UNITED STATES

REPORTS

581

OCT. TERM 2016

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

UNITED STATES REPORTS

VOLUME 581

CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2016

MARCH 28 THROUGH JUNE 8, 2017

CHRISTINE LUCHOK FALLON

REPORTER OF DECISIONS

WASHINGTON : 2024

Printed on Uncoated Permanent Printing Paper

For sale by the Superintendent of Documents, U. S. Government Publishing Office

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS*

JOHN G. ROBERTS, JR., CHIEF JUSTICE.
ANTHONY M. KENNEDY, ASSOCIATE JUSTICE.
CLARENCE THOMAS, ASSOCIATE JUSTICE.
RUTH BADER GINSBURG, ASSOCIATE JUSTICE.
STEPHEN BREYER, ASSOCIATE JUSTICE.
SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE.
SONIA SOTOMAYOR, ASSOCIATE JUSTICE.
ELENA KAGAN, ASSOCIATE JUSTICE.
NEIL M. GORSUCH, ASSOCIATE JUSTICE.[1]

RETIRED

JOHN PAUL STEVENS, ASSOCIATE JUSTICE.
SANDRA DAY O'CONNOR, ASSOCIATE JUSTICE.
DAVID H. SOUTER, ASSOCIATE JUSTICE.

OFFICERS OF THE COURT

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JEFFREY B. WALL, ACTING SOLICITOR GENERAL.
SCOTT S. HARRIS, CLERK.
CHRISTINE LUCHOK FALLON, REPORTER OF DECISIONS.
PAMELA TALKIN, MARSHAL.
LINDA S. MASLOW, LIBRARIAN.

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*For notes, see p. II.

NOTES

[1] The Honorable Neil M. Gorsuch, of Colorado, formerly a Judge of the United States Court of Appeals for the Tenth Circuit, was nominated by President Trump on February 1, 2017, to be an Associate Justice of this Court; the nomination was confirmed by the Senate on April 7, 2017; he was commissioned on April 8, 2017; and he took the oaths and his seat on April 10, 2017.

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, 2016

MOORE *v.* TEXAS

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

No. 15–797. Argued November 29, 2016—Decided March 28, 2017

Petitioner Moore was convicted of capital murder and sentenced to death for fatally shooting a store clerk during a botched robbery that occurred when Moore was 20 years old. A state habeas court subsequently determined that, under *Atkins* v. *Virginia*, 536 U. S. 304, and *Hall* v. *Florida*, 572 U. S. 701, Moore qualified as intellectually disabled and that his death sentence therefore violated the Eighth Amendment's proscription of "cruel and unusual punishments." The court consulted current medical diagnostic standards—the 11th edition of the American Association on Intellectual and Developmental Disabilities clinical manual (AAIDD–11) and the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. The habeas court followed the generally accepted intellectual-disability definition, which identifies three core elements: (1) intellectual-functioning deficits, (2) adaptive deficits, and (3) the onset of these deficits while still a minor. Moore's IQ scores, the court determined, established subaverage intellectual functioning. The court credited six scores, the average of which (70.66) indicated mild intellectual disability. And relying on testimony from mental-health professionals, the court found significant adaptive deficits in all three skill sets (conceptual, social, and practical). Based on its findings, the habeas court recommended to the Texas Court of Criminal Appeals (CCA) that Moore be granted relief. The CCA declined to adopt the judgment recommended by the habeas court. The CCA held instead that the habeas court erred by not following the

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CCA's 2004 decision in *Ex parte Briseno*, 135 S. W. 3d 1, which adopted the definition of, and standards for assessing, intellectual disability contained in the 1992 (ninth) edition of the American Association on Mental Retardation manual (AAMR–9), predecessor to the current AAIDD–11 manual. *Briseno* also incorporated the AAMR–9's requirement that adaptive deficits must be "related" to intellectual-functioning deficits, and it recited, without citation to any medical or judicial authority, seven evidentiary factors relevant to the intellectual-disability inquiry. Based on only two of Moore's IQ scores (of 74 and 78), the CCA concluded that Moore had not shown significantly subaverage intellectual functioning. And even if he had, the CCA continued, his adaptive strengths undercut any adaptive weaknesses. The habeas court also failed, the CCA determined, to inquire into relatedness. Among alternative causes for Moore's adaptive deficits, the CCA suggested, were an abuse-filled childhood, undiagnosed learning disorders, multiple elementary school transfers, racially motivated harassment and violence at school, and a history of academic failure, drug abuse, and absenteeism. *Briseno*'s seven evidentiary factors, the CCA further determined, weighed against finding that Moore had satisfied the relatedness requirement.

Held: By rejecting the habeas court's application of medical guidance and by following the *Briseno* standard, including the nonclinical *Briseno* factors, the CCA's decision does not comport with the Eighth Amendment and this Court's precedents. Pp. 12–21.

(a) The Eighth Amendment, which "'reaffirms the duty of the government to respect the dignity of all persons,'" *Hall*, 572 U. S., at 708, prohibits the execution of any intellectually disabled individual, *Atkins*, 536 U. S., at 321. While *Atkins* and *Hall* left to the States "the task of developing appropriate ways to enforce" the restriction on executing the intellectually disabled, *Hall*, 572 U. S., at 719 (internal quotation marks omitted), States' discretion is not "unfettered," *ibid.*, and must be "informed by the medical community's diagnostic framework," *id.*, at 721. Relying on the most recent (and still current) versions of the leading diagnostic manuals, the Court concluded in *Hall* that Florida had "disregard[ed] established medical practice," *id.*, at 712, and had parted ways with practices and trends in other States, *id.*, at 714–718. *Hall* indicated that being informed by the medical community does not demand adherence to everything stated in the latest medical guide. But neither does precedent license disregard of current medical standards. Pp. 12–13.

(b) The CCA's conclusion that Moore's IQ scores established that he is not intellectually disabled is irreconcilable with *Hall*, which instructs

that, where an IQ score is close to, but above, 70, courts must account for the test's "standard error of measurement." See 572 U. S., at 712–713, 723–724. Because the lower range of Moore's adjusted IQ score of 74 falls at or below 70, the CCA had to move on to consider Moore's adaptive functioning. Pp. 13–15.

(c) The CCA's consideration of Moore's adaptive functioning also deviated from prevailing clinical standards and from the older clinical standards the CCA deemed applicable. Pp. 15–19.

(1) The CCA overemphasized Moore's perceived adaptive strengths—living on the streets, mowing lawns, and playing pool for money—when the medical community focuses the adaptive-functioning inquiry on adaptive *deficits*. The CCA also stressed Moore's improved behavior in prison, but clinicians caution against reliance on adaptive strengths developed in controlled settings. Pp. 15–16.

(2) The CCA further concluded that Moore's record of academic failure, along with a history of childhood abuse and suffering, detracted from a determination that his intellectual and adaptive deficits were related. The medical community, however, counts traumatic experiences as *risk factors* for intellectual disability. The CCA also departed from clinical practice by requiring Moore to show that his adaptive deficits were not related to "a personality disorder." Mental-health professionals recognize that intellectually disabled people may have other coexisting mental or physical impairments, including, *e. g.*, attention-deficit/hyperactivity disorder, depressive and bipolar disorders, and autism. Pp. 16–17.

(3) The CCA's attachment to the seven *Briseno* evidentiary factors further impeded its assessment of Moore's adaptive functioning. By design and in operation, the lay perceptions advanced by *Briseno* "creat[e] an unacceptable risk that persons with intellectual disability will be executed." *Hall*, 572 U. S., at 704. The medical profession has endeavored to counter lay stereotypes, and the *Briseno* factors are an outlier, in comparison both to other States' handling of intellectual-disability pleas and to Texas' own practices in contexts other than the death penalty. Pp. 17–19.

(d) States have some flexibility, but not "unfettered discretion," in enforcing *Atkins*' holding, *Hall*, 572 U. S., at 719, and the medical community's current standards, reflecting improved understanding over time, constrain States' leeway in this area. Here, the habeas court applied current medical standards in reaching its conclusion, but the CCA adhered to the standard it laid out in *Briseno*, including the nonclinical *Briseno* factors. The CCA therefore failed adequately to inform itself of the "medical community's diagnostic framework," *Hall*, 572 U. S., at

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721. Because *Briseno* pervasively infected the CCA's analysis, the decision of that court cannot stand. Pp. 20–21.

470 S. W. 3d 481, vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which KENNEDY, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ROBERTS, C. J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined, *post,* p. 21.

