ct. App. Ohio, 5th App. Dist., Stark County. Certiorari denied. Reported below: 2015-Ohio-1787.

No. 15–1180. SHIRVELL *v.* MICHIGAN DEPARTMENT OF ATTORNEY GENERAL ET AL. Ct. App. Mich. Certiorari denied. Reported below: 308 Mich. App. 702, 866 N. W. 2d 478.

No. 15–1216. ORR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–1226. CALZADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 185.

No. 15–7713. YAN PING XU *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 612 Fed. Appx. 22.

No. 15–8013. BURSE *v.* GOTTLIEB ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 852.

No. 15–8129. NASH *v.* RUSSELL, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 807 F. 3d 892.

No. 15–8295. GUTIERREZ *v.* COUNTY OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 693.

No. 15–8317. BRAZIEL *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 225.

No. 15–8322. GRANT *v.* BALMIR ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–8347. HAYWOOD *v.* CHAMPAIGN COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 596 Fed. Appx. 512.

No. 15–8348. HOPKINS *v.* JPMORGAN CHASE BANK, N. A. C. A. 11th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 959.

No. 15–8349. HANDY *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8354. HORN *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8356. TAFFARO *v.* TAFFARO. Super. Ct. N. J., App. Div. Certiorari denied.

No. 15–8362. STOKES *v.* CEBULA ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–8364. ROYAL *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 15–8367. WEATHERS *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied.

No. 15–8374. HOLT *v.* WEXFORD HEALTH SOURCES ET AL. C. A. 7th Cir. Certiorari denied.

No. 15–8376. BOZEMAN *v.* JOHNSON ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 192 So. 3d 35.

No. 15–8377. DEJESUS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 127 App. Div. 3d 589, 8 N. Y. S. 3d 111.

No. 15–8378. FERRARO *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 149 So. 3d 1157.

No. 15–8379. INTA *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 15–8384. MAGWOOD *v.* HABERSTADT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 125.

No. 15–8385. BOUVIER *v.* BUSH ET AL. C. A. 1st Cir. Certiorari denied.

No. 15–8387. NELSON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 206 So. 3d 54.

No. 15–8392. MURITHI *v.* BUTLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 15–8394. TAYLOR *v.* BLUE LICK APARTMENTS ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–8395. WATTS *v.* WAGGONER, SHERIFF, LEAKE COUNTY, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 245.

No. 15–8397. RANKIN *v.* BRIAN LAVAN & ASSOCIATES, P. C., ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–8398. JEHOVAH *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. (two judgments). C. A. 4th Cir. Certiorari denied. Reported below: 798 F. 3d 169 (first judgment); 620 Fed. Appx. 202 (second judgment).

No. 15–8403. LAGAITE *v.* BOLAND ET AL. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 15–8405. DOYLE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 131 Nev. 1273.

No. 15–8407. JAVIER GONZALES *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 15–8414. SIMMONS *v.* MCLAUGHLIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 15–8416. JOHNSON *v.* ALLBAUGH, INTERIM DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 653.

No. 15–8426. SHALLOW *v.* NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 626 Fed. Appx. 286.

No. 15–8429. HURNS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 15–8431. GRIMES *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 218 Md. App. 746.

No. 15–8438. Bernard *v.* Woods, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–8440. Sendejo *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 15–8443. Longoria *v.* Texas. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 15–8446. Ruffin *v.* Medlin, Warden, et al. Sup. Ct. Ga. Certiorari denied.

No. 15–8468. Lord *v.* International Marine Insurance Services et al. C. A. 2d Cir. Certiorari denied. Reported below: 618 Fed. Appx. 12.

No. 15–8479. Bemore *v.* Davis, Warden. C. A. 9th Cir. Certiorari denied. Reported below: ___ Fed. Appx. ___.

No. 15–8482. Thornton *v.* Georgia. Super. Ct. Clayton County, Ga. Certiorari denied.

No. 15–8483. Johnson *v.* Lynch, Attorney General. C. A. 3d Cir. Certiorari denied. Reported below: 632 Fed. Appx. 728.

No. 15–8515. Miller *v.* Atlantic Municipal Corp. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 15–8555. Podlucky *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 15–8595. Bryant *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 15–8612. Davis *v.* Maryland. Ct. Sp. App. Md. Certiorari denied. Reported below: 223 Md. App. 770.

No. 15–8622. Lukashov *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 15–8637. White *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 810 F. 3d 212.

No. 15–8642. Brantley *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 803 F. 3d 1265.

No. 15–8645. Sessoms *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 117.

No. 15–8659. JONES *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–8661. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–8683. PETTUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 961.

No. 15–8700. BODDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 219.

No. 15–8703. MARTINEZ-VILLESCAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 375.

No. 15–8707. REYES-REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 280.

No. 15–8711. GARCIA-PAGAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 804 F. 3d 121.

No. 15–8715. SHERMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 104.

No. 15–8719. DE JESUS SIERRA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 99.

No. 15–8723. BRONSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 607.

No. 15–8724. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–8728. LAWRENCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 672.

No. 15–8730. THORNTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 736.

No. 15–8738. PITTMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 15–8750. WETZEL-SANDERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 805 F. 3d 1266.

No. 15–8760. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 872.

No. 15–8761. BOWENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 91.

No. 15–525. POM WONDERFUL, LLC, ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. D. C. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 777 F. 3d 478.

No. 15–905. WARREN, WARDEN *v.* GARCIA-DORANTES. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 801 F. 3d 584.

No. 15–910. BIROS *v.* KANE, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. Allegheny County Ct., Pa. Motion of respondents for leave to file brief in opposition under seal granted. Motion of petitioner for leave to file reply brief under seal granted. Certiorari denied.

No. 15–8119. BOYER *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 793 F. 3d 1092.

JUSTICE BREYER, dissenting.

Richard Boyer was initially sentenced to death 32 years ago. He now asks us to consider whether the Eighth Amendment allows a State to keep a prisoner incarcerated under threat of execution for so long. Boyer's first trial ended with a mistrial after his jury was unable to reach a verdict. Brief in Opposition 1. Boyer's second trial, in 1984, yielded a conviction and capital sentence that the California Supreme Court reversed on the ground that police officers had obtained evidence by violating his constitutional rights. *Ibid.*; see *Boyer* v. *Chappell*, 793 F. 3d 1092, 1094, n. 1 (CA9 2015). Boyer's third trial took place in 1992 and took 14 years to wend its way through California's appellate process. *Id.*, at 1097. In all, 22 years elapsed between his first trial and our denial of his petition for certiorari on direct appeal. See *Boyer* v. *California*, 549 U. S. 1021 (2006). Since then, 10 more years have elapsed.

These delays are the result of a system that the California Commission on the Fair Administration of Justice (Commission), an arm of the State of California, see Cal. S. Res. 44 (2004), has labeled "dysfunctional." Report and Recommendations on the Administration of the Death Penalty in California 6 (2008). Eight years ago, the Commission wrote that more than 10 percent of

the capital sentences issued in California since 1978 had been reversed. See *id.*, at 20. It noted that many prisoners had died of natural causes before their sentences were carried out, and more California death row inmates had committed suicide than had been executed by the State. *Ibid.* Indeed, only a small, apparently random set of death row inmates had been executed. See *ibid.* A vast and growing majority remained incarcerated, like Boyer, on death row under a threat of execution for ever longer periods of time. See *id.*, at 19–20. The Commission added that California's death penalty system was expensive, with its system for capital cases costing more than 10 times what the Commission estimated the cost would be for a system that substituted the death penalty with life imprisonment without the possibility of parole. *Id.*, at 83–84.

Put simply, California's costly "administration of the death penalty" likely embodies "three fundamental constitutional defects" about which I have previously written: "(1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty's penological purpose." *Glossip* v. *Gross*, 576 U. S. 863, 909 (2015) (BREYER, J., dissenting); see *Lackey* v. *Texas*, 514 U. S. 1045 (1995) (memorandum of Stevens, J., respecting denial of certiorari); see also *Valle* v. *Florida*, 564 U. S. 1067 (2011) (BREYER, J., dissenting from denial of stay); *Knight* v. *Florida*, 528 U. S. 990, 993 (1999) (BREYER, J., dissenting from denial of certiorari).

For these reasons, I respectfully dissent from the denial of certiorari.

No. 15–8368. YOULD *v.* YOULD. Sup. Ct. Alaska. Motion of Paul Stanley Holdorf et al. for leave to file brief as *amici curiae* granted. Certiorari denied.

No. 15–8690. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 619 Fed. Appx. 978.

Rehearing Granted. (See No. 15–7091, *supra.*)

Rehearing Denied

No. 15–6487. GONZALES *v.* UTAH, 577 U. S. 991;

No. 15–7197. JOHNSON *v.* INTERNATIONAL UNION, UAW, AFL–CIO, ET AL., 577 U. S. 1148;

No. 15–7211. Mayfield *v.* Cassady, Superintendent, Jefferson City Correctional Center, 577 U. S. 1149;

No. 15–7293. Torres, aka Muhammad *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 577 U. S. 1151;

No. 15–7298. Marshall *v.* Crutchfield, Warden, 577 U. S. 1152;

No. 15–7349. Young *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 577 U. S. 1220;

No. 15–7513. Dulcie *v.* Guardian Transfer Storage Co., Inc., 577 U. S. 1158;

No. 15–7534. Austin *v.* Florida, 577 U. S. 1160;

No. 15–7567. Cook *v.* United States, 577 U. S. 1161;

No. 15–7593. Otyang *v.* City and County of San Francisco, California, et al., 577 U. S. 1196;

No. 15–7837. Brown *v.* Mansukhani, Warden, 577 U. S. 1198;

No. 15–7914. LordMaster, fka Goldader *v.* Davis, Magistrate Judge, United States District Court for the Eastern District of Virginia, et al., 577 U. S. 1224;

No. 15–7970. Estrada *v.* Gooden et al., 577 U. S. 1225; and

No. 15–8059. In re Coates, 577 U. S. 1136. Petitions for rehearing denied.

May 6, 2016

Miscellaneous Order

No. 15A1060 (15–404). Weston Educational, Inc., dba Heritage College *v.* United States ex rel. Miller et al. Application for stay, presented to Justice Alito, and by him referred to the Court, granted, and the mandate of the United States Court of Appeals for the Eighth Circuit in case No. 14–1760 is recalled and stayed pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the issuance of the judgment of this Court.

May 11, 2016

Certiorari Denied

No. 15–9000 (15A1080). Forrest *v.* Griffith, Warden. Sup. Ct. Mo. Application for stay of execution of sentence of death,

presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied.

MAY 12, 2016

Miscellaneous Order

No. 15A1175. DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS *v.* MADISON. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eleventh Circuit on May 12, 2016, presented to JUSTICE THOMAS, and by him referred to the Court, denied. THE CHIEF JUSTICE, JUSTICE KENNEDY, JUSTICE THOMAS, and JUSTICE ALITO would grant the application to vacate the stay of execution.

MAY 16, 2016

Certiorari Granted—Vacated and Remanded

No. 15–774. BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* DORDT COLLEGE ET AL. C. A. 8th Cir. Reported below: 801 F. 3d 946; and

No. 15–775. DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. *v.* CNS INTERNATIONAL MINISTRIES ET AL. C. A. 8th Cir. Reported below: 801 F. 3d 927. Certiorari granted, judgments vacated, and cases remanded in light of *Zubik* v. *Burwell*, *ante*, p. 403 (*per curiam*). Nothing in the *Zubik* opinion, or in the opinions or orders of the courts below, is to affect the ability of the Government to ensure that women covered by respondents' health plans "obtain, without cost, the full range of Food and Drug Administration approved contraceptives." *Wheaton College* v. *Burwell*, 573 U. S. 958, 959 (2014). Through this litigation, respondents have made the Government aware of their view that they meet "the requirements for exemption from the contraceptive coverage requirement on religious grounds." *Ibid.* Nothing in the *Zubik* opinion, or in the opinions or orders of the courts below, "precludes the Government from relying on this notice, to the extent it considers it necessary, to facilitate the provision of full contraceptive coverage" going forward. 573 U. S., at 959. Because the Government may rely on this notice, the Government may not impose taxes or penalties on respondents for failure to provide the relevant notice. JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, concurs in the decision to grant, vacate,

and remand in these cases for the reasons expressed in *Zubik* v. *Burwell*, *ante*, p. 403 (SOTOMAYOR, J., concurring).

No. 15–812. UNIVERSITY OF NOTRE DAME *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 7th Cir. Reported below: 786 F. 3d 606;

No. 15–834. UNIVERSITY OF DALLAS ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 5th Cir. Reported below: 793 F. 3d 449;

No. 15–1003. DIOCESE OF FORT WAYNE-SOUTH BEND, INC., ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 7th Cir. Reported below: 801 F. 3d 788; and

No. 15–1004. GRACE SCHOOLS ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 7th Cir. Reported below: 801 F. 3d 788. Certiorari granted, judgments vacated, and cases remanded in light of *Zubik* v. *Burwell*, *ante*, p. 403 (*per curiam*). Nothing in the *Zubik* opinion, or in the opinions or orders of the courts below, is to affect the ability of the Government to ensure that women covered by petitioners' health plans "obtain, without cost, the full range of Food and Drug Administration approved contraceptives." *Wheaton College* v. *Burwell*, 573 U. S. 958, 959 (2014). Through this litigation, petitioners have made the Government aware of their view that they meet "the requirements for exemption from the contraceptive coverage requirement on religious grounds." *Ibid.* Nothing in the *Zubik* opinion, or in the opinions or orders of the courts below, "precludes the Government from relying on this notice, to the extent it considers it necessary, to facilitate the provision of full contraceptive coverage" going forward. 573 U. S., at 959. Because the Government may rely on this notice, the Government may not impose taxes or penalties on petitioners for failure to provide the relevant notice. JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, concurs in the decision to grant, vacate, and remand in these cases for the reasons expressed in *Zubik* v. *Burwell*, *ante*, p. 403 (SOTOMAYOR, J., concurring).

Certiorari Granted—Reversed. (See No. 15–833, *ante*, p. 412.)

Certiorari Dismissed

No. 15–8498. JOHNSON *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. Sup. Ct. Miss. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certio-

rari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 15–8626. REDDY *v.* GILBERT MEDICAL TRANSCRIPTION SERVICE, INC., ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–8848. VENTURA-VERA *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 15–8871. ASKEW *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–8884. JEEP *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–8894. POLK *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. 15A975. ADETILOYE *v.* UNITED STATES. C. A. 8th Cir. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. D–2887. IN RE DISCIPLINE OF MICHAEL. Ronald Dale Michael, of Booneville, Miss., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2888. IN RE DISCIPLINE OF NAEGELE. Timothy Duncan Naegele, of Malibu, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2889. IN RE DISCIPLINE OF ADLER. Jack Israel Adler, of Moreno Valley, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2890. IN RE DISCIPLINE OF WARNER. James Joseph Warner, of San Diego, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2891. IN RE DISCIPLINE OF ALARI. Stanley Alari, of Nevada City, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2892. IN RE DISCIPLINE OF MASTRONARDI. Janet Anthony Mastronardi, of East Greenwich, R. I., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2893. IN RE DISCIPLINE OF CLAIR. Jerome Edward Clair, of Ft. Lauderdale, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2894. IN RE DISCIPLINE OF SEEGER. David J. Seeger, of Buffalo, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2895. IN RE DISCIPLINE OF HUFF. Raymond L. Huff, of Peoria, Ill., is suspended from the practice of law in this Court,

and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2896. IN RE DISCIPLINE OF MORAN. Edmund Benedict Moran, Jr., of Evanston, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2897. IN RE DISCIPLINE OF PETERS-HAMLIN. Kristan L. Peters-Hamlin, of Westport, Conn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2898. IN RE DISCIPLINE OF SILVER. Sheldon Silver, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2899. IN RE DISCIPLINE OF KERNS. Robert J. Kerns, of North Wales, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2900. IN RE DISCIPLINE OF TERRY. Steven James Terry, of Cleveland, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2901. IN RE DISCIPLINE OF TOWERY. Lynn Gaines Towery, of Plano, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2902. IN RE DISCIPLINE OF HARRIS. Richard T. Harris, of Rego Park, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2903. In re Discipline of Tagupa. William E. H. Tagupa, of Honolulu, Haw., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2904. In re Discipline of Hayes. Frederick B. Hayes III, of Boston, Mass., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 15M113. V. E. *v.* Maine Department of Health and Human Services et al. Motion for leave to file petition for writ of certiorari under seal granted.

No. 15M114. Heather S. *v.* Connecticut Department of Children and Families. Motion of petitioner for leave to proceed *in forma pauperis* with declaration of indigency under seal granted.

No. 15M115. Washington *v.* United States et al.;

No. 15M116. Valenzuela, fka Mendez *v.* Byasse et al.; and

No. 15M117. Wilson *v.* Kent, Warden. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 15–1044. Pennsylvania Higher Education Assistance Agency *v.* Pele. C. A. 4th Cir.; and

No. 15–1045. Pennsylvania Higher Education Assistance Agency *v.* United States ex rel. Oberg. C. A. 4th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 15–7364. Williams *v.* James et al. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [577 U. S. 1130] denied.

No. 15–7812. Ullah *v.* Wells Fargo Bank, N. A. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [577 U. S. 1234] denied.

No. 15–8276. Reed *v.* United States. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [577 U. S. 1234] denied.

No. 15–8962. HARRISON, AKA GREEN *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 6, 2016, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 15–8986. IN RE SANCHEZ. Petition for writ of habeas corpus denied.

No. 15–9006. IN RE GOIST. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 15–8456. IN RE RAHMAN;
No. 15–8610. IN RE SHAH; and
No. 15–8797. IN RE HAHN. Petitions for writs of mandamus denied.

No. 15–8441. IN RE GREENE. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

Certiorari Denied

No. 15–816. SMITH *v.* ATTOCKNIE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 798 F. 3d 1252.

No. 15–859. CHADD, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BOARDMAN, DECEASED *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 794 F. 3d 1104.

No. 15–863. HODGE *v.* TALKIN, MARSHAL, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 799 F. 3d 1145.

No. 15–868. CITY OF HOUSTON, TEXAS *v.* ZAMORA. C. A. 5th Cir. Certiorari denied. Reported below: 798 F. 3d 326.

No. 15–900. GUPTA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 618 Fed. Appx. 21.

No. 15–933. EXXON MOBIL CORP. ET AL. *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 168 N. H. 211, 126 A. 3d 266.

No. 15–995. LAZZO ET AL. *v.* ROSE HILL BANK ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 808 F. 3d 1215.

No. 15–1006. VAWTER ET AL. *v.* ABERNATHY, COMMISSIONER, INDIANA BUREAU OF MOTOR VEHICLES. Sup. Ct. Ind. Certiorari denied. Reported below: 45 N. E. 3d 1200.

No. 15–1009. MAIER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2014 WI App 71, 354 Wis. 2d 623, 848 N. W. 2d 904.

No. 15–1013. PHILIP MORRIS USA INC. *v.* SCHWARZ, PERSONAL REPRESENTATIVE OF THE ESTATE OF SCHWARZ. Ct. App. Ore. Certiorari denied. Reported below: 272 Ore. App. 268, 355 P. 3d 931.

No. 15–1090. WAYNE COUNTY, MICHIGAN, ET AL. *v.* BIBLE BELIEVERS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 3d 228.

No. 15–1094. EVANS *v.* PITT COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 636.

No. 15–1105. ROGERS ET AL. *v.* ROMAN CATHOLIC ARCHBISHOP OF BOSTON. App. Ct. Mass. Certiorari denied. Reported below: 88 Mass. App. 519, 39 N. E. 3d 736.

No. 15–1109. CLARK *v.* COUNTY OF FAIRFAX, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 79.

No. 15–1110. GREENE ET AL. *v.* DAYTON, GOVERNOR OF MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 806 F. 3d 1146.

No. 15–1113. MOORE *v.* PEDERSON. C. A. 11th Cir. Certiorari denied. Reported below: 806 F. 3d 1036.

No. 15–1122. AMERIJET INTERNATIONAL, INC. *v.* MIAMI-DADE COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 744.

No. 15–1123. BIRO *v.* CONDE NAST ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 807 F. 3d 541 and 622 Fed. Appx. 67.

No. 15–1126. TELFORD, FKA LUNDAHL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 445.

No. 15–1132. JARVIS ET AL. *v.* VILLAGE GUN SHOP, INC., DBA VILLAGE VAULT. C. A. 1st Cir. Certiorari denied. Reported below: 805 F. 3d 1.

No. 15–1135. EAGLE US 2 L. L. C. *v.* ABRAHAM ET AL. C. A. 5th Cir. Certiorari denied.

No. 15–1137. ZIMMECK *v.* MARSHALL UNIVERSITY BOARD OF GOVERNORS. C. A. 4th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 117.

No. 15–1148. ABDULLA *v.* EMBASSY OF THE REPUBLIC OF IRAQ IN WASHINGTON, D. C. C. A. 3d Cir. Certiorari denied.

No. 15–1154. CLAYTON *v.* FORRESTER ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–1159. DOE ET AL. *v.* EAST LYME BOARD OF EDUCATION. C. A. 2d Cir. Certiorari denied. Reported below: 790 F. 3d 440.

No. 15–1162. HAMMANN *v.* SEXTON LOFTS, LLC, ET AL.; and HAMMANN *v.* IVY TOWER MINNEAPOLIS, LLC, ET AL. C. A. 8th Cir. Certiorari denied.

No. 15–1172. DRINKARD *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 177 So. 3d 993.

No. 15–1183. HAROLD *v.* CARRICK ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 15–1188. AZAM *v.* U. S. BANK N. A. (two judgments). C. A. 9th Cir. Certiorari denied.

No. 15–1196. BARON *v.* VOGEL. C. A. 5th Cir. Certiorari denied.

No. 15–1202. SULLIVAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 286.

No. 15–1214. THOMAS *v.* OHIO. Ct. App. Ohio, 9th App. Dist., Summit County. Certiorari denied. Reported below: 2015-Ohio-2935.

No. 15–1219. RIFFIN *v.* SURFACE TRANSPORTATION BOARD ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–1227. KAPLAN *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 637 Fed. Appx. 585.

No. 15–1230. BOOK *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 155 Conn. App. 560, 109 A. 3d 1027.

No. 15–1237. SIMKIN *v.* SUPREME JUDICIAL COURT OF MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 471 Mass. 1013, 28 N. E. 3d 1171.

No. 15–1241. NICHOLSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 638 Fed. Appx. 40.

No. 15–1253. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 809 F. 3d 371.

No. 15–1255. DOHERTY *v.* NELLIS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 307.

No. 15–1260. VARGAS *v.* MURPHY, ACTING SECRETARY OF THE ARMY. C. A. 5th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 213.

No. 15–1261. MONTGOMERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 666.

No. 15–1277. DONALDSON *v.* MERIT SYSTEMS PROTECTION BOARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 108.

No. 15–1282. BORER *v.* LEW, SECRETARY OF THE TREASURY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 427.

No. 15–1287. MACALPINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 602 Fed. Appx. 928.

No. 15–1290. WILEY M. ELICK D. D. S., INC., ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 609.

No. 15–6181. FAISON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 547 Fed. Appx. 88.

No. 15–6719. FULLER *v.* WALTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 15–6793. TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 794 F. 3d 1053.

No. 15–6875. CALHOUN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 796 F. 3d 1251.

No. 15–7087. HOUSTON *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 2015 UT 40, 353 P. 3d 55.

No. 15–7092. OLSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 796 F. 3d 1173.

No. 15–7313. BELL *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 480 S. W. 3d 486.

No. 15–7360. PRECIADO-DELACRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 801 F. 3d 508.

No. 15–7432. SANTANA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 794 F. 3d 635.

No. 15–7490. WILSON *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 351 P. 3d 1126.

No. 15–7669. MCPHEARSON *v.* BENOV, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 645.

No. 15–7733. SPARKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 806 F. 3d 1323.

No. 15–7931. COX *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 183 So. 3d 36.

No. 15–7967. MONJE-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 477.

No. 15–8071. BOYD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 625 Fed. Appx. 183.

No. 15–8087. WILLIAMS *v.* MORRIS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 773.

No. 15–8135. DRUMMOND *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 797 F. 3d 400.

No. 15–8145. AZMAT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 805 F. 3d 1018.

No. 15–8187. SLOCUM *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 629 Fed. Appx. 992.

No. 15–8277. WILLIAMS *v.* WEBB LAW FIRM, P. C. C. A. 3d Cir. Certiorari denied. Reported below: 628 Fed. Appx. 836.

No. 15–8283. MICHAEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 146.

No. 15–8396. HANSON *v.* SHERROD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 797 F. 3d 810.

No. 15–8412. DEAN ET AL. *v.* KEEL. Sup. Ct. S. C. Certiorari denied.

No. 15–8421. METTLE *v.* METTLE. Sup. Ct. Wash. Certiorari denied. Reported below: 184 Wash. 2d 1002, 357 P. 3d 665.

No. 15–8444. JACKSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 180 So. 3d 938.

No. 15–8447. MARSHALL *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 202.

No. 15–8457. RODRIGUEZ *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8462. VANDERHOOF *v.* OHIO. Ct. App. Ohio, 11th App. Dist., Lake County. Certiorari denied. Reported below: 2015-Ohio-2198.

No. 15–8466. JONES *v.* MOORE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 306.

No. 15–8470. LEWIS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 223 Md. App. 775.

No. 15–8472. SONIAT *v.* JACKSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 292.

No. 15–8475. MIXON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 129 App. Div. 3d 1509, 10 N. Y. S. 3d 779.

No. 15–8476. BROWNLEE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 15–8485. JORDAN *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2015 IL App (3d) 120756–U.

No. 15–8486. JOSEPH *v.* BETH ISRAEL MEDICAL CENTER. C. A. 2d Cir. Certiorari denied.

No. 15–8487. LEWIS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 224 Md. App. 726.

No. 15–8488. MASSEY *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 15–8489. JACKSON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–8491. WILSON *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 15–8492. WASHINGTON *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 15–8493. OAKMAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 125 A. 3d 447.

No. 15–8494. RODRIGUEZ *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 15–8495. MATLOCK *v.* REISER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 15–8496. KERNS *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 186.

No. 15–8499. LISLE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 131 Nev. 356, 351 P. 3d 725.

No. 15–8502. BORGES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 130 App. Div. 3d 1057, 15 N. Y. S. 3d 378.

No. 15–8504. YOUNG *v.* MADDEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 632.

No. 15–8509. ROBERTS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 192 So. 3d 41.

No. 15–8517. SMITH *v.* BOLAVA, DEPUTY WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 632 Fed. Appx. 683.

No. 15–8523. ROSEVEAR *v.* UNITED STATES. Ct. App. Cal., 1st App. Dist., Div. 4. Certiorari denied.

No. 15–8526. BLAKE *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 180 So. 3d 89.

No. 15–8527. MESA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 15–8529. MODRALL *v.* O'ROURKE. C. A. D. C. Cir. Certiorari denied.

No. 15–8532. DAVIS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–8533. FORCHION *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 15–8534. HERRIOTT *v.* HERRIOTT. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 15–8547. RUCKER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 7. Certiorari denied.

No. 15–8549. MORRISON *v.* PETERSON. C. A. 9th Cir. Certiorari denied. Reported below: 809 F. 3d 1059.

No. 15–8550. HUNTER *v.* PEPSICO, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 445.

No. 15–8554. MCKAUFMAN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 179 So. 3d 333.

No. 15–8560. ROBINSON *v.* BREWER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8572. WITHERSPOON *v.* BURTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8573. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 460.

No. 15–8596. AVALOS *v.* SHERMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8615. THOMPSON, AKA CODY *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2015-Ohio-2261, 34 N. E. 3d 189.

No. 15–8620. CALLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 839.

No. 15–8624. PONDS *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 51 Kan. App. 2d xxxiv, 340 P. 3d 1236.

No. 15–8630. MACURDY *v.* BLUE SKY CONDOMINIUM HOMEOWNERS ASSN., INC. Ct. App. Colo. Certiorari denied.

No. 15–8631. JONES *v.* FLORIDA PAROLE BOARD ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–8636. TOBKIN *v.* CALDERIN. C. A. 11th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 822.

No. 15–8648. KHAN *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 808 F. 3d 1169.

No. 15–8656. SAUCEDO LOPEZ *v.* BAKER, WARDEN, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 131 Nev. 1314.

No. 15–8662. WILLIAMS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–8669. WILSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 15–8681. MORALES *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8689. KRUG *v.* CASTRO. C. A. 9th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 387.

No. 15–8691. KINKLE *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 863.

No. 15–8692. BACHYNSKI *v.* STEWART, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 813 F. 3d 241.

No. 15–8705. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 834.

No. 15–8708. SIERRA-JAIMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 228.

No. 15–8714. WALTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 911.

No. 15–8718. SCOTT *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 15–8721. SPELLMAN *v.* TRITT, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8729. TOMLIN *v.* WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES. Ct. App. Wash. Certiorari denied.

No. 15–8732. PERRY *v.* HOLLOWAY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8736. MOSES *v.* EAGLETON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 300.

No. 15–8739. WARREN *v.* APKER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 443.

No. 15–8740. WINNINGHAM *v.* WILLIAMS ET AL. C. A. 5th Cir. Certiorari denied.

No. 15–8743. MCCAULEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 590.

No. 15–8748. GARCIA *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 15–8752. YAZZIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 703.

No. 15–8754. FOSTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 570 Fed. Appx. 322.

No. 15–8757. ANDERSON *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 2015 UT 90, 362 P. 3d 1232.

No. 15–8765. MONTGOMERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 127.

No. 15–8767. SEABRIDGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 258.

No. 15–8774. HAWKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 796 F. 3d 843.

No. 15–8780. ALVIRA-SANCHEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 804 F. 3d 488.

No. 15–8781. CALLEN *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 15–8783. EVANS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 15–8788. NAILS *v.* SLUSHER. C. A. 10th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 625.

No. 15–8793. MCDONALD *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 125 A. 3d 464.

No. 15–8794. HUDSON *v.* TARNOW, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–8795. HAGER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 609 Fed. Appx. 355.

No. 15–8796. GRIGSBY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 696.

No. 15–8799. WILDER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 806 F. 3d 653.

No. 15–8800. WARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 189.

No. 15–8801. WIDNER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 183 So. 3d 365.

No. 15–8805. MARQUEZ-APODACA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 609 Fed. Appx. 230.

No. 15–8810. SHORTY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 524.

No. 15–8811. CANNON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 636 Fed. Appx. 30.

No. 15–8812. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 206.

No. 15–8813. BRADLEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 132 A. 3d 1177.

No. 15–8814. CHANEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 492.

No. 15–8816. SERMENO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–8818. JACKSON *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 88 Mass. App. 1104, 37 N. E. 3d 688.

No. 15–8819. LIEDKE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–8821. MANN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 15–8822. SHEIKH *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 181 So. 3d 569.

No. 15–8824. WALJI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–8837. JACK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 858.

No. 15–8838. PADILLA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 15–8841. MORENO-GODOY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–8843. THORPE *v.* NEW JERSEY ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 15–8845. WOOLRIDGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 374.

No. 15–8846. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 270.

No. 15–8852. CARMICHAEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 196.