Clifford M. Sloan argued the cause for petitioner. With him on the briefs were *Lauryn K. Fraas*, *Donald P. Salzman*, and *Michael A. McIntosh.*

Scott A. Keller, Solicitor General of Texas, argued the cause for respondent. With him on the brief were *Ken Paxton*, Attorney General, *Matthew H. Frederick*, Deputy Solicitor General, *Jeffrey C. Mateer*, First Assistant Attorney General, and *Rance Craft* and *Michael P. Murphy*, Assistant Solicitors General.*

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*Briefs of *amici curiae* urging reversal were filed for the American Association of Intellectual and Developmental Disabilities (AAIDD) et al. by *James W. Ellis*, *Ann M. Delpha*, *Carol M. Suzuki*, *David J. Stout*, and *April Land*; for the American Bar Association by *Paulette Brown*, *Danielle Spinelli*, *Catherine M. A. Carroll*, and *Ari J. Savitzky*; for the American Civil Liberties Union et al. by *Brian W. Stull*, *Cassandra Stubbs*, *Anna Arceneux*, and *Steven R. Shapiro*; for the American Psychological Association et al. by *Paul M. Smith*, *J. Douglas Wilson*, *Nathalie F. P. Gilfoyle*, *Deanne Ottaviano*, and *Aaron M. Panner*; for the Constitution Project by *Meir Feder* and *Virginia E. Sloan*; and for International Organizations and Individuals Interested in Medical Expertise and Psychiatry by *Paul Hessler.*

Briefs of *amici curiae* urging affirmance were filed for the State of Arizona et al. by *Mark Brnovich*, Attorney General of Arizona, *John R. Lopez IV*, Solicitor General, *Lacey Stover Gard*, Chief Counsel, Capital Litigation Section, and *Jeffrey L. Sparks*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Leslie Rutledge* of Arkansas, *Cynthia H. Coffman* of Colorado, *Pamela Jo Bondi* of Florida, *Sam Olens* of Georgia, *Lawrence G. Wasden* of Idaho, *Derek Schmidt* of Kansas, *Jeff Landry* of Louisiana, *Chris Koster* of Missouri, *Adam Paul Laxalt* of Nevada, *E. Scott Pruitt* of Oklahoma, *Bruce R. Beemer* of Pennsylvania, *Alan Wilson* of South Carolina, *Herbert H. Slattery III* of Tennessee, and *Sean D. Reyes* of Utah;

JUSTICE GINSBURG delivered the opinion of the Court.

Bobby James Moore fatally shot a store clerk during a botched robbery. He was convicted of capital murder and sentenced to death. Moore challenged his death sentence on the ground that he was intellectually disabled and therefore exempt from execution. A state habeas court made detailed factfindings and determined that, under this Court's decisions in *Atkins* v. *Virginia*, 536 U. S. 304 (2002), and *Hall* v. *Florida*, 572 U. S. 701 (2014), Moore qualified as intellectually disabled. For that reason, the court concluded, Moore's death sentence violated the Eighth Amendment's proscription of "cruel and unusual punishments." The habeas court therefore recommended that Moore be granted relief.

The Texas Court of Criminal Appeals (CCA)[1] declined to adopt the judgment recommended by the state habeas court.[2] In the CCA's view, the habeas court erroneously employed intellectual-disability guides currently used in the medical community rather than the 1992 guides adopted by the CCA in *Ex parte Briseno*, 135 S. W. 3d 1 (2004). See *Ex parte Moore*, 470 S. W. 3d 481, 486–487 (2015). The appeals court further determined that the evidentiary factors announced in *Briseno* "weigh[ed] heavily" against upsetting Moore's death sentence. 470 S. W. 3d, at 526.

We vacate the CCA's judgment. As we instructed in *Hall*, adjudications of intellectual disability should be "informed by the views of medical experts." 572 U. S., at 721; see *id.*, at 709–710. That instruction cannot sensibly be read to give courts leave to diminish the force of the medical com-

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and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Kymberlee Stapleton*.

[1] The CCA is Texas' court of last resort in criminal cases. See Tex. Const., Art. 5, § 5.

[2] Under Texas law, the CCA, not the court of first instance, is "the ultimate factfinder" in habeas corpus proceedings. *Ex parte Reed*, 271 S. W. 3d 698, 727 (Tex. Crim. App. 2008); see *Ex parte Moore*, 470 S. W. 3d 481, 489 (Tex. Crim. App. 2015).

munity's consensus. Moreover, the several factors *Briseno* set out as indicators of intellectual disability are an invention of the CCA untied to any acknowledged source. Not aligned with the medical community's information, and drawing no strength from our precedent, the *Briseno* factors "creat[e] an unacceptable risk that persons with intellectual disability will be executed," 572 U. S., at 704. Accordingly, they may not be used, as the CCA used them, to restrict qualification of an individual as intellectually disabled.

I

In April 1980, then-20-year-old Bobby James Moore and two others were engaged in robbing a grocery store. *Ex parte Moore*, 470 S. W. 3d 481, 490–491 (Tex. Crim. App. 2015); App. 58. During the episode, Moore fatally shot a store clerk. 470 S. W. 3d, at 490. Some two months later, Moore was convicted and sentenced to death. See *id.*, at 492. A federal habeas court later vacated that sentence based on ineffective assistance of trial counsel, see *Moore* v. *Collins*, 1995 U. S. Dist. LEXIS 22859, *35 (SD Tex., Sept. 29, 1995), and the Fifth Circuit affirmed, see *Moore* v. *Johnson*, 194 F. 3d 586, 622 (1999). Moore was resentenced to death in 2001, and the CCA affirmed on direct appeal. See *Moore* v. *State*, 2004 WL 231323, *1 (Jan. 14, 2004), cert. denied, 543 U. S. 931 (2004).

Moore subsequently sought state habeas relief. In 2014, the state habeas court conducted a two-day hearing on whether Moore was intellectually disabled. See *Ex parte Moore*, No. 314483–C (185th Jud. Dist., Harris Cty., Tex., Feb. 6, 2015), App. to Pet. for Cert. 129a. The court received affidavits and heard testimony from Moore's family members, former counsel, and a number of court-appointed mental-health experts. The evidence revealed that Moore had significant mental and social difficulties beginning at an early age. At 13, Moore lacked basic understanding of the days of the week, the months of the year, and the seasons;

he could scarcely tell time or comprehend the standards of measure or the basic principle that subtraction is the reverse of addition. *Id.*, at 187a. At school, because of his limited ability to read and write, Moore could not keep up with lessons. *Id.*, at 146a, 182a–183a. Often, he was separated from the rest of the class and told to draw pictures. *Ibid.* Moore's father, teachers, and peers called him "stupid" for his slow reading and speech. *Id.*, at 146a, 183a. After failing every subject in the ninth grade, Moore dropped out of high school. *Id.*, at 188a. Cast out of his home, he survived on the streets, eating from trash cans, even after two bouts of food poisoning. *Id.*, at 192a–193a.

In evaluating Moore's assertion of intellectual disability, the state habeas court consulted current medical diagnostic standards, relying on the 11th edition of the American Association on Intellectual and Developmental Disabilities (AAIDD) clinical manual, see AAIDD, Intellectual Disability: Definition, Classification, and Systems of Supports (2010) (hereinafter AAIDD–11), and on the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association (APA), see APA, Diagnostic and Statistical Manual of Mental Disorders (2013) (hereinafter DSM–5). App. to Pet. for Cert. 150a–151a, 202a. The court followed the generally accepted, uncontroversial intellectual-disability diagnostic definition, which identifies three core elements: (1) intellectual-functioning deficits (indicated by an IQ score "approximately two standard deviations below the mean"—*i. e.*, a score of roughly 70—adjusted for "the standard error of measurement," AAIDD–11, at 27); (2) adaptive deficits ("the inability to learn basic skills and adjust behavior to changing circumstances," *Hall* v. *Florida*, 572 U. S. 701, 710 (2014)); and (3) the onset of these deficits while still a minor. See App. to Pet. for Cert. 150a (citing AAIDD–11, at 1). See also *Hall*, 572 U. S., at 710.[3]

[3] The third element is not at issue here.