No. 15–8856. ASCENCIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–8858. COCHRAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 766 F. 3d 672.

No. 15–8860. BENTLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–8861. BLANK *v.* BELL. C. A. 5th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 445.

No. 15–8863. MORRIS *v.* FEATHER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8867. GARCIA-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 809 F. 3d 834.

No. 15–8868. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 672.

No. 15–8870. BLANK *v.* ROBINSON. C. A. 5th Cir. Certiorari denied.

No. 15–8873. LOMAX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 816 F. 3d 468.

No. 15–8874. DECOLOGERO ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 802 F. 3d 155.

No. 15–8876. MACK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 443.

No. 15–8879. MUNIZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 637 Fed. Appx. 65.

No. 15–8881. STIRLING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 739.

No. 15–8885. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 633 Fed. Appx. 818.

No. 15–8886. BROADNAX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 335.

No. 15–8887. BLANC *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 860.

No. 15–8895. LAGOS-MEDINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 276.

No. 15–8898. WALLACE *v.* ISRAEL, SHERIFF, BROWARD COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–8907. WHITE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 890.

No. 15–8909. BIRD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 207.

No. 15–8911. ABDUR-RAHIIM *v.* HOLLAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8917. RAMOS-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 809 F. 3d 817.

No. 15–8918. Lazaro Rodriguez *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 15–8919. Ramos-Pineiro *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 633 Fed. Appx. 532.

No. 15–8921. Lynn *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 15–8925. Romano *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 630 Fed. Appx. 56.

No. 15–8926. Barlow *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 811 F. 3d 133.

No. 15–8927. Collier *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 15–8928. Allen *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 311.

No. 15–8941. Strickland *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 15–8943. Pineda-Goigochea *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 851.

No. 15–8947. Malady *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 329.

No. 15–8948. Presley *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 934.

No. 15–8949. Walker *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 810 F. 3d 568.

No. 15–8952. Stinson *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 15–8960. Free *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 15–8961. Fleetwood *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 874.

No. 15–8963. Graciani-Febus *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 800 F. 3d 48.

No. 15–8973. Xiao-Ping Su *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 635.

No. 15–8977. Deering Bey, aka Williams *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 15–8978. Charles *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 801 F. 3d 855.

No. 15–8996. Williams *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 933.

No. 15–861. United Student Aid Funds, Inc. *v.* Bible. C. A. 7th Cir. Certiorari denied. Reported below: 799 F. 3d 633.

Justice Thomas, dissenting.

This petition asks the Court to overrule *Auer* v. *Robbins*, 519 U. S. 452 (1997), and *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410 (1945). For the reasons set forth in my opinion concurring in the judgment in *Perez* v. *Mortgage Bankers Assn.*, 575 U. S. 92, 112 (2015), that question is worthy of review.

The doctrine of *Seminole Rock* deference (or, as it is sometimes called, *Auer* deference) permits courts to defer to an agency's interpretation of its own regulation "unless that interpretation is plainly erroneous or inconsistent with the regulation." *Decker* v. *Northwest Environmental Defense Center*, 568 U. S. 597, 613 (2013) (internal quotation marks omitted). Courts will defer even when the agency's interpretation is not "the only possible reading of a regulation—or even the best one." *Ibid.*

Any reader of this Court's opinions should think that the doctrine is on its last gasp. Members of this Court have repeatedly called for its reconsideration in an appropriate case. See *Mortgage Bankers*, 575 U. S., at 107 (Alito, J., concurring); *id.*, at 108 (Scalia, J., concurring in judgment); *id.*, at 112 (Thomas, J., concurring in judgment); *Decker*, 568 U. S., at 615–616 (Roberts, C. J., concurring); *id.*, at 617–621 (Scalia, J., concurring in part and dissenting in part); *Talk America, Inc.* v. *Michigan Bell Telephone Co.*, 564 U. S. 50, 68–69 (2011) (Scalia, J., concurring); see also *Christopher* v. *SmithKline Beecham Corp.*, 567 U. S. 142, 155–159 (2012) (refusing to defer under *Auer*). And rightly so. The doctrine has metastasized, see Knudsen & Wildermuth, Unearthing the Lost History of *Seminole Rock*, 65 Emory L. J. 47, 54–68 (2015) (discussing *Seminole Rock*'s humble origins), and

today "amounts to a transfer of the judge's exercise of interpretive judgment to the agency," *Mortgage Bankers*, *supra*, at 124 (opinion of THOMAS, J.). "Enough is enough." *Decker*, *supra*, at 616 (opinion of Scalia, J.).

This case is emblematic of the failings of *Seminole Rock* deference. Here, the Court of Appeals for the Seventh Circuit deferred to the Department of Education's interpretation of the regulatory scheme it enforces—an interpretation set forth in an *amicus* brief that the Department filed at the invitation of the Seventh Circuit. For the reasons stated in Judge Manion's partial dissent, 799 F. 3d 633, 663–676 (2015), the Department's interpretation is not only at odds with the regulatory scheme but also defies ordinary English. More broadly, by deferring to an agency's litigating position under the guise of *Seminole Rock*, courts force regulated entities like petitioner here to "divine the agency's interpretations in advance," lest they "be held liable when the agency announces its interpretations for the first time" in litigation. *Christopher*, *supra*, at 159. By enabling an agency to enact "vague rules" and then to invoke *Seminole Rock* to "do what it pleases" in later litigation, the agency (with the judicial branch as its co-conspirator) "frustrates the notice and predictability purposes of rulemaking, and promotes arbitrary government." *Talk America, Inc.*, *supra*, at 69 (Scalia, J., concurring).

This is the appropriate case in which to reevaluate *Seminole Rock* and *Auer*. But the Court chooses to sit idly by, content to let "[h]e who writes a law" also "adjudge its violation." *Decker*, *supra*, at 621 (opinion of Scalia, J.). I respectfully dissent from the denial of certiorari.

No. 15–1037. BYRNE, WARDEN, ET AL. *v.* SAMPSON. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 628 Fed. Appx. 477.

No. 15–1146. LEE *v.* FAIRFAX COUNTY SCHOOL BOARD ET AL. C. A. 4th Cir. Motion of Camden County East Branch of the NAACP et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 621 Fed. Appx. 761.

No. 15–1236. JOLLEY *v.* MERIT SYSTEMS PROTECTION BOARD ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 636 Fed. Appx. 567.

No. 15–8896. OHAYON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 617 Fed. Appx. 830.

Rehearing Denied

No. 14–9806. COOK *v.* CASHLER ET AL., 577 U. S. 837;

No. 15–788. MARGELIS *v.* INDYMAC BANK ET AL., 577 U. S. 1141;

No. 15–794. WALKER *v.* WALKER, 577 U. S. 1141;

No. 15–904. AARON *v.* ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD ET AL., 577 U. S. 1144;

No. 15–6840. THOMAS ET UX. *v.* CHATTAHOOCHEE JUDICIAL CIRCUIT ET AL., 577 U. S. 1219;

No. 15–7139. SELDEN *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 577 U. S. 1147;

No. 15–7153. SUTEERACHANON *v.* MCDONALD'S RESTAURANTS OF MARYLAND, INC., 577 U. S. 1195;

No. 15–7234. CRUDUP *v.* ENGLEHART ET AL., 577 U. S. 1149;

No. 15–7256. COLE *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 577 U. S. 1150;

No. 15–7356. SPEAR *v.* KIRKLAND ET AL., 577 U. S. 1153;

No. 15–7375. KELLY *v.* STREETER, 577 U. S. 1154;

No. 15–7467. GOUCH-ONASSIS *v.* CALIFORNIA, 577 U. S. 1156;

No. 15–7472. EPSHTEYN *v.* COURT OF COMMON PLEAS OF PENNSYLVANIA, DELAWARE COUNTY, ET AL., 577 U. S. 1157;

No. 15–7613. ENRIQUEZ SANCHEZ *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 577 U. S. 1197;

No. 15–7708. BROWN *v.* LAZAROFF, WARDEN, 577 U. S. 1221;

No. 15–7730. SCHMITT *v.* TEXAS, 577 U. S. 1222;

No. 15–7736. TAYLOR *v.* NEW YORK, 577 U. S. 1222;

No. 15–7742. RUNNELS *v.* MCDOWELL, WARDEN, 577 U. S. 1230;

No. 15–7748. STURGIS *v.* MICHIGAN, 577 U. S. 1222;

No. 15–7753. SMITH *v.* MISSOURI ET AL., 577 U. S. 1223;

No. 15–7775. REILLY *v.* HERRERA ET AL., 577 U. S. 1223;

No. 15–7781. WOOD *v.* PIERCE, WARDEN, ET AL., 577 U. S. 1223;

No. 15–7861. STEWART *v.* UNITED STATES, 577 U. S. 1224;

No. 15–7990. KENNEDY *v.* UNITED STATES, 577 U. S. 1201;

No. 15–8007. CURRY *v.* SOUTH CAROLINA, *ante*, p. 910;

No. 15–8014. BAMDAD *v.* DRUG ENFORCEMENT ADMINISTRATION ET AL., 577 U. S. 1225;

No. 15–8067. PETERSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., 577 U. S. 1225;

No. 15–8082. SIMMONS *v.* UNITED STATES, 577 U. S. 1226;

No. 15–8115. DAVIS *v.* COMCAST CORP., INC., ET AL., 577 U. S. 1202;

No. 15–8142. MELOT *v.* UNITED STATES, 577 U. S. 1239; and

No. 15–8146. BIGELOW *v.* UNITED STATES, 577 U. S. 1227. Petitions for rehearing denied.

MAY 19, 2016

Dismissal Under Rule 46

No. 15–791. DOW CHEMICAL CO. ET AL. *v.* COOK ET AL.; and

No. 15–911. COOK ET AL. *v.* DOW CHEMICAL CO. ET AL. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 790 F. 3d 1088.

MAY 23, 2016

Certiorari Granted—Vacated and Remanded

No. 15–1. JOHNSON *v.* MANIS, WARDEN. C. A. 4th Cir.* Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016). Reported below: 780 F. 3d 219.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, concurring.

The Court has held the petition in this and many other cases pending the decision in *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016). In holding this petition and now vacating and remanding the judgment below, the Court has not assessed whether petitioner's asserted entitlement to retroactive relief "is properly presented in the case." *Id.*, at 205. On remand, courts should understand that the Court's disposition of this petition does not reflect any view regarding petitioner's entitlement to relief. The Court's disposition does not, for example, address whether an adequate and independent state ground bars relief, whether peti-

*[REPORTER'S NOTE: For opinions of JUSTICE ALITO and JUSTICE SOTOMAYOR concurring in this case, see No. 15–6289, *infra*, p. 994.]

tioner forfeited or waived any entitlement to relief (by, for example, entering into a plea agreement waiving any entitlement to relief), or whether petitioner's sentence actually qualifies as a mandatory life without parole sentence.

No. 15–620. JONES ET AL. *v.* GILLIE ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Sheriff* v. *Gillie*, *ante*, p. 317. Reported below: 785 F. 3d 1091.

No. 15–785. PUNDT, INDIVIDUALLY AND AS REPRESENTATIVE OF PLAN PARTICIPANTS AND PLAN BENEFICIARIES OF VERIZON MANAGEMENT PENSION PLAN *v.* VERIZON COMMUNICATIONS, INC., ET AL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Spokeo, Inc.* v. *Robins*, *ante*, p. 330. Reported below: 623 Fed. Appx. 132.

No. 15–1100. CATHOLIC HEALTH CARE SYSTEM ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 2d Cir. Reported below: 796 F. 3d 207; and

No. 15–1131. MICHIGAN CATHOLIC CONFERENCE ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 6th Cir. Reported below: 807 F. 3d 738. Certiorari granted, judgments vacated, and cases remanded in light of *Zubik* v. *Burwell*, *ante*, p. 403 (*per curiam*). Nothing in the *Zubik* opinion, or in the opinions or orders of the courts below, is to affect the ability of the Government to ensure that women covered by petitioners' health plans "obtain, without cost, the full range of Food and Drug Administration approved contraceptives." *Wheaton College* v. *Burwell*, 573 U. S. 958, 959 (2014). Through this litigation, petitioners have made the Government aware of their view that they meet "the requirements for exemption from the contraceptive coverage requirement on religious grounds." *Ibid.* Nothing in the *Zubik* opinion, or in the opinions or orders of the courts below, "precludes the Government from relying on this notice, to the extent it considers it necessary, to facilitate the provision of full contraceptive coverage" going forward. 573 U. S., at 959. Because the Government may rely on this notice, the Government may not impose taxes or penalties on petitioners for failure to provide the relevant notice. JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, concurs in the decision to grant, vacate, and remand in these cases for the reasons ex-

pressed in *Zubik* v. *Burwell*, *ante*, p. 403 (SOTOMAYOR, J., concurring).

No. 15–6284. KNOTTS *v.* ALABAMA. Ct. Crim. App. Ala.* Reported below: 184 So. 3d 466;

No. 15–6290. BONDS *v.* ALABAMA. Ct. Crim. App. Ala.* Reported below: 184 So. 3d 465;

No. 15–6300. SLATON *v.* ALABAMA. Ct. Crim. App. Ala.* Reported below: 195 So. 3d 1081;

No. 15–6306. FLOWERS *v.* ALABAMA. Ct. Crim. App. Ala.* Reported below: 184 So. 3d 466;

No. 15–6904. BARNES *v.* ALABAMA. Ct. Crim. App. Ala.* Reported below: 207 So. 3d 808; and

No. 15–6905. BARNES *v.* ALABAMA. Ct. Crim. App. Ala.* Reported below: 207 So. 3d 808. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016).

JUSTICE THOMAS, with whom JUSTICE ALITO joins, concurring.

The Court has held the petitions in these and many other cases pending the decision in *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016). In holding these petitions and now vacating and remanding the judgments below, the Court has not assessed whether petitioners' asserted entitlement to retroactive relief "is properly presented in the case." *Id.*, at 205. On remand, courts should understand that the Court's disposition of these petitions does not reflect any view regarding petitioners' entitlement to relief. The Court's disposition does not, for example, address whether an adequate and independent state ground bars relief, whether petitioners forfeited or waived any entitlement to relief (by, for example, entering into a plea agreement waiving any entitlement to relief), or whether petitioners' sentences actually qualify as mandatory life without parole sentences.

No. 15–6289. ADAMS *v.* ALABAMA. Ct. Crim. App. Ala. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016). Reported below: 184 So. 3d 467.

*[REPORTER'S NOTE: For opinions of JUSTICE ALITO and JUSTICE SOTOMAYOR concurring in this case, see No. 15–6289, *infra* this page.]

JUSTICE THOMAS, with whom JUSTICE ALITO joins, concurring in the decision to grant, vacate, and remand.

The Court has held the petition in this and many other cases pending the decision in *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016). In holding this petition and now vacating and remanding the judgment below, the Court has not assessed whether petitioner's asserted entitlement to retroactive relief "is properly presented in the case." *Id.*, at 205. On remand, courts should understand that the Court's disposition of this petition does not reflect any view regarding petitioner's entitlement to relief. The Court's disposition does not, for example, address whether an adequate and independent state ground bars relief, whether petitioner forfeited or waived any entitlement to relief (by, for example, entering into a plea agreement waiving any entitlement to relief), or whether petitioner's sentence actually qualifies as a mandatory life without parole sentence.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring.*

The Court grants the petition for a writ of certiorari in this case, vacates the decision below, and remands for reconsideration in light of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016), which holds that *Miller* v. *Alabama*, 567 U. S. 460 (2012), applies retroactively to cases on state collateral review. As a result of *Montgomery* and *Miller*, States must now ensure that prisoners serving sentences of life without parole for offenses committed before the age of 18 have the benefit of an individualized sentencing procedure that considers their youth and immaturity at the time of the offense.

The present case differs from most of those in which the Court grants, vacates, and remands for reconsideration in light of *Montgomery*. The petitioner in this case—as with a few others now before the Court—was sentenced to death prior to our decision in *Roper* v. *Simmons*, 543 U. S. 551 (2005), which held that the

*This opinion also applies to the other petitions held for *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016), in which the defendant was originally sentenced to death, No. 15–1, *Johnson* v. *Manis*, *supra*, p. 992; No. 15–6284, *Knotts* v. *Alabama*, *supra*, p. 994; No. 15–6290, *Bonds* v. *Alabama*, *supra*, p. 994; No. 15–6300, *Slaton* v. *Alabama*, *supra*, p. 994; No. 15–6306, *Flowers* v. *Alabama*, *supra*, p. 994; No. 15–6904, *Barnes* v. *Alabama*, *supra*, p. 994; and No. 15–6905, *Barnes* v. *Alabama*, *supra*, p. 994.

Eighth Amendment prohibits a death sentence for a minor. During that pre-*Roper* period, juries in capital cases were required at the penalty phase to consider "all relevant mitigating evidence," including "the chronological age of a minor" and a youthful defendant's "mental and emotional development." *Eddings* v. *Oklahoma*, 455 U. S. 104, 116–117 (1982); see also *Roper* v. *Simmons*, *supra*, at 603 (O'Connor, J., dissenting) ("A defendant's youth or immaturity is, of course, a paradigmatic example" of the type of mitigating evidence to which a "sentencer in a capital case must be permitted to give full effect"). After *Roper*, death sentences imposed on prisoners convicted of murders committed as minors were reduced to lesser sentences.

In the present case, petitioner committed a heinous murder in 1997 when he was 17 years old. See 955 So. 2d 1037, 1047–1049 (Ala. Crim. App. 2003). Wielding a knife and wearing a stocking mask to conceal his face, petitioner climbed through a window into the home of Melissa and Andrew Mills. Petitioner demanded money, but the Mills family had only $9 on hand. While petitioner remained in the Mills home with Melissa Mills and her three young children, Andrew Mills raced to an ATM and withdrew $375, the maximum amount available. Petitioner then demanded more money, so Andrew went to a nearby grocery store to cash a check. While holding her at knife point, petitioner raped Melissa Mills, who was four months pregnant, before stabbing her repeatedly in the neck, upper and lower chest, and back. The stab wounds pierced her liver and lungs, and she eventually succumbed.

When police arrived at the Mills' home, summoned by the grocery store clerk, Melissa Mills was gasping for breath and bleeding profusely. Petitioner fled but was captured nearby 20 minutes later. His clothes were covered in Melissa Mills' blood, and he had in his possession the knife used to kill her, which was also covered in her blood. Nine blood-smeared dollar bills were located nearby. Petitioner's DNA matched the semen recovered from the rape kit performed as part of Melissa Mills' autopsy.

A jury found petitioner guilty of murder and then proceeded to decide whether he should be sentenced to death or life imprisonment without parole. *Id.*, at 1048; see Ala. Code § 13A–5–45 (1982). Under the Alabama law then in force, "[t]he age of the defendant at the time of the crime" was one of the statutory "[m]itigating circumstances" that the jury was required to con-

sider. § 13A–5–51(7). The jury nevertheless concluded that petitioner's age did not warrant a sentence of less than death. After *Roper*, however, petitioner's sentence was commuted to life without parole. See *Ex parte Adams*, 955 So. 2d 1106 (Ala. 2005).

In cases like this, it can be argued that the original sentencing jury fulfilled the individualized sentencing requirement that *Miller* subsequently imposed. In these cases, the sentencer necessarily rejected the argument that the defendant's youth and immaturity called for the lesser sentence of life imprisonment without parole. It can therefore be argued that such a sentencer would surely have felt that the defendant's youth and immaturity did not warrant an even lighter sentence that would have allowed the petitioner to be loosed on society at some time in the future. In short, it can be argued that the jury that sentenced petitioner to death already engaged in the very process mandated by *Miller* and concluded that petitioner was not a mere "'child'" whose crimes reflected "'unfortunate yet transient immaturity,'" *post*, at 999 (SOTOMAYOR, J., concurring), but was instead one of the rare minors who deserves life without parole.†

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†A similar argument can be made in other cases in which the jury originally sentenced a minor to death. Here are some examples of other cases in which it might be inferred that the original sentencing juries concluded that the evidence established "irreparable corruption," despite the fact that the defendant had not yet reached the age of 18 at the time of the crime. *Montgomery* v. *Louisiana*, 577 U. S. 190, 209 (2016).

Petitioner William Knotts, No. 15–6284, was 17 years old when he escaped from a juvenile facility, broke into two houses, and stole multiple weapons, hundreds of rounds of ammunition, food, and other supplies. He then hid in the woods to plan an attack on a woman who had called him a "'cracker'" and a "'honky.'" Knotts broke into the woman's home, lay in wait for her, and shot her to death in front of her 2-year-old son. The victim's husband discovered her body—and their son, sitting next to her, crying, covered in blood—four hours later. *Knotts* v. *State*, 686 So. 2d 431, 442, 442–443 (Ala. Crim. App. 1995).

Petitioner Nathan Slaton, No. 15–6300, was 17 years old when he decided to spend a morning shooting birds with his BB gun. He then got into a fight with his next-door neighbor over the gun, so he entered her house, unplugged her phone, raped her, beat her over the head, strangled her, and shot her. Slaton confessed to the rape-murder. *Slaton* v. *State*, 680 So. 2d 879, 884–885 (Ala. Crim. App. 1995).

Petitioner Michael Barnes, Nos. 15–6904, 15–6905, was 17 years old when he committed capital murder in the course of a burglary and rape. Neighbors of the victim saw smoke in her house. When firefighters responded,

In cases in which a juvenile offender was originally sentenced to death after the sentencer considered but rejected youth as a mitigating factor, courts are free on remand to evaluate whether any further individualized consideration is required.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, concurring.*

The petitioners in these cases were sentenced to death for crimes they committed before they turned 18. In most of these cases, petitioners' sentences were automatically converted to life without the possibility of parole following our decisions outlawing the death penalty for juveniles.[1] See *Roper* v. *Simmons*, 543 U. S. 551 (2005); *Thompson* v. *Oklahoma*, 487 U. S. 815 (1988). Today, we grant, vacate, and remand these cases in light of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016), for the lower courts to consider whether petitioners' sentences comport with the exacting limits the Eighth Amendment imposes on sentencing a juvenile offender to life without parole.

JUSTICE ALITO suggests otherwise, noting that the juries that originally sentenced petitioners to death were statutorily obligated to consider the mitigating effects of petitioners' youth. "In

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they discovered Barnes' victim. Her severely burned body was tied to her bed, an electrical appliance cord wrapped around her neck, and charred paper scattered about her. An autopsy revealed that the victim had been sexually assaulted and was alive when the fire was set. She died from strangulation, smoke inhalation, and her burns. *Barnes* v. *State*, 704 So. 2d 487, 489–490 (Ala. Crim. App. 1997).

Petitioner Shermaine Johnson, No. 15–1, was a serial rapist (he had committed four rapes, including the rape of a 13-year-old girl) before, at the age of 16, he committed the rape and brutal murder for which he was sentenced to death. *Johnson* v. *Commonwealth*, 259 Va. 654, 662–667, 529 S. E. 2d 769, 773–776 (2000).

*This opinion also applies to No. 15–1, *Johnson* v. *Manis*, *supra*, p. 992; No. 15–6284, *Knotts* v. *Alabama*, *supra*, p. 994; No. 15–6290, *Bonds* v. *Alabama*, *supra*, p. 994; No. 15–6300, *Slaton* v. *Alabama*, *supra*, p. 994; No. 15–6306, *Flowers* v. *Alabama*, *supra*, p. 994; No. 15–6904, *Barnes* v. *Alabama*, *supra*, p. 994; and No. 15–6905, *Barnes* v. *Alabama*, *supra*, p. 994.

[1]The only exception is that of Michael Shawn Barnes, who was sentenced to life without parole after all three of the juries to consider the question recommended life without parole over the death penalty. See Reporter's Tr. 1, *Alabama* v. *Barnes*, Nos. CC 94–1401 and CC 94–2913 (C. C. Mobile Cty., Ala., June 12, 1998), 5 Record 202 (sentencing judge states only, "I've overruled two juries in this case, but I'm not going to overrule this one").

cases like this," he writes, it can "be argued that the original sentencing jury fulfilled the individualized sentencing requirement that *Miller* subsequently imposed." *Ante*, at 997 (concurring opinion).

But *Miller* v. *Alabama*, 567 U. S. 460 (2012), did not merely impose an "individualized sentencing requirement"; it imposed a substantive rule that life without parole is only an appropriate punishment for "the rare juvenile offender whose crime reflects irreparable corruption." *Montgomery*, 577 U. S., at 208 (internal quotation marks omitted). "Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity." *Ibid.* (same). There is no indication that, when the factfinders in these cases considered petitioners' youth, they even asked the question *Miller* required them not only to answer, but to answer correctly: whether petitioners' crimes reflected "transient immaturity" or "irreparable corruption." 577 U. S., at 208.

The last factfinders to consider petitioners' youth did so more than 10—and in most cases more than 20—years ago. (Petitioners' post-*Roper* resentencings were generally automatic.) Those factfinders did not have the benefit of this Court's guidance regarding the "diminished culpability of juveniles" and the ways that "penological justifications" apply to juveniles with "lesser force than to adults." *Roper*, 543 U. S., at 571. As importantly, they did not have the benefit of this Court's repeated exhortation that the gruesomeness of a crime is not sufficient to demonstrate that a juvenile offender is beyond redemption: "The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Id.*, at 570; see also *id.*, at 573; *Miller*, 567 U. S., at 479–480.

When petitioners were sentenced, their youth was just one consideration among many; after *Miller*, we know that youth is the dispositive consideration for "all but the rarest of children." *Montgomery*, 577 U. S., at 195. The sentencing proceedings in these cases are a product of that pre-*Miller* era. In one typical case, a judge's sentencing order—overruling a unanimous jury verdict recommending life without parole instead of death—refers to youth only once, noting "the court finds that the age of the defendant at the time of the crime is a mitigating circumstance"

and then that "[t]he [c]ourt rejects the advisory verdict of the jury, and finds that the aggravating circumstances in this case outweigh the mitigating circumstances and that the punishment should be death." Sentencing Order, *Alabama* v. *Barnes*, No. CC 94–1401 (C. C. Mobile Cty., Ala., Dec. 12, 1995), 2 Record 225. Other sentencing orders are similarly terse.[2] In at least two cases, there is no indication that youth was considered as a stand-alone mitigating factor.[3] In two others, factfinders did not put "'great weight'"[4] on considerations that we have described as particularly important in evaluating the culpability of juveniles, such as intellectual disability, an abusive upbringing, and evidence of impulsivity and immaturity. *Miller*, 567 U. S., at 476.

Standards of decency have evolved since the time petitioners were sentenced to death. See *Roper*, 543 U. S., at 561. That petitioners were once given a death sentence we now know to be constitutionally unacceptable tells us nothing about whether their current life-without-parole sentences are constitutionally acceptable. I see no shortcut: On remand, the lower courts must in-

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[2]See, *e. g.*, Sentencing Order, *Alabama* v. *Adams*, No. CC 97–2403 (C. C. Montgomery Cty., Ala., Dec. 10, 1998), 1 Record 309–311 ("This Court finds that the age of Adams at the time of the crime as a mitigating circumstance, does exist and is considered by this Court. This Court notes that Adams's age alone is not determinative of whether the death penalty should be imposed in this case, nor is imposition of such a sentence unconstitutional . . . . These choices made by Adams diminish the impact of his age as a mitigating circumstance . . . "); Sentencing Order, *Alabama* v. *Knotts*, No. CC 91–2537 (C. C. Montgomery Cty., Ala., Oct. 2, 1992), 2 Record 595, 606 ("The defendant was seventeen (17) years and eleven (11) months old at the time of the crime. The Court finds this to be a mitigating circumstance, but also finds that the aforestated aggravating circumstances outweigh this mitigating evidence") (overruling 9-to-3 jury recommendation for life without parole); Appendix, *Alabama* v. *Slaton*, No. CC 87–200210 (C. C. Marshall Cty., Ala., May 22, 1990), 13 Record 242 (considering only "[t]hat the defendant was seventeen years old at the time of the crime").

[3]See Sentencing Order, *Alabama* v. *Bonds*, No. CC 00–1289 (C. C. Houston Cty., Ala., Nov. 14, 2002), 1 Record 257; Jury Instructions, *Johnson* v. *Virginia*, No. 992525 (Va., Jan. 11, 2000), I App. 225–250.

[4]See Sentencing Order, *Alabama* v. *Knotts*, No. CC 91–2537 (C. C. Montgomery Cty., Ala., Oct. 2, 1992), 2 Record 607–610; Sentencing Order, *Alabama* v. *Barnes*, No. CC 94–1401 (C. C. Mobile Cty., Ala., Dec. 12, 1995), 2 Record 223 ("borderline mental retardation" makes defendant "no less accountable for his actions").

stead ask the difficult but essential question whether petitioners are among the very "rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 577 U. S., at 209.

Certiorari Dismissed

No. 15–8530. MISSUD *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). THE CHIEF JUSTICE took no part in the consideration or decision of this motion and this petition.

No. 15–8580. JOHNSON *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 15–8600. MCFADDEN *v.* DETROIT UNITED INSURANCE ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–8651. SCHEIB *v.* BANK OF NEW YORK MELLON. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 620 Fed. Appx. 77.

No. 15–8912. AHMED *v.* SHELDON, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 15M118. PARKER *v.* LEHIGH COUNTY DOMESTIC RELATIONS COURT ET AL.;

No. 15M119. BANKS *v.* UNITED STATES; and

No. 15M120. MARCHAND *v.* SIMONSON. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 15M121. CHISHOLM ET AL. *v.* TWO UNNAMED PETITIONERS ET AL. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 15–8399. KIRBY *v.* NORTH CAROLINA STATE UNIVERSITY. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 920] denied.

No. 15–8623. DAVIS *v.* NEW YORK CITY DEPARTMENT OF EDUCATION. C. A. 2d Cir.; and

No. 15–8680. PAUL *v.* DE HOLCZER ET AL. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until June 13, 2016, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 15–9088. IN RE ZONE;

No. 15–9114. IN RE FAULKNER; and

No. 15–9121. IN RE MILES. Petitions for writs of habeas corpus denied.

No. 15–8658. IN RE RAHMAN; and

No. 15–8735. IN RE MCDONALD. Petitions for writs of mandamus denied.

Certiorari Denied

No. 15–113. LAWSON *v.* SAUER INC., DBA SAUER SOUTHEAST. C. A. 1st Cir. Certiorari denied. Reported below: 791 F. 3d 214.

No. 15–776. BOLLINGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 798 F. 3d 201.

No. 15–798. CHINATOWN NEIGHBORHOOD ASSN. ET AL. *v.* HARRIS, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 794 F. 3d 1136.

No. 15–1005. CHABAD-LUBAVITCH OF MICHIGAN ET AL. *v.* SCHUCHMAN ET AL. Sup. Ct. Mich. Certiorari denied.

No. 15–1021. SUNRISE CHILDREN'S SERVICES, INC. *v.* GLISSON, SECRETARY, KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 802 F. 3d 865.

No. 15–1143. GREENBLATT ET VIR *v.* KLEIN. C. A. 3d Cir. Certiorari denied. Reported below: 634 Fed. Appx. 66.

No. 15–1147. BEE'S AUTO, INC., ET AL. *v.* CITY OF CLERMONT, FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 15–1149. DIBBS *v.* HILLSBOROUGH COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 515.