Moore's IQ scores, the habeas court determined, established subaverage intellectual functioning. The court credited six of Moore's IQ scores, the average of which (70.66) indicated mild intellectual disability. App. to Pet. for Cert. 167a–170a.[4] And relying on testimony from several mental-health experts, the habeas court found significant adaptive deficits. In determining the significance of adaptive deficits, clinicians look to whether an individual's adaptive performance falls two or more standard deviations below the mean in any of the three adaptive skill sets (conceptual, social, and practical). See AAIDD–11, at 43. Moore's performance fell roughly two standard deviations below the mean in *all three* skill categories. App. to Pet. for Cert. 200a–201a. Based on this evidence, the state habeas court recommended that the CCA reduce Moore's sentence to life in prison or grant him a new trial on intellectual disability. See *id.*, at 203a.

The CCA rejected the habeas court's recommendations and denied Moore habeas relief. See 470 S. W. 3d 481. At the outset of its opinion, the CCA reaffirmed *Ex parte Briseno*, 135 S. W. 3d 1 (Tex. Crim. App. 2004), as paramount precedent on intellectual disability in Texas capital cases. See 470 S. W. 3d, at 486–487. *Briseno* adopted the definition of, and standards for assessing, intellectual disability contained in the 1992 (ninth) edition of the American Association on Mental Retardation (AAMR) manual, predecessor to the current AAIDD–11 manual. See 135 S. W. 3d, at 7 (citing AAMR, Mental Retardation: Definition, Classification, and Systems of Supports (9th ed. 1992) (hereinafter AAMR–9)).

Briseno incorporated the AAMR–9's requirement that adaptive deficits be "related" to intellectual-functioning

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[4] The habeas court considered a seventh score (of 59 on a WAIS–IV test administered in 2013) elsewhere in its opinion, see App. to Pet. for Cert. 170a–172a, but did not include that score in the calculation of Moore's average IQ score, see *id.*, at 170a.

deficits. 135 S. W. 3d, at 7 (quoting AAMR–9, at 25).[5] To determine whether a defendant has satisfied the relatedness requirement, the CCA instructed in this case, Texas courts should attend to the "seven evidentiary factors" first set out in *Briseno*. 470 S. W. 3d, at 489.[6] No citation to any authority, medical or judicial, accompanied the *Briseno* court's recitation of the seven factors. See 135 S. W. 3d, at 8–9.

The habeas judge erred, the CCA held, by "us[ing] the most current position, as espoused by AAIDD, regarding the diagnosis of intellectual disability rather than the test . . . in *Briseno*." 470 S. W. 3d, at 486. This Court's decision in *Atkins* v. *Virginia*, 536 U. S. 304 (2002), the CCA emphasized, "left it to the States to develop appropriate ways to enforce the constitutional restriction" on the execution of the intellectually disabled. 470 S. W. 3d, at 486. Thus, even though "[i]t may be true that the AAIDD's and APA's positions regarding the diagnosis of intellectual disability have changed since *Atkins* and *Briseno*," the CCA retained *Brise-*

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[5] This relatedness requirement, the CCA noted, is retained in the DSM–5. See 470 S. W. 3d, at 487, n. 5 (citing DSM–5, at 38).

[6] The seven "*Briseno* factors" are:

- "Did those who knew the person best during the developmental stage—his family, friends, teachers, employers, authorities—think he was mentally retarded at that time, and, if so, act in accordance with that determination?
- "Has the person formulated plans and carried them through or is his conduct impulsive?
- "Does his conduct show leadership or does it show that he is led around by others?
- "Is his conduct in response to external stimuli rational and appropriate, regardless of whether it is socially acceptable?
- "Does he respond coherently, rationally, and on point to oral or written questions or do his responses wander from subject to subject?
- "Can the person hide facts or lie effectively in his own or others' interests?
- "Putting aside any heinousness or gruesomeness surrounding the capital offense, did the commission of that offense require forethought, planning, and complex execution of purpose?" *Briseno*, 135 S. W. 3d, at 8–9.

no's instructions, both because of "the subjectivity surrounding the medical diagnosis of intellectual disability" and because the Texas Legislature had not displaced *Briseno* with any other guideposts. 470 S. W. 3d, at 486–487. The *Briseno* inquiries, the court said, "remai[n] adequately 'informed by the medical community's diagnostic framework.'" 470 S. W. 3d, at 487 (quoting *Hall*, 572 U. S., at 721).

Employing *Briseno*, the CCA first determined that Moore had failed to prove significantly subaverage intellectual functioning. 470 S. W. 3d, at 514–519. Rejecting as unreliable five of the seven IQ tests the habeas court had considered, the CCA limited its appraisal to Moore's scores of 78 in 1973 and 74 in 1989. *Id.*, at 518–519. The court then discounted the lower end of the standard-error range associated with those scores. *Id.*, at 519; see *infra*, at 13–14 (describing standard error of measurement). Regarding the score of 74, the court observed that Moore's history of academic failure, and the fact that he took the test while "exhibit[ing] withdrawn and depressive behavior" on death row, might have hindered his performance. 470 S. W. 3d, at 519. Based on the two scores, but not on the lower portion of their ranges, the court concluded that Moore's scores ranked "above the intellectually disabled range" (*i. e.*, above 70). *Ibid.*; see *id.*, at 513.

"Even if [Moore] had proven that he suffers from significantly sub-average general intellectual functioning," the court continued, he failed to prove "significant and related limitations in adaptive functioning." *Id.*, at 520. True, the court acknowledged, Moore's and the State's experts agreed that Moore's adaptive-functioning test scores fell more than two standard deviations below the mean. *Id.*, at 521; see *supra*, at 8. But the State's expert ultimately discounted those test results because Moore had "no exposure" to certain tasks the testing included, "such as writing a check and using a microwave oven." 470 S. W. 3d, at 521–522. Instead, the expert emphasized Moore's adaptive strengths in school, at trial, and in prison. *Id.*, at 522–524.

The CCA credited the state expert's appraisal. *Id.*, at 524. The habeas court, the CCA concluded, had erred by concentrating on Moore's adaptive weaknesses. *Id.*, at 489. Moore had demonstrated adaptive strengths, the CCA spelled out, by living on the streets, playing pool and mowing lawns for money, committing the crime in a sophisticated way and then fleeing, testifying and representing himself at trial, and developing skills in prison. *Id.*, at 522–523. Those strengths, the court reasoned, undercut the significance of Moore's adaptive limitations. *Id.*, at 524–525.

The habeas court had further erred, the CCA determined, by failing to consider whether any of Moore's adaptive deficits were related to causes other than his intellectual-functioning deficits. *Id.*, at 488, 526. Among alternative causes for Moore's adaptive deficits, the CCA suggested, were an abuse-filled childhood, undiagnosed learning disorders, multiple elementary school transfers, racially motivated harassment and violence at school, and a history of academic failure, drug abuse, and absenteeism. *Id.*, at 526. Moore's significant improvement in prison, in the CCA's view, confirmed that his academic and social difficulties were not related to intellectual-functioning deficits. *Ibid.* The court then examined each of the seven *Briseno* evidentiary factors, see *supra*, at 8–9, and n. 6, concluding that those factors "weigh[ed] heavily" against finding that Moore had satisfied the relatedness requirement. 470 S. W. 3d, at 526–527.

Judge Alcala dissented. *Atkins* and *Hall*, she would have held, require courts to consult current medical standards to determine intellectual disability. 470 S. W. 3d, at 530. She criticized the majority for relying on manuals superseded in the medical community, *id.*, at 530–534, 536–539, and for disregarding the habeas court's credibility determinations, *id.*, at 535–536, 538–539. Judge Alcala questioned the legitimacy of the seven *Briseno* factors, recounting wide criticism of the factors and explaining how they deviate from the cur-

rent medical consensus. See 470 S. W. 3d, at 529–530, and n. 5. Most emphatically, she urged, the CCA "must consult the medical community's current views and standards in determining whether a defendant is intellectually disabled"; "reliance on . . . standard[s] no longer employed by the medical community," she objected, "is constitutionally unacceptable." *Id.*, at 533.

We granted certiorari to determine whether the CCA's adherence to superseded medical standards and its reliance on *Briseno* comply with the Eighth Amendment and this Court's precedents. 578 U. S. 1022 (2016).

II

The Eighth Amendment prohibits "cruel and unusual punishments" and "reaffirms the duty of the government to respect the dignity of all persons," *Hall*, 572 U. S., at 708 (quoting *Roper* v. *Simmons*, 543 U. S. 551, 560 (2005)). "To enforce the Constitution's protection of human dignity," we "loo[k] to the evolving standards of decency that mark the progress of a maturing society," recognizing that "[t]he Eighth Amendment is not fastened to the obsolete." *Hall*, 572 U. S., at 708 (internal quotation marks omitted).

In *Atkins* v. *Virginia*, we held that the Constitution "restrict[s] . . . the State's power to take the life of" *any* intellectually disabled individual. 536 U. S., at 321. See also *Hall*, 572 U. S., at 708; *Roper*, 543 U. S., at 563–564. Executing intellectually disabled individuals, we concluded in *Atkins*, serves no penological purpose, see 536 U. S., at 318–320; runs up against a national consensus against the practice, see *id.*, at 313–317; and creates a "risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty," *id.*, at 320 (internal quotation marks omitted); see *id.*, at 320–321.

In *Hall* v. *Florida*, we held that a State cannot refuse to entertain other evidence of intellectual disability when a defendant has an IQ score above 70. 572 U. S., at 723. Al-

though *Atkins* and *Hall* left to the States "the task of developing appropriate ways to enforce" the restriction on executing the intellectually disabled, 572 U. S., at 719 (quoting *Atkins*, 536 U. S., at 317), States' discretion, we cautioned, is not "unfettered," 572 U. S., at 719. Even if "the views of medical experts" do not "dictate" a court's intellectual-disability determination, *id.*, at 721, we clarified, the determination must be "informed by the medical community's diagnostic framework," *ibid.* We relied on the most recent (and still current) versions of the leading diagnostic manuals—the DSM–5 and AAIDD–11. *Id.*, at 705, 710, 713, 722–723. Florida, we concluded, had violated the Eighth Amendment by "disregard[ing] established medical practice." *Id.*, at 712. We further noted that Florida had parted ways with practices and trends in other States. *Id.*, at 714–718. *Hall* indicated that being informed by the medical community does not demand adherence to everything stated in the latest medical guide. But neither does our precedent license disregard of current medical standards.

III

The CCA's conclusion that Moore's IQ scores established that he is not intellectually disabled is irreconcilable with *Hall*. *Hall* instructs that, where an IQ score is close to, but above, 70, courts must account for the test's "standard error of measurement." See *id.*, at 712–713, 723–724. See also *Brumfield* v. *Cain*, 576 U. S. 305, 315–316 (2015) (relying on *Hall* to find unreasonable a state court's conclusion that a score of 75 precluded an intellectual-disability finding). As we explained in *Hall*, the standard error of measurement is "a statistical fact, a reflection of the inherent imprecision of the test itself." 572 U. S., at 713. "For purposes of most IQ tests," this imprecision in the testing instrument "means that an individual's score is best understood as a range of scores on either side of the recorded score . . . within which one may say an individual's true IQ score lies." *Ibid.* A

test's standard error of measurement "reflects the reality that an individual's intellectual functioning cannot be reduced to a single numerical score." *Ibid.* See also *id.*, at 712–714; DSM–5, at 37; AAIDD, User's Guide: Intellectual Disability: Definition, Classification, and Systems of Supports 22–23 (11th ed. 2012) (hereinafter AAIDD–11 User's Guide).

Moore's score of 74, adjusted for the standard error of measurement, yields a range of 69 to 79, see 470 S. W. 3d, at 519, as the State's retained expert acknowledged, see Brief for Petitioner 39, n. 18; App. 185, 189–190. Because the lower end of Moore's score range falls at or below 70, the CCA had to move on to consider Moore's adaptive functioning. See *Hall*, 572 U. S., at 723; 470 S. W. 3d, at 536 (Alcala, J., dissenting) (even if the majority correctly limited the scores it would consider, "current medical standards . . . would still require [the CCA] to examine whether [Moore] has adaptive deficits").

Both Texas and the dissent maintain that the CCA properly considered factors unique to Moore in disregarding the lower end of the standard-error range. *Post*, at 33–35; Brief for Respondent 41–42; see *supra*, at 10; 470 S. W. 3d, at 519. But the presence of other sources of imprecision in administering the test to a particular individual, see *post*, at 33–35, and n. 3, cannot *narrow* the test-specific standard-error range.[7]

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[7] The dissent suggests that *Hall* v. *Florida*, 572 U. S. 701 (2014), tacitly approved Idaho's approach to capital sentencing, which the dissent characterizes as "grant[ing] trial courts discretion to draw 'reasonable inferences' about IQ scores and, where appropriate, decline to consider the full range of the [standard error of measurement]." *Post*, at 34 (quoting *Hall*, 572 U. S., at 717, in turn quoting *Pizzuto* v. *State*, 146 Idaho 720, 729, 202 P. 3d 642, 651 (2008)). We referred in *Hall* to Idaho's capital sentencing scheme, however, only to note that the State had "passed legislation allowing a defendant to present additional evidence of intellectual disability even when an IQ test score is above 70." 572 U. S., at 717.

In requiring the CCA to move on to consider Moore's adaptive functioning in light of his IQ evidence, we do not suggest that "the Eighth Amendment turns on the slightest numerical difference in IQ score," *post*, at 35. *Hall* invalidated Florida's strict IQ cutoff because the cutoff took "an IQ score as final and conclusive evidence of a defendant's intellectual capacity, when experts in the field would consider other evidence." 572 U. S., at 712. Here, by contrast, we do not end the intellectual-disability inquiry, one way or the other, based on Moore's IQ score. Rather, in line with *Hall*, we require that courts continue the inquiry and consider other evidence of intellectual disability where an individual's IQ score, adjusted for the test's standard error, falls within the clinically established range for intellectual-functioning deficits.

IV

The CCA's consideration of Moore's adaptive functioning also deviated from prevailing clinical standards and from the older clinical standards the court claimed to apply.

A

In concluding that Moore did not suffer significant adaptive deficits, the CCA overemphasized Moore's perceived adaptive strengths. The CCA recited the strengths it perceived, among them, Moore lived on the streets, mowed lawns, and played pool for money. See 470 S. W. 3d, at 522–523, 526–527. Moore's adaptive strengths, in the CCA's view, constituted evidence adequate to overcome the considerable objective evidence of Moore's adaptive deficits, see *supra*, at 8; App. to Pet. for Cert. 180a–202a. See 470 S. W. 3d, at 522–524, 526–527. But the medical community focuses the adaptive-functioning inquiry on adaptive *deficits*. *E. g.*, AAIDD–11, at 47 ("significant limitations in conceptual, social, or practical adaptive skills [are] not outweighed by the potential strengths in some adaptive skills"); DSM–5, at 33, 38 (inquiry should focus on "[d]eficits in adaptive func-

tioning"; deficits in only one of the three adaptive-skills domains suffice to show adaptive deficits); see *Brumfield*, 576 U. S., at 320 ("[I]ntellectually disabled persons may have 'strengths in social or physical capabilities, strengths in some adaptive skill areas, or strengths in one aspect of an adaptive skill in which they otherwise show an overall limitation.'" (quoting AAMR, Mental Retardation: Definition, Classification, and Systems of Supports 8 (10th ed. 2002))).[8]

In addition, the CCA stressed Moore's improved behavior in prison. 470 S. W. 3d, at 522–524, 526–527. Clinicians, however, caution against reliance on adaptive strengths developed "in a controlled setting," as a prison surely is. DSM–5, at 38 ("Adaptive functioning may be difficult to assess in a controlled setting (e. g., prisons, detention centers); if possible, corroborative information reflecting functioning outside those settings should be obtained."); see AAIDD–11 User's Guide 20 (counseling against reliance on "behavior in jail or prison").

B

The CCA furthermore concluded that Moore's record of academic failure, along with the childhood abuse and suffering he endured, detracted from a determination that his intellectual and adaptive deficits were related. See 470 S. W. 3d, at 488, 526; *supra*, at 8, 11. Those traumatic experiences, however, count in the medical community as "*risk factors*" *for* intellectual disability. AAIDD–11, at 59–60 (emphasis added). Clinicians rely on such factors as cause to explore the prospect of intellectual disability further, not to counter the case for a disability determination. See *id.*,

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[8] The dissent suggests that disagreement exists about the precise role of adaptive strengths in the adaptive-functioning inquiry. See *post*, at 31–32. But even if clinicians would consider adaptive strengths alongside adaptive weaknesses within the same adaptive-skills domain, neither Texas nor the dissent identifies any clinical authority permitting the arbitrary offsetting of deficits against unconnected strengths in which the CCA engaged, see 470 S. W. 3d, at 520–526.

at 60 ("[A]t least one or more of the risk factors [described in the manual] will be found in every case of" intellectual disability.).