No. 15–1155. GOSSAGE *v.* TERRILL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 586 Fed. Appx. 393.

No. 15–1156. VILLAGE SUPERMARKETS, INC., ET AL. *v.* HANOVER 3201 REALTY, LLC. C. A. 3d Cir. Certiorari denied. Reported below: 806 F. 3d 162.

No. 15–1160. DOW CHEMICAL CO. *v.* NOVA CHEMICALS CORP. (CANADA) ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 803 F. 3d 620.

No. 15–1165. DROMGOOLE *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 470 S. W. 3d 204.

No. 15–1168. RYE ET VIR *v.* WOMEN'S CARE CENTER OF MEMPHIS, MPLLC, ET AL. Sup. Ct. Tenn. Certiorari denied. Reported below: 477 S. W. 3d 235.

No. 15–1169. BOWEN *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied. Reported below: 494 S. W. 3d 181.

No. 15–1170. KAKOSCH *v.* SIEMENS CORP. ET AL. C. A. 5th Cir. Certiorari denied.

No. 15–1171. TAYLOR *v.* U. S. BANK N. A. Ct. App. Ore. Certiorari denied. Reported below: 271 Ore. App. 591, 354 P. 3d 774.

No. 15–1181. MILLER *v.* OLESIUK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 887.

No. 15–1221. REXINE *v.* REXINE. Ct. App. Minn. Certiorari denied.

No. 15–1231. ASHCRAFT *v.* KENNEDY. Ct. App. Ky. Certiorari denied.

No. 15–1239. HERSON ET AL. *v.* CITY OF RICHMOND, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 472.

No. 15–1250. GREEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 476 S. W. 3d 440.

No. 15–1259. BURNS *v.* REYNOLDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 265.

No. 15–1269. CARAMADRE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 807 F. 3d 359.

No. 15–7332. SAID ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 798 F. 3d 182.

No. 15–7552. ALEJANDRO GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 208.

No. 15–7561. HOLLAND *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2015 Ark. 341, 471 S. W. 3d 179.

No. 15–7639. ASCENCIO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 15–7798. ADAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 783 F. 3d 1145.

No. 15–7946. FLEMING *v.* SAINI ET AL. Ct. App. Tenn. Certiorari denied.

No. 15–8225. KING *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 15–8336. WIGGINS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 193 So. 3d 765.

No. 15–8564. HALL *v.* RAMSEY COUNTY, MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 801 F. 3d 912.

No. 15–8566. Bowman *v.* Griffin, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 641 Fed. Appx. 51.

No. 15–8568. Pedro Valdez *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 15–8574. Ford *v.* Texas. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 444 S. W. 3d 171.

No. 15–8575. Muhammad *v.* Fleming et al. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 93.

No. 15–8591. Alonzo Bernal *v.* Pfeiffer, Acting Warden. C. A. 9th Cir. Certiorari denied.

No. 15–8592. Blake *v.* Pierce, Warden, et al. C. A. 3d Cir. Certiorari denied.

No. 15–8593. Boyd *v.* Garman, Superintendent, State Correctional Institution at Rockview, et al. C. A. 3d Cir. Certiorari denied.

No. 15–8597. Bermudez *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 471 S. W. 3d 572.

No. 15–8602. Morris *v.* Davey, Acting Warden. C. A. 9th Cir. Certiorari denied.

No. 15–8611. Eline *v.* Wetzel, Secretary, Pennsylvania Department of Corrections, et al. C. A. 3d Cir. Certiorari denied.

No. 15–8616. Urrea *v.* Montgomery, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–8619. Vasquez *v.* Spearman, Acting Warden. C. A. 9th Cir. Certiorari denied.

No. 15–8625. Sipplen *v.* Bryson, Commissioner, Georgia Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 15–8627. Alfredo Aguirre *v.* Aguirre. C. A. 11th Cir. Certiorari denied.

No. 15–8638. SASAKI *v.* NEW YORK UNIVERSITY HOSPITALS CENTER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 46.

No. 15–8641. ALLEN *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 3d 617.

No. 15–8643. LOPEZ *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 478 S. W. 3d 936.

No. 15–8647. JONES *v.* WILLIE ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–8649. LITTLEPAGE *v.* OHIO. Ct. App. Ohio, 1st App. Dist., Hamilton County. Certiorari denied.

No. 15–8650. LOZANO *v.* DUCART, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8654. WILLIAMS *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8676. WILSON *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 222.

No. 15–8682. RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied.

No. 15–8731. TOWNSEND *v.* BRADSHAW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8745. COX *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 15–8755. DOE *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 291.

No. 15–8769. BOUVIER *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 1st Cir. Certiorari denied.

No. 15–8776. SUTHERLAND *v.* DOVEY. C. A. 9th Cir. Certiorari denied.

No. 15–8778. SEDINE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–8785. GAY *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 15–8802. WHITE *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 15–8807. RIOS *v.* MONTEREY COUNTY DEPARTMENT OF SOCIAL AND EMPLOYMENT SERVICES. C. A. 9th Cir. Certiorari denied.

No. 15–8827. WRIGHT *v.* JAMES CITY COUNTY, VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 211.

No. 15–8833. MCKANT *v.* CAMERON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8839. PLEASANT *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 139.

No. 15–8891. BLANKENSHIP *v.* BACA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 401.

No. 15–8906. UHRICH *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8923. PEASE *v.* RAEMISCH, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS. Sup. Ct. Colo. Certiorari denied.

No. 15–8937. JOHNSON *v.* MASONITE INTERNATIONAL CORP. C. A. 4th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 153.

No. 15–8951. SEDA *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 638 Fed. Appx. 1006.

No. 15–8953. SATIZABAL *v.* GILMORE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8968. HEURUNG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 796 F. 3d 843.

No. 15–8969. HAYNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 113.

No. 15–8970. GARY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 69 A. 3d 1013.

No. 15–8979. DEEM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 206.

No. 15–8981. TAYLOR *v.* UNITED STATES (Reported below: 630 Fed. Appx. 350); and GILCHREST *v.* UNITED STATES (639 Fed. Appx. 212). C. A. 5th Cir. Certiorari denied.

No. 15–8984. VIDAL TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 601 Fed. Appx. 920.

No. 15–8987. JIAU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 624 Fed. Appx. 771.

No. 15–8995. WEIKAL-BEAUCHAT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 640 Fed. Appx. 219.

No. 15–9001. BANUELOS-ESTRADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 751.

No. 15–9009. KILLINGBECK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 616 Fed. Appx. 14.

No. 15–9011. POACHES *v.* CAMERON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9013. DESAI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–9018. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 86.

No. 15–9019. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 657.

No. 15–9026. GUERRERO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 205.

No. 15–873. ANGELOTTI CHIROPRACTIC, INC., ET AL. *v.* BAKER, DIRECTOR, CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS, ET AL. C. A. 9th Cir. Motion of California Society of Industrial Medicine and Surgery et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 791 F. 3d 1075.

No. 15–1036. PENNSYLVANIA *v.* ROSE. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 633 Pa. 659, 127 A. 3d 794.

No. 15–1118. MICHAEL'S FLOOR COVERING, INC. *v.* RESILIENT FLOOR COVERING PENSION FUND ET AL. C. A. 9th Cir. Motion of Associated Builders & Contractors, Inc., for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 801 F. 3d 1079.

Rehearing Denied

No. 15–664. BLAGOJEVICH *v.* UNITED STATES, 577 U. S. 1234;

No. 15–923. KIRSCHMANN *v.* KIRSCHMANN, 577 U. S. 1235;

No. 15–1007. LOVE *v.* WASHINGTON, *ante*, p. 906;

No. 15–6958. MURRAY *v.* WOLF, GOVERNOR OF PENNSYLVANIA, ET AL., 577 U. S. 1107;

No. 15–7204. PIANKA *v.* DE LA ROSA, WARDEN, ET AL., 577 U. S. 1149;

No. 15–7538. WISMER *v.* SARASOTA HOUSING AUTHORITY, 577 U. S. 1160;

No. 15–7589. LAMBERT *v.* MICHIGAN, 577 U. S. 1196;

No. 15–7704. REEDMAN *v.* BRYSON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, 577 U. S. 1221;

No. 15–7714. TURNER *v.* MARYLAND, 577 U. S. 1221;

No. 15–7897. TORRES *v.* SCOTT, GOVERNOR OF FLORIDA, *ante*, p. 908; and

No. 15–8154. DHALIWAL *v.* COUNTY OF IMPERIAL, CALIFORNIA, ET AL., 577 U. S. 1239. Petitions for rehearing denied.

MAY 31, 2016

Certiorari Granted—Reversed and Remanded. (See No. 15–789, *ante*, p. 605; and No. 15–8366, *ante*, p. 613.)

Certiorari Granted—Vacated and Remanded

No. 15–7939. WIMBLEY *v.* ALABAMA. Ct. Crim. App. Ala. Motion of petitioner for leave to proceed *in forma pauperis*

granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hurst* v. *Florida*, 577 U. S. 92 (2016). Reported below: 191 So. 3d 176.

Certiorari Dismissed

No. 15–8673. WITHEROW *v.* SKOLNIK ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 637 Fed. Appx. 285.

No. 15–8720. LEWIS *v.* PFISTER, WARDEN, ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–8741. TAYLOR *v.* VIRGINIA ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 642 Fed. Appx. 205.

No. 15–8742. MAGWOOD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–9077. BURGESS *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 623 Fed. Appx. 88.

Miscellaneous Orders

No. 15A1078. DAILEY *v.* LEW, SECRETARY OF THE TREASURY, ET AL. D. C. Md. Application for injunctive relief, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. 15A1108. MATTA *v.* MATTA. Sup. Ct. N. H. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. 15M122. WILLIAMS *v.* BARKLEY. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 141, Orig. TEXAS *v.* NEW MEXICO ET AL. Second Interim Motion of the Special Master for allowance of fees and disbursements, as amended by his letter dated May 20, 2016, granted, and

the Special Master is awarded a total of $200,000.00 for the period May 1 through October 31, 2015, to be paid as follows: 37.5% by Texas, 37.5% by New Mexico, 20% by the United States, and 5% by Colorado. [For earlier order herein, see, *e. g.*, 577 U. S. 809.]

No. 15–827. Endrew F., a Minor, By and Through His Parents and Next Friends, Joseph F. et al. *v.* Douglas County School District RE–1. C. A. 10th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 15–8889. Kindig *v.* Whole Foods Market Group, Inc. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 21, 2016, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 15–9184. In re Peterka; and

No. 15–9229. In re Thomas. Petitions for writs of habeas corpus denied.

No. 15–8709. In re Alvarez. Petition for writ of mandamus denied.

No. 15–1130. In re Ratcliff. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 15–513. State Farm Fire & Casualty Co. *v.* United States ex rel. Rigsby et al. C. A. 5th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 794 F. 3d 457.

Certiorari Denied

No. 14–1268. Espinal-Andrades *v.* Lynch, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 777 F. 3d 163.

No. 15–780. Citizens Against Casino Gambling in Erie County et al. *v.* Chaudhuri, Chairman, National Indian Gaming Commission, et al. C. A. 2d Cir. Certiorari denied. Reported below: 802 F. 3d 267.

No. 15–1027. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 800 F. 3d 720.

No. 15–1041. SPRINT NEXTEL CORP. ET AL. *v.* NEW YORK ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 26 N. Y. 3d 98, 42 N. E. 3d 655.

No. 15–1178. CHIKOSI *v.* GALLAGHER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 429.

No. 15–1179. EMBASSY OF THE ARAB REPUBLIC OF EGYPT ET AL. *v.* LASHEEN. C. A. 9th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 338.

No. 15–1184. BURTON *v.* PASH, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 15–1186. ROGERS *v.* CHATMAN, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 15–1197. GLOVER *v.* WELLS FARGO HOME MORTGAGE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 331.

No. 15–1198. MCDONOUGH ET AL. *v.* ANOKA COUNTY, MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 799 F. 3d 931.

No. 15–1201. VEHICLE INTELLIGENCE & SAFETY LLC *v.* MERCEDES-BENZ USA, LLC, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 635 Fed. Appx. 914.

No. 15–1206. CRANE *v.* MARY FREE BED REHABILITATION HOSPITAL. C. A. 6th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 518.

No. 15–1207. WALLACE ET AL. *v.* HERNANDEZ. C. A. 5th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 257.

No. 15–1235. FUNES *v.* LYNCH, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 15–1246. CHENOWETH *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 35 N. E. 3d 317.

No. 15–1267. MEDINA *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. Fed. Cir. Certiorari denied. Reported below: 628 Fed. Appx. 760.

No. 15–1274. Brown *v.* Indiana Board of Law Examiners. Sup. Ct. Ind. Certiorari denied.

No. 15–1286. Unite Here Local 54 *v.* Trump Entertainment Resorts, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 810 F. 3d 161.

No. 15–1301. Dunderdale *v.* United Airlines, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 807 F. 3d 849.

No. 15–1313. Green et al. *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 632.

No. 15–7563. Hill *v.* Texas. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 464 S. W. 3d 444.

No. 15–8634. Cannon *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 180 So. 3d 1023.

No. 15–8653. Lavie Villasana *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 15–8660. Loftis *v.* Pash, Warden. Sup. Ct. Mo. Certiorari denied.

No. 15–8665. Shapley *v.* Dunn, Commissioner, Alabama Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 15–8666. Dotson *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 15–8667. Silva Roque *v.* Arizona. Ct. App. Ariz. Certiorari denied.

No. 15–8668. Thomas *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 15–8674. Wood *v.* Galef-Surdo et al. C. A. 3d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 255.

No. 15–8675. Ware *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 15–8687. JORDAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 120583–U.

No. 15–8693. CHAPMAN *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 224 Md. App. 717.

No. 15–8694. CROSBY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 15–8695. BURKE *v.* LAWRENCE ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–8696. BARNETT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 121 A. 3d 534.

No. 15–8697. BENJAMIN *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–8698. SUMPTER *v.* MCINTOSH COUNTY DISTRICT COURT. Sup. Ct. Okla. Certiorari denied.

No. 15–8702. MAHLER, AKA MOHLER *v.* BALES. Sup. Ct. Va. Certiorari denied.

No. 15–8706. CUTTS *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 505.

No. 15–8710. ALEXANDER *v.* ROSEN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 804 F. 3d 1203.

No. 15–8712. NEWSOME *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–8716. STENSON *v.* CAPRA, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 15–8717. SINICO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 132164–U.

No. 15–8722. BROWN *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 468 S. W. 3d 158.

No. 15–8727. STEAH *v.* BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–8733. WASHINGTON *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–8737. MCDOWELL *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied.

No. 15–8749. WRIGHT *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 15–8756. DISNEY *v.* BREWER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8759. ARMIJO *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 15–8772. WILLIAMS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 61 Cal. 4th 1244, 355 P. 3d 444.

No. 15–8791. HENRY *v.* ARIZONA. Super. Ct. Ariz., County of Mohave. Certiorari denied.

No. 15–8854. VIEIRA *v.* CALIFORNIA. C. A. D. C. Cir. Certiorari denied.

No. 15–8892. VILLAMAN ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 799 F. 3d 180.

No. 15–8935. WATSON *v.* LOMBARDI ET AL. Sup. Ct. Mo. Certiorari denied.

No. 15–8983. TAYLOR, AKA SMITH *v.* LANE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8988. MARTINEZ-MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 262.

No. 15–9016. PETE *v.* MCCAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 15–9027. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–9032. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 181 So. 3d 498.

No. 15–9037. COLLINS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 811 F. 3d 63.

No. 15–9038. SAEED-WATARA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 483.

No. 15–9039. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 811 F. 3d 717.

No. 15–9041. ALQUZA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 810 F. 3d 879.