The CCA also departed from clinical practice by requiring Moore to show that his adaptive deficits were not related to "a personality disorder." 470 S. W. 3d, at 488; see *id.*, at 526 (Moore's problems in kindergarten were "more likely cause[d]" by "emotional problems" than by intellectual disability). As mental-health professionals recognize, however, many intellectually disabled people also have other mental or physical impairments, for example, attention-deficit/hyperactivity disorder, depressive and bipolar disorders, and autism. DSM–5, at 40 ("[c]o-occurring mental, neurodevelopmental, medical, and physical conditions are frequent in intellectual disability, with rates of some conditions (e. g., mental disorders, cerebral palsy, and epilepsy) three to four times higher than in the general population"); see AAIDD–11, at 58–63. Coexisting conditions frequently encountered in intellectually disabled individuals have been described in clinical literature as "[c]omorbidit[ies]." DSM–5, at 40. See also Brief for AAIDD et al. as *Amici Curiae* 20, and n. 25. The existence of a personality disorder or mental-health issue, in short, is "not evidence that a person does not also have intellectual disability." Brief for American Psychological Association et al. as *Amici Curiae* 19.

C

The CCA's attachment to the seven *Briseno* evidentiary factors further impeded its assessment of Moore's adaptive functioning.

1

By design and in operation, the *Briseno* factors "creat[e] an unacceptable risk that persons with intellectual disability will be executed," *Hall*, 572 U. S., at 704. After observing that persons with "mild" intellectual disability might be treated differently under clinical standards than under

Texas' capital system, the CCA defined its objective as identifying the "consensus of *Texas citizens*" on who "should be exempted from the death penalty." *Briseno*, 135 S. W. 3d, at 6 (emphasis added). Mild levels of intellectual disability, although they may fall outside Texas citizens' consensus, nevertheless remain intellectual disabilities, see *Hall*, 572 U. S., at 719–720; *Atkins*, 536 U. S., at 308, and n. 3; AAIDD–11, at 153, and States may not execute anyone in "the *entire category* of [intellectually disabled] offenders," *Roper*, 543 U. S., at 563–564 (emphasis added); see *supra*, at 12.

Skeptical of what it viewed as "exceedingly subjective" medical and clinical standards, the CCA in *Briseno* advanced lay perceptions of intellectual disability. 135 S. W. 3d, at 8; see *supra*, at 8–10, and n. 6. *Briseno* asks, for example, "Did those who knew the person best during the developmental stage—his family, friends, teachers, employers, authorities—think he was mentally retarded at that time, and, if so, act in accordance with that determination?" 135 S. W. 3d, at 8. Addressing that question here, the CCA referred to Moore's education in "normal classrooms during his school career," his father's reactions to his academic challenges, and his sister's perceptions of Moore's intellectual abilities. 470 S. W. 3d, at 526–527. But the medical profession has endeavored to counter lay stereotypes of the intellectually disabled. See AAIDD–11 User's Guide 25–27; Brief for AAIDD et al. as *Amici Curiae* 9–14, and nn. 11–15. Those stereotypes, much more than medical and clinical appraisals, should spark skepticism.[9]

2

The *Briseno* factors are an outlier, in comparison both to other States' handling of intellectual-disability pleas and to

[9] As elsewhere in its opinion, the CCA, in its deployment of the *Briseno* factors, placed undue emphasis on adaptive strengths, see *supra*, at 15–16; 470 S. W. 3d, at 527, and regarded risk factors for intellectual disability as evidence of the absence of intellectual disability, see *supra*, at 16–17; 470 S. W. 3d, at 526–527.

Texas' own practices in other contexts. See *Hall*, 572 U. S., at 714 (consensus in the States provides "objective indicia of society's standards in the context of the Eighth Amendment" (internal quotation marks omitted)). No state legislature has approved the use of the *Briseno* factors or anything similar. In the 12 years since Texas adopted the factors, only one other state high court and one state intermediate appellate court have authorized their use. See, *e. g.*, *Commonwealth* v. *Bracey*, 632 Pa. 75, 101–102, 117 A. 3d 270, 286–287 (2015); *Howell* v. *State*, 2011 WL 2420378, *18 (Tenn. Crim. App., June 14, 2011).

Indeed, Texas itself does not follow *Briseno* in contexts other than the death penalty. See Brief for Constitution Project as *Amicus Curiae* 14–17. For example, the relatedness requirement Texas defends here, see *supra*, at 8–9, is conspicuously absent from the standards the State uses to assess students for intellectual disabilities. See 19 Tex. Admin. Code § 89.1040(c)(5) (2015). And even within Texas' criminal-justice system, the State requires the intellectual-disability diagnoses of juveniles to be based on "the latest edition of the DSM." 37 Tex. Admin. Code § 380.8751(e)(3) (2016). Texas cannot satisfactorily explain why it applies current medical standards for diagnosing intellectual disability in other contexts, yet clings to superseded standards when an individual's life is at stake.[10]

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[10] Given the *Briseno* factors' flaws, it is unsurprising that scholars and experts have long criticized the factors. See, *e. g.*, American Bar Assn., Evaluating Fairness and Accuracy in State Death Penalty Systems: The Texas Capital Punishment Assessment Report 395 (2013) ("The *Briseno* factors create an especially high risk that [an intellectually disabled defendant] will be executed because, in many ways, they contradict established methods for diagnosing [intellectual disability]."); Blume, Johnson, & Seeds, Of *Atkins* and Men: Deviations From Clinical Definitions of Mental Retardation in Death Penalty Cases (footnote omitted), 18 Cornell J. L. & Pub. Pol'y 689, 710–712 (2009) ("The *Briseno* factors present an array of divergences from the clinical definitions."); Macvaugh & Cunningham, *Atkins v. Virginia*: Implications and Recommendations for Forensic

V

As noted *supra*, at 13, States have some flexibility, but not "unfettered discretion," in enforcing *Atkins*' holding. *Hall*, 572 U. S., at 719. "If the States were to have complete autonomy to define intellectual disability as they wished," we have observed, "*Atkins* could become a nullity, and the Eighth Amendment's protection of human dignity would not become a reality." *Id.*, at 720–721.

The medical community's current standards supply one constraint on States' leeway in this area. Reflecting improved understanding over time, see DSM–5, at 7; AAIDD–11, at xiv–xv, current manuals offer "the best available description of how mental disorders are expressed and can be recognized by trained clinicians," DSM–5, at xli. See also *Hall*, 572 U. S., at 704–705, 710, 713, 722–723 (employing current clinical standards); *Atkins*, 536 U. S., at 308, n. 3, 317, n. 22 (relying on then-current standards).

In Moore's case, the habeas court applied current medical standards in concluding that Moore is intellectually disabled and therefore ineligible for the death penalty. See, *e. g.*, App. to Pet. for Cert. 150a–151a, 200a–203a. The CCA, however, faulted the habeas court for "disregarding [the CCA's] case law and employing the definition of intellectual disability presently used by the AAIDD." 470 S. W. 3d, at 486. The CCA instead fastened its intellectual-disability determination to "the AAMR's 1992 definition of intellectual disability that [it] adopted in *Briseno* for *Atkins* claims presented in Texas death-penalty cases." *Ibid.* By rejecting the habeas court's application of medical guidance and clinging to the standard it laid out in *Briseno*, including the wholly nonclinical *Briseno* factors, the CCA failed ade-

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Practice, 37 J. Psychiatry & L. 131, 136 (2009) ("The seven criteria of the *Briseno* opinion operationalize an *Atkins* interpretation that [exempts only] a subcategory of persons with [intellectual disabilities] from execution."). See also 470 S. W. 3d, at 529–530, and n. 5 (Alcala, J., dissenting) (summarizing, in this case, scholarly criticism of *Briseno*).

quately to inform itself of the "medical community's diagnostic framework," *Hall*, 572 U. S., at 721. Because *Briseno* pervasively infected the CCA's analysis, the decision of that court cannot stand.

* * *

For the reasons stated, the judgment of the Texas Court of Criminal Appeals is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

CHIEF JUSTICE ROBERTS, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting.

The Texas Court of Criminal Appeals (CCA) concluded that Bobby James Moore was not intellectually disabled so as to be exempt from the death penalty under *Atkins* v. *Virginia*, 536 U. S. 304 (2002). It reached that conclusion based on its findings that he had failed to establish either significantly subaverage intellectual functioning or related significant deficits in adaptive behavior. The latter conclusion was based, in part, on the CCA's analysis of a set of seven "evidentiary factors" from *Ex parte Briseno*, 135 S. W. 3d 1, 8 (Tex. Crim. App. 2004). I agree with the Court today that those factors are an unacceptable method of enforcing the guarantee of *Atkins*, and that the CCA therefore erred in using them to analyze adaptive deficits. But I do not agree that the CCA erred as to Moore's intellectual functioning. Because the CCA's determination on that ground is an independent basis for its judgment, I would affirm the decision below.

My broader concern with today's opinion, however, is that it abandons the usual mode of analysis this Court has employed in Eighth Amendment cases. The Court overturns the CCA's conclusion that Moore failed to present sufficient evidence of both inadequate intellectual functioning and significant deficits in adaptive behavior without even consider-

ing "objective indicia of society's standards" reflected in the practices among the States. *Hall* v. *Florida*, 572 U. S. 701, 714 (2014) (quoting *Roper* v. *Simmons*, 543 U. S. 551, 563 (2005)). The Court instead crafts a constitutional holding based solely on what it deems to be medical consensus about intellectual disability. But clinicians, not judges, should determine clinical standards; and judges, not clinicians, should determine the content of the Eighth Amendment. Today's opinion confuses those roles, and I respectfully dissent.

I

On April 25, 1980, Moore and two others were throwing dice when they decided to commit a robbery to obtain money for car payments. Moore provided the group with two firearms, and the three men began to drive around Houston looking for a target. Eventually they settled on the Birdsall Super Market. After negotiating their respective shares of the money they intended to steal and donning disguises, the three went inside, heading straight to a courtesy booth staffed by James McCarble and Edna Scott. When Scott realized a robbery was occurring and screamed, Moore shot McCarble in the head, killing the 70-year-old instantly.

Moore fled Houston and remained on the run until his arrest in Louisiana ten days after the murder. After giving a written statement admitting his participation in the robbery and killing, Moore was charged with capital murder. A jury convicted him and sentenced him to death.

Over the next three decades, Moore's case traversed the state and federal court systems, finally reaching the *Atkins* hearing at issue today in 2014. The state habeas court conducted a two-day evidentiary hearing, during which it heard testimony from family members, a fellow inmate, a prison official, and four mental health professionals. The court concluded that Moore had shown intellectual disability and recommended that he be granted relief.

But it was just that: a recommendation. Under Texas law, the CCA, not the habeas court, is the ultimate factfinder in habeas corpus proceedings. *Ex parte Reed*, 271 S. W. 3d 698, 727 (Tex. Crim. App. 2008); see also *Ex parte Moore*, 470 S. W. 3d 481, 489 (Tex. Crim. App. 2015). Assuming that role, the CCA declined to adopt the habeas court's findings and conclusions, instead conducting its own review of the record to determine whether Moore had shown he was intellectually disabled.

The CCA began by considering the appropriate legal standard for assessing intellectual disability. Following our instruction to the States to "develop[ ] appropriate ways to enforce" *Atkins*, 536 U. S., at 317 (internal quotation marks omitted), the CCA had set out a legal definition for intellectual disability in its prior decision in *Ex parte Briseno*. Rather than follow that test, the habeas court below crafted its own standards for intellectual disability. But "[t]he decision to modify the legal standard for intellectual disability in the capital-sentencing context," the CCA explained, "rests with this Court unless and until the Legislature acts." 470 S. W. 3d, at 487. Just as we have corrected lower courts for taking it upon themselves to dismiss our precedent as outdated, see, *e. g.*, *Bosse* v. *Oklahoma*, 580 U. S. 1, 3 (2016) (*per curiam*), so too the CCA rebuked the habeas court for ignoring binding CCA precedent.

The CCA went on to explain why there was no reason to modify the legal standard it had previously set out. *Briseno* had stated a rule that in order for an *Atkins* claimant to demonstrate intellectual disability he must show (1) significantly subaverage general intellectual functioning and (2) related limitations in adaptive functioning, (3) which had appeared prior to age 18. See 470 S. W. 3d, at 486. It also laid out a set of seven evidentiary factors—the "*Briseno* factors"—designed to assist "factfinders . . . in weighing evidence" of intellectual disability. *Briseno*, 135 S. W. 3d, at 8.

The three-prong definition of intellectual disability came directly from the ninth edition of the manual published by what is now the American Association on Intellectual and Developmental Disabilities (AAIDD). *Id.*, at 7; see American Association on Mental Retardation, Mental Retardation: Definition, Classification, and Systems of Supports 5 (9th ed. 1992). By the time Moore's case reached the CCA, the AAIDD no longer included the requirement that adaptive deficits be "related" to intellectual functioning. But, as the CCA noted, the most recent version of the other leading diagnostic manual, the DSM–5, *did* include that requirement. 470 S. W. 3d, at 487, n. 5; American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 38 (5th ed. 2013) (hereinafter DSM–5). So the CCA was faced with a choice in *Moore*: Keeping the relatedness requirement would be inconsistent with the AAIDD's current guidance; dropping it would be out of step with the newest version of the DSM. The CCA concluded that "the legal test we established in *Briseno* remains adequately 'informed by the medical community's diagnostic framework,' " and went on to evaluate the case under that approach. 470 S. W. 3d, at 487 (quoting *Hall*, 572 U. S., at 721).

Starting with intellectual functioning, the CCA conducted a painstaking analysis of the battery of tests Moore had taken over the past 40 years. The CCA concluded that five of the tests the habeas court had considered were unreliable: two of them were neuropsychological tests rather than formal IQ measures; two were group-administered tests, which Moore's own experts had criticized, App. 12 (Otis-Lennon Mental Abilities Test "not accepted as an instrument appropriate for the assessment of mental retardation or intellectual deficiency"); *id.*, at 115–116 (Slosson is "not the greatest test" and "not the most reliable approach"); and the administrator of the fifth test concluded it was "not . . . a valid score" because of evidence of suboptimal effort, *id.*, at 203.

That left two scores for the CCA to analyze: a 78 and a 74. Significantly subaverage intellectual functioning is "generally shown by an [IQ] of 70 or less." 470 S. W. 3d, at 486. "Taking into account the standard error of measurement" for the 78 score yielded a range of 73 to 83—*i. e.*, a range that did not include an IQ of 70 or less. *Id.*, at 519. As for the 74, the CCA again considered the standard error of measurement, which yielded a score range of 69 to 79. The lower end of that range placed Moore within the parameters for significantly subaverage intellectual functioning. The CCA found, however, that Moore's score was unlikely to be in the lower end of the error-generated range because he was likely exerting poor effort and experiencing depression at the time the test was administered—both factors that Moore's experts agreed could artificially deflate IQ scores. *Id.*, at 516–517, 519; App. 46, 92. The CCA accordingly concluded that Moore had failed to present sufficient evidence of significantly subaverage intellectual functioning.

Having failed one part of the CCA's three-part test, Moore could not be found intellectually disabled. The CCA nonetheless went on to consider the second prong of the test, Moore's adaptive deficits. Moore had taken a standardized test of adaptive functioning in which he scored more than two standard deviations below the mean. But Dr. Kristi Compton, the state expert who had administered that test, explained that it was not an accurate measure of Moore's abilities. She reached this conclusion not because of Moore's adaptive strengths but instead because "she had to assign zeroes to questions asking about areas to which [Moore] had no exposure, such as writing a check and using a microwave oven." 470 S. W. 3d, at 522. Dr. Compton further opined that her evaluation of Moore and review of documentary evidence—including school, trial, and prison records—did not show adaptive deficits sufficient for an intellectual disability diagnosis. App. 185; see 470 S. W. 3d, at 521–524.

The CCA also considered and recounted the testimony of the other experts who, unlike Dr. Compton, concluded that Moore had shown significant adaptive deficits. As factfinders often do in confronting conflicting evidence, the CCA made a credibility determination. The opinion of Dr. Compton, the CCA concluded, was "far more credible and reliable" than those of Moore's experts, given Dr. Compton's "considerable experience," "thorough[] and rigorous[] review[] [of] a great deal of material," and personal evaluation of Moore. *Id.*, at 524. Based on Dr. Compton's expert opinion, the CCA concluded Moore had failed to demonstrate significant adaptive deficits.

Finally, the CCA considered whether, even assuming that Moore had made sufficient showings as to intellectual functioning and adaptive deficits, those two were related. Again finding Dr. Compton's testimony the most credible, the CCA concluded that "the record overwhelmingly supports the conclusion" that Moore's observed academic and social difficulties stemmed, not from low intellectual abilities, but instead from outside factors like the trauma and abuse he suffered as a child and his drug use at a young age. *Id.*, at 526. The CCA explained that, in addition to Dr. Compton's expert testimony, consideration of the seven *Briseno* factors reinforced that relatedness conclusion.