No. 15–9043. BUCCI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 15–9045. DAVIS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 183 So. 3d 367.

No. 15–9052. LANZA-VAZQUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 799 F. 3d 134.

No. 15–9053. JAUREGUI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 450.

No. 15–9055. ROQUE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 628 Fed. Appx. 65.

No. 15–9056. COOLEY *v.* DAVENPORT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–9059. KARAYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 15–9061. SHIVERS *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9064. JEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 767.

No. 15–9065. BAKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–9066. COOKE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 524.

No. 15–9067. MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 15–9068. PEDRIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 797 F. 3d 792.

No. 15–9069. PHILLIPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–9070. RAMIREZ-ALANIZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 721.

No. 15–9071. BOWERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 3d 412.

No. 15–9072. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 917.

No. 15–9079. HERRING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 451.

No. 15–9086. WELCH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 674.

No. 15–9093. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 547.

No. 15–9094. GIBSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 595 Fed. Appx. 911.

No. 15–9096. GARRISON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–9097. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–9101. DOBBIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 448.

No. 15–9103. MOLINA-SANCHEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 173.

No. 15–9105. BUZZARD *v.* GILBERT, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 15–9116. AUSTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 98.

No. 15–9120. JAMES *v.* KRUEGER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 15–9122. RARICK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 911.

No. 15–9137. TAMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 15–946. TUCKER *v.* LOUISIANA. Sup. Ct. La. Motions of Former Prosecutors, Law and Political Science Scholars, Charles Hamilton Houston Institute for Race and Justice at Harvard Law School, and Former Appellate Court Jurists for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 2013–1631 (La. 9/1/15), 181 So. 3d 590.

JUSTICE BREYER, with whom JUSTICE GINSBURG joins, dissenting.

Lamondre Tucker shot and killed his pregnant girlfriend in 2008. At the time of the murder, Tucker was 18 years, 5 months, and 6 days old, cf. *Roper* v. *Simmons*, 543 U. S. 551, 578 (2005) ("The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed"), and he had an IQ of 74, cf. *Atkins* v. *Virginia*, 536 U. S. 304, 321 (2002) (execution of the intellectually disabled violates the Eighth Amendment). Tucker was sentenced to death in a Louisiana county (Caddo Parish) that imposes almost half the death sentences in Louisiana, even though it accounts for only 5% of that State's population and 5% of its homicides. See Pet. for Cert. 18.

Given these facts, Tucker may well have received the death penalty not because of the comparative egregiousness of his crime, but because of an arbitrary feature of his case, namely, geography. See *Glossip* v. *Gross*, 576 U. S. 863, 919–921 (2015) (BREYER, J., dissenting). One could reasonably believe that if Tucker had committed the same crime but been tried and sentenced just across the Red River in, say, Bossier Parish, he would not now be on death row. See, *e. g.*, Smith, The Geography of the Death Penalty and Its Ramifications, 92 B. U. L. Rev. 227, 233–235, 278, 281 (2012); Robertson, The Man Who Says Louisiana Should "Kill More," N. Y. Times, July 8, 2015, p. A1 ("From 2010 to 2014, more people were sentenced to death per capita [in Caddo Parish] than in any other county in the United States, among counties with four or more death sentences in that time period"); see also *Glossip*, *supra*, at 919 (BREYER, J., dissenting) ("[I]n

2012, just 59 counties (fewer than 2% of counties in the country) accounted for *all* death sentences imposed nationwide").

For this reason, and for the additional reasons set out in my opinion in *Glossip*, I would grant certiorari in this case to confront the first question presented, *i. e.*, whether imposition of the death penalty constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

No. 15–1210. CUBIST PHARMACEUTICALS, INC. *v.* HOSPIRA, INC. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 805 F. 3d 1112.

No. 15–1243. WAGNER *v.* CRUZ. C. A. 10th Cir. Certiorari before judgment denied.

No. 15–8734. CARPENTER *v.* PNC BANK, N. A. C. A. 7th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 633 Fed. Appx. 346.

No. 15–9047. HAMMER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 15–9130. WHEELER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 15–7283. KING *v.* LIVINGSTON ET AL., 577 U. S. 1151;

No. 15–7570. HOLBROOK *v.* RONNIES LLC, DBA RONNY'S RV PARK, *ante*, p. 926;

No. 15–7677. JAMES *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., 577 U. S. 1164;

No. 15–8086. LABRANCH *v.* CALIFORNIA, *ante*, p. 929;

No. 15–8156. GLAGOLA *v.* MICHIGAN ADMINISTRATIVE HEARING SYSTEM ET AL., *ante*, p. 911; and

No. 15–8193. IN RE GETZ, 577 U. S. 1192. Petitions for rehearing denied.

JUNE 6, 2016

Certiorari Granted—Vacated and Remanded

No. 14–493. KENT RECYCLING SERVICES, LLC *v.* UNITED STATES ARMY CORPS OF ENGINEERS. C. A. 5th Cir. Petition

for rehearing granted. The order entered March 23, 2015, [575 U. S. 912] denying petition for writ of certiorari vacated. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Army Corps of Engineers* v. *Hawkes Co.*, *ante*, p. 590. Reported below: 761 F. 3d 383.

No. 15–964. PIPER ET AL. *v.* MIDDAUGH ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Mullenix* v. *Luna*, 577 U. S. 7 (2015) (*per curiam*). Reported below: 629 Fed. Appx. 710.

No. 15–7912. KIRKSEY *v.* ALABAMA. Ct. Crim. App. Ala. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hurst* v. *Florida*, 577 U. S. 92 (2016). Reported below: 191 So. 3d 810.

No. 15–7915. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Welch* v. *United States*, *ante*, p. 120. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

Certiorari Dismissed

No. 15–8803. SEWELL *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 627 Fed. Appx. 230.

No. 15–8836. LORDMASTER, FKA GOLDADER *v.* DISTRICT COURT OF NORTH DAKOTA, CASS COUNTY. Sup. Ct. N. D. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–8882. RANDOLPH *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 1st Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 174 So. 3d 999.

Miscellaneous Orders

No. 15M123. MERCADO VALDEZ *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL.; and

No. 15M124. BAILEY *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 15M125. BEASLEY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 15–1055. SMITHKLINE BEECHAM CORP., DBA GLAXOSMITHKLINE, ET AL. *v.* KING DRUG COMPANY OF FLORENCE, INC., ET AL. C. A. 3d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 15–7828. WRIGHT *v.* WESTBROOKS, WARDEN, *ante*, p. 926. Respondent is requested to file a response to petition for rehearing within 30 days.

No. 15–8567. IN RE DECARO. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 920] denied.

No. 15–8746. GRASSO *v.* EMA DESIGN AUTOMATION, INC., ET AL. C. A. 2d Cir.; and

No. 15–8775. DEUERLEIN *v.* NEBRASKA ET AL. C. A. D. C. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until June 27, 2016, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 15–7776. IN RE RIVERO;

No. 15–9269. IN RE MARTS; and

No. 15–9299. IN RE HALL. Petitions for writs of habeas corpus denied.

No. 15–8835. IN RE MASON; and

No. 15–9074. IN RE BRAWNER. Petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 15–680. BETHUNE-HILL ET AL. *v.* VIRGINIA STATE BOARD OF ELECTIONS ET AL. Appeal from D. C. E. D. Va. Probable jurisdiction noted. Reported below: 141 F. Supp. 3d 505.

Certiorari Granted

No. 15–797. Moore *v.* Texas. Ct. Crim. App. Tex. Certiorari granted limited to Question 1 presented by the petition. Reported below: 470 S. W. 3d 481.

No. 15–8049. Buck *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 623 Fed. Appx. 668.

Certiorari Denied

No. 15–826. La Cuna De Aztlan Sacred Sites Protection Circle Advisory Committee et al. *v.* Department of the Interior et al. C. A. 9th Cir. Certiorari denied. Reported below: 603 Fed. Appx. 651.

No. 15–847. Campoverde Rivera *v.* Lynch, Attorney General. C. A. 3d Cir. Certiorari denied. Reported below: 607 Fed. Appx. 228.

No. 15–960. International Custom Products, Inc. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 791 F. 3d 1329.

No. 15–969. Florida Bankers Assn. et al. *v.* Department of the Treasury et al. C. A. D. C. Cir. Certiorari denied. Reported below: 799 F. 3d 1065.

No. 15–977. Rail-Term Corp. *v.* Surface Transportation Board et al. C. A. D. C. Cir. Certiorari denied. Reported below: 654 Fed. Appx. 1.

No. 15–1078. GlaxoSmithKline LLC *v.* Allied Services Division Welfare Fund et al. C. A. 3d Cir. Certiorari denied. Reported below: 804 F. 3d 633.

No. 15–1081. Target Corp. et al. *v.* Guvenoz, Individually and as Representative of the Estate of Guvenoz, Deceased. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 133940, 30 N. E. 3d 404.

No. 15–1084. Daniels *v.* United States; and

No. 15–8388. DEAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 803 F. 3d 335.

No. 15–1088. REPUBLIC OF ECUADOR *v.* CHEVRON CORP. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 795 F. 3d 200.

No. 15–1101. GOOGLE INC. *v.* PULASKI & MIDDLEMAN, LLC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 802 F. 3d 979.

No. 15–1103. SCHOLZ ET AL. *v.* DELP ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 473 Mass. 242, 41 N. E. 3d 38.

No. 15–1164. CAIN, WARDEN *v.* BRUMFIELD. C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 3d 1041.

No. 15–1220. MALCOLM *v.* HONEOYE FALLS-LIMA CENTRAL SCHOOL DISTRICT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 87.

No. 15–1225. BARFIELD *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 464 S. W. 3d 67.

No. 15–1228. BAKER *v.* AMERICAN EXPRESS FINANCIAL SERVICES ET AL. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied.

No. 15–1233. CHENAULT ET AL. *v.* DEUTSCHE BANK NATIONAL TRUST CO. ET AL. Ct. App. Ohio, 10th App. Dist., Franklin County. Certiorari denied. Reported below: 2015-Ohio-1850.

No. 15–1238. RESTREPO-DUQUE *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 130 A. 3d 340.

No. 15–1240. MITRANO *v.* TYLER. C. A. 4th Cir. Certiorari denied.

No. 15–1244. TAYLOR *v.* TEXAS ET AL. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 15–1247. EVANS ET AL. *v.* SHEEN. Ct. App. Cal., 2d App. Dist., Div. 7. Certiorari denied.

No. 15–1249. HIRMIZ ET VIR, AS BEST FRIENDS OF THEIR DAUGHTER, J. H. *v.* BURWELL, SECRETARY OF HEALTH AND

HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 618 Fed. Appx. 1033.

No. 15–1263. TRESCOTT *v.* DEPARTMENT OF TRANSPORTATION ET AL. C. A. 7th Cir. Certiorari denied.

No. 15–1320. AMERINDO INVESTMENT ADVISORS ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 752.

No. 15–1339. THORNTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 360.

No. 15–1340. KOKLICH *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–1341. MANISCALCO *v.* SEIBEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 799.

No. 15–7152. LATKA *v.* MILES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 122.

No. 15–7277. NEUMAN *v.* UNITED STATES;
No. 15–7634. LARKIN *v.* UNITED STATES; and
No. 15–7635. LYONS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 363.

No. 15–7395. SANTOS-AVILA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 187.

No. 15–7875. SULLIVAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 797 F. 3d 623.

No. 15–7952. HENRICKS *v.* IVES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 574.

No. 15–8310. RAFFERTY *v.* OHIO. Ct. App. Ohio, 9th App. Dist., Summit County. Certiorari denied. Reported below: 2015-Ohio-1629.

No. 15–8361. WATSON *v.* BANK OF AMERICA, N. A. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 200.

No. 15–8454. MCGRUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 15–8513. SHERIDAN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 629 Fed. Appx. 948.

No. 15–8744. DITTMAIER *v.* SOSNE, CHAPTER 7 TRUSTEE. C. A. 8th Cir. Certiorari denied. Reported below: 806 F. 3d 987.

No. 15–8747. GROTH *v.* INTERNATIONAL INFORMATION SYSTEMS SECURITY CERTIFICATION CONSORTIUM, INC. App. Ct. Mass. Certiorari denied. Reported below: 88 Mass. App. 1110, 39 N. E. 3d 778.

No. 15–8758. CARRASQUILLO *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8766. GALLE *v.* ISLE OF CAPRI CASINOS, INC., ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 180 So. 3d 619.

No. 15–8770. BUTLER *v.* FLEMING, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 250.

No. 15–8773. SANDERS *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 15–8777. RISHAR *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 498 Mich. 952, 872 N. W. 2d 483.

No. 15–8786. V. H. *v.* GUARDIAN AD LITEM PROGRAM. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 174 So. 3d 1000.

No. 15–8787. MOORE *v.* BULATAO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 679.

No. 15–8789. ODIGWE *v.* NATIONAL MENTOR HEALTHCARE, LLC, DBA ARIZONA MENTOR. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 262.

No. 15–8792. SELLS *v.* CHRISMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 381.

No. 15–8798. GEDDES *v.* ARTUS, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 15–8804. JEFFERSON *v.* STEWART, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8806. DVORAK *v.* LONG, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–8817. JONES *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 15–8820. MASCIO *v.* RAUNER, GOVERNOR OF ILLINOIS, ET AL. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 15–8828. SIMON *v.* LEBLANC ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 276.

No. 15–8830. MEJIA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 126 App. Div. 3d 1364, 6 N. Y. S. 3d 813.

No. 15–8832. PIPPEN *v.* DELBALSO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT RETREAT, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–8834. JENNINGS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 15–8840. DIAS PEREZ *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 15–8844. TAYLOR *v.* NIKOLITS ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 195 So. 3d 391.

No. 15–8847. WASHINGTON *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 14–522 (La. App. 5 Cir. 2/11/15), 168 So. 3d 746.

No. 15–8849. VILLATORA-AVILA *v.* LYNCH, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 451.

No. 15–8855. SCOTT *v.* CRICKMAR, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 15–8857. STEWART *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–8916. ROSE *v.* UNITED STATES; and

No. 15–9083. FRYE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 802 F. 3d 114.

No. 15–8933. RUTTER *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 363 P. 3d 183.

No. 15–8980. BROWN *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 15–8982. VOITS *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 15–8989. JACKSON *v.* MOORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8991. MILNER *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9014. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 133323–U.

No. 15–9024. JEMANEH *v.* UNIVERSITY OF WYOMING ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 765.

No. 15–9028. JHAVERI *v.* JHAVERI. Ct. Sp. App. Md. Certiorari denied.

No. 15–9031. ANDERSON *v.* DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9051. MOYA-BUITRAGO *v.* UNITED STATES;
No. 15–9115. CASTIBLANCO CABALCANTE *v.* UNITED STATES;
No. 15–9143. VILLEGAS ROJAS *v.* UNITED STATES; and
No. 15–9151. BARRERA PINEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 3d 382.

No. 15–9063. LOWE *v.* MILLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9078. BROWN *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 15–9085. WEBSTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 809 F. 3d 1158.

No. 15–9123. RAMIREZ-PADILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 603.

No. 15–9124. NEEL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 782.

No. 15–9126. VELARDE *v.* ARCHULETA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 740.

No. 15–9128. WARREN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 450.

No. 15–9132. HILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 396.

No. 15–9139. GAUR *v.* WORLD BANK GROUP. Ct. App. D. C. Certiorari denied.

No. 15–9142. ALVARADO-GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 383.

No. 15–9145. PLUID *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 15–9146. FEDOROWICZ *v.* PEARCE. C. A. 10th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 773.

No. 15–9147. ESQUIVAL-CENTENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 233.

No. 15–9149. MYLES *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 479 S. W. 3d 649.

No. 15–9154. BRANDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 542.