Given that Moore had failed to present sufficient evidence on intellectual functioning or related adaptive deficits, the CCA "conclude[d] that for Eighth Amendment purposes," Moore had not shown he was intellectually disabled. 470 S. W. 3d, at 527. Accordingly, he was not exempt from execution under *Atkins*.

II

A

This Court's precedents have emphasized the importance of state legislative judgments in giving content to the Eighth Amendment ban on cruel and unusual punishment. "Eighth Amendment judgments should not be . . . merely the subjec-

tive views of individual Justices." *Coker* v. *Georgia*, 433 U. S. 584, 592 (1977) (plurality opinion). For that reason, we have emphasized that "judgment should be informed by objective factors to the maximum possible extent." *Ibid.* The "clearest and most reliable objective evidence of contemporary values" comes from state legislative judgments. *Atkins*, 536 U. S., at 312 (internal quotation marks omitted). Such legislative judgments are critical because in "a democratic society legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people." *Gregg* v. *Georgia*, 428 U. S. 153, 175 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.) (internal quotation marks omitted). And we have focused on state enactments in this realm because of the "deference we owe to the decisions of the state legislatures under our federal system . . . where the specification of punishments is concerned." *Id.*, at 176. For these reasons, we have described state legislative judgments as providing "essential instruction" in conducting the Eighth Amendment inquiry. *Roper*, 543 U. S., at 564.

Our decisions addressing capital punishment for the intellectually disabled recognize the central significance of state consensus. In holding that the Eighth Amendment prohibits the execution of intellectually disabled individuals in *Atkins*, the Court first identified a national consensus against the practice and then, applying our own "independent evaluation of the issue," concluded that there was "no reason to disagree" with that consensus. 536 U. S., at 321. The scope of our holding—guided as it was by the national consensus—swept only as far as that consensus. We recognized that there remained the potential for "serious disagreement . . . in determining which offenders are in fact retarded." *Id.*, at 317. And we did not seek to provide "definitive procedural or substantive guides for determining when a person who claims mental retardation will be so impaired as to fall within *Atkins*' compass." *Bobby* v. *Bies*, 556 U. S. 825, 831

(2009) (alterations and internal quotation marks omitted). Instead, we left "to the States the task of developing appropriate ways to enforce the constitutional restriction upon their execution of sentences." *Atkins*, 536 U. S., at 317 (quoting *Ford* v. *Wainwright*, 477 U. S. 399, 416–417 (1986); alterations omitted).

Twelve years after *Atkins*, the Court confronted one State's attempt to enforce the holding of that case. *Hall* v. *Florida* considered Florida's rule requiring a prisoner to present an IQ score of 70 or below to make out an *Atkins* claim. Although the Court thought it "proper to consider the psychiatric and professional studies that elaborate on the purpose and meaning of IQ scores," it emphasized that "[t]he legal determination of intellectual disability is distinct from a medical diagnosis." 572 U. S., at 709, 721. It was "the Court's duty"—not that of medical experts—"to interpret the Constitution." *Id.*, at 721. The Court's conclusion that Florida's rule was "in direct opposition to the views of those who design, administer, and interpret the IQ test" was not enough to decide the case. *Id.*, at 724. Instead, consistent with our settled approach, the Court canvassed "the legislative policies of various States," as well as "the holdings of state courts," because it was state policies that provided "essential instruction" for determining the scope of the constitutional guarantee. *Id.*, at 710, 721 (quoting *Roper*, 543 U. S., at 564). State policy, the Court concluded, indicated a "consensus that our society does not regard [Florida's rule] as proper or humane," and that "consensus . . . instruct[ed us] how to decide the specific issue presented." 572 U. S., at 710, 718. The Court was sharply divided on that conclusion, see *id.*, at 727–730 (ALITO, J., dissenting), but not on the fact that our precedent mandated such an inquiry.

B

Today's decision departs from this Court's precedents, followed in *Atkins* and *Hall*, establishing that the determina-

tion of what is cruel and unusual rests on a judicial judgment about societal standards of decency, not a medical assessment of clinical practice. The Court rejects the CCA's conclusion that Moore failed to make the requisite showings with respect to intellectual functioning and adaptive deficits, without any consideration of the state practices that were, three Terms ago, "essential" to the Eighth Amendment question. *Hall*, 572 U. S., at 721. The Court instead finds error in the CCA's analysis based solely on what the Court views to be departure from typical clinical practice.

The clinical guides on which the Court relies today are "designed to assist clinicians in conducting clinical assessment, case formulation, and treatment planning." DSM–5, at 25. They do not seek to dictate or describe who is morally culpable—indeed, the DSM–5 cautions its readers about "the imperfect fit between the questions of ultimate concern to the law and the information contained" within its pages. *Ibid.*

The Eighth Amendment, under our precedent, is supposed to impose a moral backstop on punishment, prohibiting sentences that our society deems repugnant. The Court, however, interprets that constitutional guarantee as turning on clinical guidelines that do not purport to reflect standards of decency. The Court's refusal even to address what we previously "pinpointed" as "the clearest and most reliable objective evidence" of such standards—the practices among the States—goes unexplained by the majority. *Atkins*, 536 U. S., at 312 (internal quotation marks omitted).

A second problem with the Court's approach is the lack of guidance it offers to States seeking to enforce the holding of *Atkins*. Recognizing that we have, in the very recent past, held that "'the views of medical experts' do not 'dictate' a court's intellectual-disability determination," the Court assures us that it is not requiring adherence "to everything stated in the latest medical guide," *ante*, at 13 (quoting *Hall*, 572 U. S., at 721); States have "some flexibility" but cannot

"disregard" medical standards. *Ante*, at 13, 20. Neither the Court's articulation of this standard nor its application sheds any light on what it means.

Start with the Court's stated principle. "Disregard" normally means to dismiss as unworthy of attention, and that is plainly not what the CCA did here. For example, the Court faults the CCA for placing too much weight on Moore's adaptive strengths and functioning in prison, implying that this marked a dismissal of clinical standards. Yet the CCA was aware of and, in a prior decision, had addressed the fact that some clinicians would counsel against considering such information. See 470 S. W. 3d, at 489 (citing *Ex parte Cathey*, 451 S. W. 3d 1, 26–27 (2014)). Both because "[m]ost courts . . . consider *all* of the person's functional abilities" and because it seemed "foolhardy" to ignore strengths, the CCA thought it proper to take note of them. *Id.*, at 27. As to prison conduct, the CCA decided that the fundamental questions the *Atkins* inquiry sought to answer were best considered—and "sound scientific principles" best served—by taking account of "*all* possible data that sheds light on a person's adaptive functioning, including his conduct in a prison society." 451 S. W. 3d, at 26–27. The CCA considered clinical standards and explained why it decided that departure from those standards was warranted. The court did not "disregard" medical standards.

Nor do the Court's identified errors clarify the scope of the "flexibility" we are told States retain in this area. The Court faults the CCA for "overemphasiz[ing]" strengths and "stress[ing]" Moore's conduct in prison, *ante*, at 15–16, suggesting that some—but not *too much*—consideration of strengths and prison functioning is acceptable. The Court's only guidance on when "some" becomes "too much"? Citations to clinical guides. See *ibid.* But if courts do have "flexibility" in enforcing the guarantee of *Atkins* and need not "adhere[ ]" to these guides in every instance or particular, *ante*, at 13, 20, then clinical texts, standing alone, cannot

answer the question of why the CCA placed too much weight on adaptive strengths and prison conduct. The line between the permissible—consideration, maybe even emphasis—and the forbidden—"overemphasis"—is not only thin, but totally undefined by today's decision. It is not at all clear when a State's deviation from medical consensus becomes so great as to "diminish the force" of that consensus, *ante*, at 5, and thereby violate the Constitution.