No. 15–9159. PARSONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 172.

No. 15–9162. GOMEZ-PEREZ, AKA PEREZ-GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 646.

No. 15–9164. SAMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 498.

No. 15–9168. CAWTHON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 804.

No. 15–9176. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 15–9177. VICKERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 813 F. 3d 1139.

No. 15–9180. RIVAS-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 426.

No. 15–9185. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 15–9189. PODLUCKY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–9194. BELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 212.

No. 15–9197. BLACKWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 668.

No. 15–9199. AOUN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 323.

No. 15–9202. SUTTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 15–9205. ERNST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 333.

No. 15–9220. MACK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 443.

No. 15–9222. SENGMANY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 15–9227. ANTONIO HERRERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 670.

No. 15–9231. WARE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 919.

No. 15–9239. RENNER ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied.

No. 15–9248. RIVERA-CLEMENTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 813 F. 3d 43.

No. 15–8768. BROWN *v.* LOWE'S HOME CENTERS. C. A. 10th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 627 Fed. Appx. 720.

Rehearing Granted. (See No. 14–493, *supra.*)

Rehearing Denied

No. 15–771. HUETE *v.* BANK OF NEW YORK MELLON, 577 U. S. 1141;

No. 15–6271. FLENOID *v.* KOSTER, ATTORNEY GENERAL OF MISSOURI, ET AL., 577 U. S. 990;

No. 15–6486. RENE GOMEZ *v.* GIPSON, WARDEN, 577 U. S. 1035;

No. 15–6566. SPENCE *v.* WILLIS, *ante*, p. 906;

No. 15–6567. SPENCE *v.* WILLIS, *ante*, p. 907;

No. 15–6689. HIGGINS *v.* TEXAS, 577 U. S. 1074;

No. 15–7178. MCGOWAN *v.* MAINE, 577 U. S. 1089;

No. 15–7295. LIN GAO *v.* ST. LOUIS LANGUAGE IMMERSION SCHOOLS, INC., ET AL., 577 U. S. 1151;

No. 15–7333. WILSON *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL., 577 U. S. 1152;

No. 15–7611. JACKSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 926;

No. 15–7618. HOLMES *v.* STEPPIG MANAGEMENT, 577 U. S. 1197;

No. 15–7744. LAWS *v.* HUGHES, JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, ET AL., 577 U. S. 1222;

No. 15–8159. BANKS *v.* GEORGIA DEPARTMENT OF CORRECTIONS, *ante*, p. 911;

No. 15–8163. KABEDE *v.* CALIFORNIA BOARD OF PRISON TERMS ET AL., *ante*, p. 911;

No. 15–8340. WILLIAMS *v.* LAW FIRM OF TURNBULL, NICHOLSON & SANDERS, P. A., ET AL., *ante*, p. 949;

No. 15–8363. SMITH *v.* UNITED STATES, 577 U. S. 1240;

No. 15–8548. NAVARRO *v.* UNITED STATES, *ante*, p. 938;

No. 15–8607. DIMONDA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 939; and

No. 15–8639. PAHUTSKI *v.* UNITED STATES, *ante*, p. 940. Petitions for rehearing denied.

AMENDMENTS TO FEDERAL RULES OF APPELLATE PROCEDURE

The following amendments to the Federal Rules of Appellate Procedure were prescribed by the Supreme Court of the United States on April 28, 2016, pursuant to 28 U. S. C. § 2072, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1032. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U. S. C. § 2074, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier publication of the Federal Rules of Appellate Procedure and amendments thereto, see 389 U. S. 1063, 398 U. S. 971, 401 U. S. 1029, 406 U. S. 1005, 441 U. S. 973, 475 U. S. 1153, 490 U. S. 1125, 500 U. S. 1007, 507 U. S. 1059, 511 U. S. 1155, 514 U. S. 1137, 517 U. S. 1255, 523 U. S. 1147, 535 U. S. 1123, 538 U. S. 1071, 544 U. S. 1151, 547 U. S. 1221, 550 U. S. 983, 556 U. S. 1291, 559 U. S. 1119, 563 U. S. 1045, 569 U. S. 1125, and 572 U. S. 1161.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 28, 2016

To the Senate and House of Representatives of the United States of America in Congress Assembled:

I have the honor to submit to the Congress the amendments to the Federal Rules of Appellate Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are the following materials submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 9, 2015; a redline version of the rules with Committee Notes; an excerpt from the September 2015 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 4, 2015 Report of the Advisory Committee on Appellate Rules.

Sincerely,

(Signed) JOHN G. ROBERTS, JR.
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 28, 2016

ORDERED:

1. That the Federal Rules of Appellate Procedure be, and they hereby are, amended by including therein amendments to Appellate Rules 4, 5, 21, 25, 26, 27, 28, 28.1, 29, 32, 35, and 40, and Forms 1, 5, and 6, new Form 7 and new Appendix.

[See *infra*, pp. 1035–1049.]

2. That the foregoing amendments to the Federal Rules of Appellate Procedure shall take effect on December 1, 2016, and shall govern in all proceedings in appellate cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Appellate Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE

Rule 4. Appeal as of right—when taken.

(*a*) *Appeal in a civil case.*

. . . . .

(*4*) *Effect of a motion on a notice of appeal.*

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

. . . . .

(*c*) *Appeal by an inmate confined in an institution.*

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U. S. C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

. . . . .

Rule 5. Appeal by permission.

. . . . .

(*c*) *Form of papers; number of copies; length limits.*—All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case. Except by the court's permission, and excluding the accompanying documents required by Rule 5(b)(1)(E):

(1) a paper produced using a computer must not exceed 5,200 words; and

(2) a handwritten or typewritten paper must not exceed 20 pages.

. . . . .

Rule 21. Writs of mandamus and prohibition, and other extraordinary writs.

. . . . .

(*d*) *Form of papers; number of copies; length limits.*—All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case. Except by the court's permission, and excluding the accompanying documents required by Rule 21(a)(2)(C):

(1) a paper produced using a computer must not exceed 7,800 words; and

(2) a handwritten or typewritten paper must not exceed 30 pages.

Rule 25. Filing and service.

(*a*) *Filing.*

. . . . .

(*2*) *Filing: Method and timeliness.*

. . . . .

(*C*) *Inmate filing.*—If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(C). A paper filed by an inmate is timely if it

is deposited in the institution's internal mail system on or before the last day for filing and:

(i) it is accompanied by:

- a declaration in compliance with 28 U. S. C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or
- evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or

(ii) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(C)(i).

. . . . .

Rule 26. Computing and extending time.

(*a*) *Computing time.*—The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

. . . . .

(*4*) *"Last day" defined.*—Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing in the district court, at midnight in the court's time zone;

(B) for electronic filing in the court of appeals, at midnight in the time zone of the circuit clerk's principal office;

(C) for filing under Rules 4(c)(1), 25(a)(2)(B), and 25(a)(2)(C)—and filing by mail under Rule 13(a)(2)—at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and

(D) for filing by other means, when the clerk's office is scheduled to close.

. . . . .

(*c*) *Additional time after certain kinds of service.*—When a party may or must act within a specified time after being served, 3 days are added after the period would otherwise expire under Rule 26(a), unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26(c), a paper that is served electronically is treated as delivered on the date of service stated in the proof of service.

Rule 27. Motions.

. . . . .

(*d*) *Form of papers; length limits; number of copies.*

. . . . .

(*2*) *Length limits.*—Except by the court's permission, and excluding the accompanying documents authorized by Rule 27(a)(2)(B):

(A) a motion or response to a motion produced using a computer must not exceed 5,200 words;

(B) a handwritten or typewritten motion or response to a motion must not exceed 20 pages;

(C) a reply produced using a computer must not exceed 2,600 words; and

(D) a handwritten or typewritten reply to a response must not exceed 10 pages.

. . . . .

Rule 28. Briefs.

(*a*) *Appellant's brief.*—The appellant's brief must contain, under appropriate headings and in the order indicated:

. . . . .

(10) the certificate of compliance, if required by Rule 32(g)(1).

. . . . .

Rule 28.1. Cross-Appeals.

. . . . .

(*e*) *Length.*

(*1*) *Page limitation.*—Unless it complies with Rule 28.1(e)(2), the appellant's principal brief must not ex-

ceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(*2*) *Type-volume limitation.*

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if it:

(i) contains no more than 13,000 words; or

(ii) uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if it:

(i) contains no more than 15,300 words; or

(ii) uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

. . . . .

Rule 29. Brief of an Amicus Curiae.

(*a*) *During initial consideration of a case on the merits.*

(*1*) *Applicability.*—This Rule 29(a) governs amicus filings during a court's initial consideration of a case on the merits.

(*2*) *When permitted.*—The United States or its officer or agency or a state may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

(*3*) *Motion for leave to file.*—The motion must be accompanied by the proposed brief and state:

(A) the movant's interest; and

(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(*4*) *Contents and form.*—An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and

indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

(A) if the amicus curiae is a corporation, a disclosure statement like that required of parties by Rule 26.1;

(B) a table of contents, with page references;

(C) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(D) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(E) unless the amicus curiae is one listed in the first sentence of Rule 29(a)(2), a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;

(F) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

(G) a certificate of compliance under Rule 32(g)(1), if length is computed using a word or line limit.

(*5*) *Length.*—Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(*6*) *Time for filing.*—An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party

being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(*7*) *Reply brief.*—Except by the court's permission, an amicus curiae may not file a reply brief.

(*8*) *Oral argument.*—An amicus curiae may participate in oral argument only with the court's permission.

(*b*) *During consideration of whether to grant rehearing.*

(*1*) *Applicability.*—This Rule 29(b) governs amicus filings during a court's consideration of whether to grant panel rehearing or rehearing en banc, unless a local rule or order in a case provides otherwise.

(*2*) *When permitted*—The United States or its officer or agency or a state may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.

(*3*) *Motion for leave to file.*—Rule 29(a)(3) applies to a motion for leave.

(*4*) *Contents, form, and length.*—Rule 29(a)(4) applies to the amicus brief. The brief must not exceed 2,600 words.

(*5*) *Time for filing.*—An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

Rule 32. Form of briefs, appendices, and other papers.

(*a*) *Form of a brief.*

. . . . .

(*7*) *Length.*

(*A*) *Page limitation.*—A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B).

(*B*) *Type-Volume limitation.*

(i) A principal brief is acceptable if it:

- contains no more than 13,000 words; or
- uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

. . . . .

(*e*) *Local variation.*—Every court of appeals must accept documents that comply with the form requirements of this rule and the length limits set by these rules. By local rule or order in a particular case, a court of appeals may accept documents that do not meet all the form requirements of this rule or the length limits set by these rules.

(*f*) *Items excluded from length.*—In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not:

- the cover page;
- a corporate disclosure statement;
- a table of contents;
- a table of citations;
- a statement regarding oral argument;
- an addendum containing statutes, rules, or regulations;
- certificates of counsel;
- the signature block;
- the proof of service; and
- any item specifically excluded by these rules or by local rule.

(*g*) *Certificate of compliance.*

(*1*) *Briefs and papers that require a certificate.*—A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B)—and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), 35(b)(2)(A), or 40(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-

volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.

(*2*) *Acceptable form.*—Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

Rule 35. En banc determination.

. . . . .

(*b*) *Petition for hearing or rehearing en banc.*—A party may petition for a hearing or rehearing en banc.

. . . . .

(2) Except by the court's permission:

(A) a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and

(B) a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.

(3) For purposes of the limits in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

. . . . .

Rule 40. Petition for panel rehearing.

. . . . .

(*b*) *Form of petition; length.*—The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Except by the court's permission:

(1) a petition for panel rehearing produced using a computer must not exceed 3,900 words; and

(2) a handwritten or typewritten petition for panel rehearing must not exceed 15 pages.

FORM 1. NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

United States District Court for the _____ District of _____
File Number _____

A.B., Plaintiff
v.
C. D., Defendant
} Notice of Appeal

Notice is hereby given that (here name all parties taking the appeal), (plaintiffs) (defendants) in the above named case,* hereby appeal to the United States Court of Appeals for the _____ Circuit (from the final judgment) (from an order (describing it)) entered in this action on the _____ day of _____, 20____.

(s) _____
Attorney for _____
Address: _____

[Note to inmate filers: *If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal.*]

*See Rule 3(c) for permissible ways of identifying appellants.

FORM 5. NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT OR ORDER OF A DISTRICT COURT OR A BANKRUPTCY APPELLATE PANEL

United States District Court for the _____ District of _____

In re

_____,
Debtor

_____,
Plaintiff

v.

_____,
Defendant

File No. _____

Notice of Appeal to United States Court of Appeals for the _____ Circuit

_____, the plaintiff [or defendant or other party] appeals to the United States Court of Appeals for the _____ Circuit from the final judgment [or order or decree] of the district court for the district of _____ [or bankruptcy appellate panel of the _____ circuit], entered in this case on _____, 20____ [here describe the judgment, order, or decree] _____

The parties to the judgment [or order or decree] appealed from and the names and addresses of their respective attorneys are as follows:

Dated _____
Signed _____
Attorney for Appellant
Address: _____
_____

[Note to inmate filers: *If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal.*]

FORM 6. CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Certificate of Compliance With Type-Volume Limit,
Typeface Requirements, and Type-Style Requirements

1. This document complies with [the type-volume limit of Fed. R. App. P. [*insert Rule citation; e.g., 32(a)(7)(B)*]] [the word limit of Fed. R. App. P. [*insert Rule citation; e.g., 5(c)(1)*]] because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) [and [*insert applicable Rule citation, if any*]]:

☐ this document contains [*state the number of*] words, or
☐ this brief uses a monospaced typeface and contains [*state the number of*] lines of text.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because:

☐ this document has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*], or
☐ this document has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

(s) _____

Attorney for _____

Dated: _____

FORM 7. DECLARATION OF INMATE FILING

[*insert name of court; for example,*
United States District Court for the District of Minnesota]

A. B., Plaintiff
v.
C. D., Defendant
} Case No. _____

I am an inmate confined in an institution. Today, [*insert date*], I am depositing the [*insert title of document; for example, "notice of appeal"*] in this case in the institution's internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U. S. C. § 1746; 18 U. S. C. § 1621).

Sign your name here _____
Signed on _____
[*insert date*]

[Note to inmate filers: *If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. App. P. 4(c)(1) or Fed. R. App. P. 25(a)(2)(C).*]

Appendix:
Length Limits Stated in the Federal Rules of Appellate Procedure

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure. Please refer to the rules for precise requirements, and bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 32(f).
- If you use a word limit or a line limit (other than the word limit in Rule 28(j)), you must file the certificate required by Rule 32(g).
- For the limits in Rules 5, 21, 27, 35, and 40:
  - You must use the word limit if you produce your document on a computer; and
  - You must use the page limit if you handwrite your document or type it on a typewriter.
- For the limits in Rules 28.1, 29(a)(5), and 32:
  - You may use the word limit or page limit, regardless of how you produce the document; or

– You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

	Rule	Document type	Word limit	Page limit	Line limit
Permission to appeal	5(c)	• Petition for permission to appeal • Answer in opposition • Cross-petition	5,200	20	Not applicable
Extraordinary writs	21(d)	• Petition for writ of mandamus or prohibition or other extraordinary writ • Answer	7,800	30	Not applicable
Motions	27(d)(2)	• Motion • Response to a motion	5,200	20	Not applicable
	27(d)(2)	• Reply to a response to a motion	2,600	10	Not applicable
Parties' briefs (where no cross-appeal)	32(a)(7)	• Principal brief	13,000	30	1,300
	32(a)(7)	• Reply brief	6,500	15	650
Parties' briefs (where cross-appeal)	28.1(e)	• Appellant's principal brief • Appellant's response and reply brief	13,000	30	1,300
	28.1(e)	• Appellee's principal and response brief	15,300	35	1,500
	28.1(e)	• Appellee's reply brief	6,500	15	650
Party's supplemental letter	28(j)	• Letter citing supplemental authorities	350	Not applicable	Not applicable
Amicus briefs	29(a)(5)	• Amicus brief during initial consideration of case on merits	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief

	Rule	Document type	Word limit	Page limit	Line limit
	29(b)(4)	• Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable
Rehearing and en banc filings	35(b)(2) & 40(b)	• Petition for hearing en banc • Petition for panel rehearing; petition for rehearing en banc	3,900	15	Not applicable

AMENDMENTS TO FEDERAL RULES OF BANKRUPTCY PROCEDURE

The following amendments to the Federal Rules of Bankruptcy Procedure were prescribed by the Supreme Court of the United States on April 28, 2016, pursuant to 28 U. S. C. § 2075, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1052. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U. S. C. § 2075, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier publication of the Federal Rules of Bankruptcy Procedure and amendments thereto, see, *e. g.*, 461 U. S. 973, 471 U. S. 1147, 480 U. S. 1077, 490 U. S. 1119, 500 U. S. 1017, 507 U. S. 1075, 511 U. S. 1169, 514 U. S. 1145, 517 U. S. 1263, 520 U. S. 1285, 526 U. S. 1169, 529 U. S. 1147, 532 U. S. 1077, 535 U. S. 1139, 538 U. S. 1075, 541 U. S. 1097, 544 U. S. 1163, 547 U. S. 1227, 550 U. S. 989, 553 U. S. 1105, 556 U. S. 1307, 559 U. S. 1127, 563 U. S. 1051, 566 U. S. 1045, 569 U. S. 1141, 572 U. S. 1169, and 575 U. S. 1049.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 28, 2016

To the Senate and House of Representatives of the United States of America in Congress Assembled:

I have the honor to submit to the Congress the amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying these rules are the following materials submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: transmittal letters to the Court; redline versions of the rules with Committee Notes; excerpts from the Reports of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; excerpts from the Reports of the Advisory Committee on Bankruptcy Rules; and a Memorandum to the Court from James C. Duff, Secretary of the Judicial Conference of the United States, with attachments.

Sincerely,

(Signed) JOHN G. ROBERTS, JR.
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 28, 2016

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 1010, 1011, 2002, 3002.1, 7008, 7012, 7016, 9006, 9027, and 9033, and new Rule 1012.

[See *infra*, pp. 1055–1059.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2016, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Bankruptcy Procedure in accordance with the provisions of Section 2075 of Title 28, United States Code.

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 1010. Service of involuntary petition and summons.

(*a*) *Service of involuntary petition and summons.*—On the filing of an involuntary petition, the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party's last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e) and Rule 4(*l*) F. R. Civ. P. apply when service is made or attempted under this rule.

. . . . .

Rule 1011. Responsive pleading or motion in involuntary cases.

(*a*) *Who may contest petition.*—The debtor named in an involuntary petition may contest the petition. In the case of a petition against a partnership under Rule 1004, a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.

. . . . .

(*f*) *Corporate ownership statement.*—If the entity responding to the involuntary petition is a corporation, the entity shall file with its first appearance, pleading, motion, response, or other request addressed to the court a corporate ownership statement containing the information described in Rule 7007.1.

Rule 1012. Responsive pleading in cross-border cases.

(*a*) *Who may contest petition.*—The debtor or any party in interest may contest a petition for recognition of a foreign proceeding.

(*b*) *Objections and responses; when presented.*—Objections and other responses to the petition shall be presented no later than seven days before the date set for the hearing on the petition, unless the court prescribes some other time or manner for responses.

(*c*) *Corporate Ownership Statement.*—If the entity responding to the petition is a corporation, then the entity shall file a corporate ownership statement containing the information described in Rule 7007.1 with its first appearance, pleading, motion, response, or other request addressed to the court.

Rule 2002. Notices to creditors, equity security holders, administrators in foreign proceedings, persons against whom provisional relief is sought in ancillary and other cross-border cases, United States, and United States trustee.

. . . . .

(*q*) *Notice of petition for recognition of foreign proceeding and of court's intention to communicate with foreign courts and foreign representatives.*

(*1*) *Notice of petition for recognition.*—After the filing of a petition for recognition of a foreign proceeding, the court shall promptly schedule and hold a hearing on the petition. The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by mail of the hearing. The notice shall state whether the petition seeks recognition as a foreign main proceeding or

foreign nonmain proceeding and shall include the petition and any other document the court may require. If the court consolidates the hearing on the petition with the hearing on a request for provisional relief, the court may set a shorter notice period, with notice to the entities listed in this subdivision.

. . . . .

Rule 3002.1. Notice relating to claims secured by security interest in the debtor's principal residence.

(*a*) *In general.*—This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor's principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.

. . . . .

Rule 7008. General rules of pleading.

Rule 8 F. R. Civ. P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy court, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.

Rule 7012. Defenses and objections—when and how presented—by pleading or motion—motion for judgment on the pleadings.

. . . . .

(*b*) *Applicability of Rule 12(b)-(i) F. R. Civ. P.* Rule 12(b)-(i) F. R. Civ. P. applies in adversary proceedings.

A responsive pleading shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court.

Rule 7016. Pretrial procedures.

(*a*) *Pretrial conferences; scheduling; management.*—Rule 16 F. R. Civ. P. applies in adversary proceedings.

(*b*) *Determining procedure.*—The bankruptcy court shall decide, on its own motion or a party's timely motion, whether:

(1) to hear and determine the proceeding;

(2) to hear the proceeding and issue proposed findings of fact and conclusions of law; or

(3) to take some other action.

Rule 9006. Computing and extending time; time for motion papers.

. . . . .

(*f*) *Additional time after service by mail or under Rule 5(b)(2)(D) or (F) F. R. Civ. P.*—When there is a right or requirement to act or undertake some proceedings within a prescribed period after being served and that service is by mail or under Rule 5(b)(2)(D) (leaving with the clerk) or (F) (other means consented to) F. R. Civ. P., three days are added after the prescribed period would otherwise expire under Rule 9006(a).

. . . . .

Rule 9027. Removal.

(*a*) *Notice of removal.*

(*1*) *Where filed; form and content.*—A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action, the party filing the notice

does or does not consent to entry of final orders or judgment by the bankruptcy court, and be accompanied by a copy of all process and pleadings.

. . . . .

(*e*) *Procedure after removal.*

. . . . .

(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action.

. . . . .

Rule 9033. Proposed findings of fact and conclusions of law.

(*a*) *Service.*—In a proceeding in which the bankruptcy court has issued proposed findings of fact and conclusions of law, the clerk shall serve forthwith copies on all parties by mail and note the date of mailing on the docket.

. . . . .

AMENDMENTS TO FEDERAL RULES OF CIVIL PROCEDURE

The following amendments to the Federal Rules of Civil Procedure were prescribed by the Supreme Court of the United States on April 28, 2016, pursuant to 28 U. S. C. § 2072, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1062. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U. S. C. § 2074, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier publication of the Federal Rules of Civil Procedure and amendments thereto, see 308 U. S. 645, 308 U. S. 642, 329 U. S. 839, 335 U. S. 919, 341 U. S. 959, 368 U. S. 1009, 374 U. S. 861, 383 U. S. 1029, 389 U. S. 1121, 398 U. S. 977, 401 U. S. 1017, 419 U. S. 1133, 446 U. S. 995, 456 U. S. 1013, 461 U. S. 1095, 471 U. S. 1153, 480 U. S. 953, 485 U. S. 1043, 500 U. S. 963, 507 U. S. 1089, 514 U. S. 1151, 517 U. S. 1279, 520 U. S. 1305, 523 U. S. 1221, 526 U. S. 1183, 529 U. S. 1155, 532 U. S. 1085, 535 U. S. 1147, 538 U. S. 1083, 544 U. S. 1173, 547 U. S. 1233, 550 U. S. 1003, 553 U. S. 1149, 556 U. S. 1341, 559 U. S. 1139, 569 U. S. 1149, 572 U. S. 1217, and 575 U. S. 1055.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 28, 2016

To the Senate and House of Representatives of the United States of America in Congress Assembled:

I have the honor to submit to the Congress the amendments to the Federal Rules of Civil Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are the following materials submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 9, 2015; a redline version of the rules with Committee Notes; an excerpt from the September 2015 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 2, 2015 Report of the Advisory Committee on Civil Rules.

Sincerely,

(Signed) JOHN G. ROBERTS, JR.
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 28, 2016

ORDERED:

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein amendments to Civil Rules 4, 6, and 82.

[See *infra*, p. 1065.]

2. That the foregoing amendments to the Federal Rules of Civil Procedure shall take effect on December 1, 2016, and shall govern in all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

Rule 4. Summons.

. . . . .

(*m*) *Time limit for service.*—If a defendant is not served within 90 days after the complaint is filed, the courton motion or on its own after notice to the plaintiff must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1).

. . . . .

Rule 6. Computing and extending time; time for motion papers.

. . . . .

(*d*) *Additional time after certain kinds of service.*—When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

Rule 82. Jurisdiction and venue unaffected.

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts. An admiralty or maritime claim under Rule 9(h) is governed by 28 U. S. C. § 1390.

AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE

The following amendments to the Federal Rules of Criminal Procedure were prescribed by the Supreme Court of the United States on April 28, 2016, pursuant to 28 U. S. C. § 2072, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1068. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U. S. C. § 2074, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier publication of the Federal Rules of Criminal Procedure and amendments thereto, see 327 U. S. 821, 335 U. S. 917, 949, 346 U. S. 941, 350 U. S. 1017, 383 U. S. 1087, 389 U. S. 1125, 401 U. S. 1025, 406 U. S. 979, 415 U. S. 1056, 416 U. S. 1001, 419 U. S. 1136, 425 U. S. 1157, 441 U. S. 985, 456 U. S. 1021, 461 U. S. 1117, 471 U. S. 1167, 480 U. S. 1041, 485 U. S. 1057, 490 U. S. 1135, 495 U. S. 967, 500 U. S. 991, 507 U. S. 1161, 511 U. S. 1175, 514 U. S. 1159, 517 U. S. 1285, 520 U. S. 1313, 523 U. S. 1227, 526 U. S. 1189, 529 U. S. 1179, 535 U. S. 1157, 541 U. S. 1103, 544 U. S. 1181, 547 U. S. 1269, 550 U. S. 1165, and 553 U. S. 1155, 556 U. S. 1363, 559 U. S. 1151, 563 U. S. 1063, 566 U. S. 1053, 569 U. S. 1161, and 572 U. S. 1223.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 28, 2016

To the Senate and House of Representatives of the United States of America in Congress Assembled:

I have the honor to submit to the Congress the amendments to the Federal Rules of Criminal Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are the following materials submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 9, 2015; a redline version of the rules with Committee Notes; an excerpt from the September 2015 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 6, 2015 Report of the Advisory Committee on Criminal Rules.

Sincerely,

(Signed) JOHN G. ROBERTS, JR.
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 28, 2016

ORDERED:

1. That the Federal Rules of Criminal Procedure be, and they hereby are, amended by including therein amendments to Criminal Rules 4, 41, and 45.

[See *infra*, pp. 1071–1074.]

2. That the foregoing amendments to the Federal Rules of Criminal Procedure shall take effect on December 1, 2016, and shall govern in all proceedings in criminal cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Criminal Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 4. Arrest warrant or summons on a complaint.

(*a*) *Issuance.*—If the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it. At the request of an attorney for the government, the judge must issue a summons, instead of a warrant, to a person authorized to serve it. A judge may issue more than one warrant or summons on the same complaint. If an individual defendant fails to appear in response to a summons, a judge may, and upon request of an attorney for the government must, issue a warrant. If an organizational defendant fails to appear in response to a summons, a judge may take any action authorized by United States law.

. . . . .

(*c*) *Execution or service, and return.*

(*1*) *By whom.*—Only a marshal or other authorized officer may execute a warrant. Any person authorized to serve a summons in a federal civil action may serve a summons.

(*2*) *Location.*—A warrant may be executed, or a summons served, within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest. A summons to an organization under Rule 4(c)(3)(D) may also be served at a place not within a judicial district of the United States.

(*3*) *Manner.*

(A) A warrant is executed by arresting the defendant. Upon arrest, an officer possessing the original or a duplicate original warrant must show it to the defendant. If

the officer does not possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the original or a duplicate original warrant to the defendant as soon as possible.

(B) A summons is served on an individual defendant:

(i) by delivering a copy to the defendant personally; or

(ii) by leaving a copy at the defendant's residence or usual place of abode with a person of suitable age and discretion residing at that location and by mailing a copy to the defendant's last known address.

(C) A summons is served on an organization in a judicial district of the United States by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process. If the agent is one authorized by statute and the statute so requires, a copy must also be mailed to the organization.

(D) A summons is served on an organization not within a judicial district of the United States:

(i) by delivering a copy, in a manner authorized by the foreign jurisdiction's law, to an officer, to a managing or general agent, or to an agent appointed or legally authorized to receive service of process; or

(ii) by any other means that gives notice, including one that is:

(a) stipulated by the parties;

(b) undertaken by a foreign authority in response to a letter rogatory, a letter of request, or a request submitted under an applicable international agreement; or

(c) permitted by an applicable international agreement.

. . . . .

Rule 41. Search and seizure.

. . . . .

(*b*) *Venue for a warrant application.*—At the request of a federal law enforcement officer or an attorney for the government:

. . . . .

(6) a magistrate judge with authority in any district where activities related to a crime may have occurred has authority to issue a warrant to use remote access to search electronic storage media and to seize or copy electronically stored information located within or outside that district if:

(A) the district where the media or information is located has been concealed through technological means; or

(B) in an investigation of a violation of 18 U. S. C. § 1030(a)(5), the media are protected computers that have been damaged without authorization and are located in five or more districts.

. . . . .

(*f*) *Executing and returning the warrant.*

(*1*) *Warrant to search for and seize a person or property.*

. . . . .

(*C*) *Receipt.*—The officer executing the warrant must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property. For a warrant to use remote access to search electronic storage media and seize or copy electronically stored information, the officer must make reasonable efforts to serve a copy of the warrant and receipt on the person whose property was searched or who possessed the information that was seized or copied. Service may be accomplished by any means, including electronic means, reasonably calculated to reach that person.

. . . . .

Rule 45. Computing and extending time.

. . . . .

(*c*) *Additional time after certain kinds of service.*—Whenever a party must or may act within a specified time after being served and service is made under Federal Rule of Civil Procedure 5(b)(2)(C) (mailing), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under subdivision (a).

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2. *California bar to state collateral claims not raised on appeal—Adequacy to bar federal habeas review.*—California's so-called "*Dixon* bar"—where a defendant procedurally defaults a claim raised for first time on state collateral review if he could have raised it earlier on direct appeal—is adequate to bar federal habeas review, as it is longstanding, oft-cited, and shared by habeas courts nationwide. Johnson v. Lee, p. 605.

3. *Summary denial of state habeas petition—Deferential-review provisions.*—Because California Supreme Court's summary denial of Hinojosa's state habeas petition was on merits, Antiterrorism and Effective Death Penalty Act of 1996's deferential-review provisions provide proper standard to use in reviewing Hinojosa's federal habeas petition. Kernan v. Hinojas, p. 412.

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law brought to enforce any liability or duty created by [the Act] or the rules or regulations thereunder," 15 U. S. C. § 78aa(a)—is same as 28 U. S. C. § 1331's test for deciding if a case "arises under" a federal law. Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning, p. 374.

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remedies before filing suit, 42 U. S. C. § 1997e(a); but respondent's contention that his prison's grievance process was not in fact available to him warrants further consideration below. Ross v. Blake, p. 632.

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