Finally, the Court's decision constitutionalizes rules for which there is not even clinical consensus—a consequence that will often arise from the approach charted by the Court today. Consider the Court's conclusion that, contrary to "the medical community['s] focus[ ] . . . on adaptive *deficits*," "the CCA overemphasized Moore's perceived adaptive strengths." *Ante*, at 15. In support of this proposition, the Court cites the AAIDD's direction that "significant limitations in conceptual, social, or practical adaptive skills [are] not outweighed by the potential strengths in some adaptive skills." AAIDD, Intellectual Disability: Definition, Classification, and Systems of Supports 47 (11th ed. 2010) (hereinafter AAIDD–11). Even assuming that all clinicians would agree with this statement, there are a number of ways it might be interpreted: as meaning that strengths in one of the three adaptive skill areas—conceptual, social, and practical—should not cancel out deficits in another; as meaning that strengths should not outweigh deficits within the same skill area; or as meaning that evidence of some ability to perform a skill should not offset evidence of the inability to perform that same skill. And it appears that clinicians do, in fact, disagree about what this direction means. Compare, *e. g.*, Brief for AAIDD et al. as *Amici Curiae* 17 ("The clinician's diagnostic focus does not—and cannot—involve *any form* of 'balancing' deficits against the abilities or strengths which the particular individual may also possess" (emphasis added)) with Hagan, Drogin, & Guilmette, Assessing Adaptive Functioning in Death Penalty Cases After *Hall* and DSM–5, 44 J.

Am. Acad. Psychiatry & L. 96, 98 (2016) ("Any assessment of adaptive functioning must give sufficient consideration to assets and deficits alike. . . . [I]nventorying only assets or deficits . . . departs from DSM–5, [the AAIDD–11], and all other established frameworks" (footnotes omitted)).

The same is true about consideration of prison conduct. The two primary clinical guides do offer caution about considering functioning in prison. But the stringency of their caution differs, with the AAIDD seeming to enact a flat ban on ever looking to functioning in prison and the DSM urging "if possible" to consider "corroborative information reflecting functioning outside" of prison. AAIDD, User's Guide: Intellectual Disability: Definition, Classification, and Systems of Supports 20 (11th ed. 2012); DSM–5, at 38. The CCA followed the DSM–5's instruction, relying on Dr. Compton's conclusion that "even before [Moore] went to prison" he demonstrated a "level of adaptive functioning . . . too great . . . to support an intellectual-disability diagnosis." 470 S. W. 3d, at 526. In determining that the CCA erred in this regard, the Court implicitly rejects the DSM–5's approach to the proper consideration of prison conduct and accepts what it takes to be that of the AAIDD. The Court does not attempt to explain its justification for why the Eighth Amendment should favor one side over the other in this clinical debate.

"Psychiatry is not . . . an exact science." *Ake* v. *Oklahoma*, 470 U. S. 68, 81 (1985). "[B]ecause there often is no single, accurate psychiatric conclusion," we have emphasized the importance of allowing the "primary factfinder[ ]" to "resolve differences in opinion . . . on the basis of the evidence offered by each party." *Ibid.* You would not know it from reading the Court's opinion today, but that is precisely what the CCA—the factfinder under Texas law—did in the decision below: Confronted with dueling expert opinions about how to evaluate adaptive functioning and what conclusion to reach, the CCA resolved the dispute before it by accepting

the testimony of the expert it deemed most credible. Of course, reliance on an expert opinion does not insulate a decision from further judicial review. But, unlike the Court, I am unwilling to upset the considered judgment of the forensic psychologist that the factfinding court deemed the most credible based on my own interpretation of a few sentences excised from medical texts.

III

As for how I would resolve this case, there is one aspect of the CCA's approach to intellectual disability that is incompatible with the Eighth Amendment: the *Briseno* factors. As the Court explains, no state legislature has approved the use of these or any similar factors. Although the CCA reviewed these factors to determine whether Moore's adaptive deficits were "related" to his intellectual functioning, it may be that consideration of those factors tainted the whole of the CCA's adaptive functioning analysis. I need not decide this question, however, because the CCA reached the issue of Moore's adaptive functioning only after concluding that he had failed to demonstrate intellectual functioning sufficiently low to warrant a finding of intellectual disability, regardless of his adaptive deficits or their relation to his IQ. Moore has not presented sufficient reason to upset that independent holding.

The Court concludes that the CCA's assessment of Moore's IQ scores is "irreconcilable with *Hall*." *Ante*, at 13. Not so. *Hall* rejected a Florida rule that required a prisoner to present an IQ score of 70 or below to demonstrate intellectual disability, thereby barring consideration of the standard error of measurement (SEM) of an over-70 score. But the CCA did not apply Florida's rule—or anything like it. The court in fact began by taking account of the SEM, explaining that Moore's tested score of 74 led to an IQ range between 69 and 79. The court went on to consider additional expert testimony about potential factors affecting that score.

Based on that evidence, the CCA discounted portions of the SEM-generated range and concluded that Moore's IQ did not lie in the relevant range for intellectual disability.

Hall provided no definitive guidance on this sort of approach: recognizing the inherent imprecision of IQ tests, but considering additional evidence to determine whether an SEM-generated range of scores accurately reflected a prisoner's actual IQ.[1] Indeed, in its catalog of States that "ha[d] taken a position contrary to that of Florida," the Court in *Hall* included a State that granted trial courts discretion to draw "reasonable inferences" about IQ scores and, where appropriate, decline to consider the full range of the SEM. 572 U. S., at 718, 717 (quoting *Pizzuto* v. *State*, 146 Idaho 720, 729, 202 P. 3d 642, 651 (2008)).[2] That is the approach the CCA took here. If that approach was "contrary" to Florida's rule in *Hall*, I do not understand how *Hall* can be read to reject that approach today.

The Court's ruling on intellectual functioning turns solely on the fact that Moore's IQ range was 69 to 79 rather than 70 to 80. See *ante*, at 14 ("Because the lower end of Moore's score range falls at or below 70, the CCA had to move on to consider Moore's adaptive functioning"). The CCA certainly did not "disregard" SEM in assessing Moore's IQ, and

[1] *Hall* also reached no holding as to the evaluation of IQ when an *Atkins* claimant presents multiple scores, noting only that "the analysis of multiple IQ scores jointly is a complicated endeavor." *Hall* v. *Florida*, 572 U. S. 701, 714 (2014). The Court's definition of deficient intellectual functioning as shown by "*an* IQ score" of roughly 70, *ante*, at 7 (emphasis added), is dicta and cannot be read to call into question the approach of States that would not treat a single IQ score as dispositive evidence where the prisoner presented additional higher scores.

[2] The Court correctly notes that *Hall* cited *Pizzuto* as an instance of a State that had enacted "legislation allowing a defendant to present additional evidence of intellectual disability even when an IQ test score is above 70." *Hall*, 572 U. S., at 717. The "additional evidence" that *Pizzuto* considered, however, was evidence that would indicate where within the SEM range a prisoner's IQ likely fell, 146 Idaho, at 729, 202 P. 3d, at 651—that is, the same sort of evidence that the CCA considered below.

it explained why other factors led it to conclude that his actual score did not fall near the lower end of the SEM range. Only by insisting on the absolute conformity to medical standards the Court disclaims can it find a violation of the Eighth Amendment based on that one-point difference.[3] *Ibid.* In concluding that the Eighth Amendment turns on the slightest numerical difference in IQ score, the Court today is just as wrong as the Florida Supreme Court was in *Hall*.

Today's decision is not compelled by *Hall*; it is an expansion of it. Perhaps there are reasons to expand *Hall*'s holding—to say that States must read IQ tests as rigidly encompassing the entire SEM range, regardless of any other evidentiary considerations, or to say that the reasons that the CCA gave for discounting the lower end of Moore's IQ range were improper. But before holding that the Constitution demands either result, our precedent requires consulting state judgments on the matter to determine whether a national consensus has developed. Moore has presented no argument as to such a consensus, and the majority does not claim that there is one. Without looking to any such "objective evidence of contemporary values," *Atkins*, 536 U. S., at 312 (internal quotation marks omitted), there is a real danger that Eighth Amendment judgments will embody "merely the subjective views of individual Justices," *Coker*, 433 U. S., at

[3] It is not obvious that clinicians would ignore evidence beyond the SEM in determining the appropriate range that an IQ score represents. See, *e. g.*, Macvaugh & Cunningham, *Atkins v. Virginia*: Implications and Recommendations for Forensic Practice, 37 J. Psychiatry & L. 131, 147 (2009) ("Error in intellectual assessment is not solely a function [of the SEM]. Other sources of error or assessment imprecision may involve the examinee . . . includ[ing] the mental and physical health, mood, effort, and motivation of the examinee during testing . . . ."); AAIDD–11, at 100–101 ("When considering the relative weight or degree of confidence given to any assessment instrument, the clinician needs to consider . . . the conditions under which the test(s) was/were given [and] the standard error of measurement").

592 (plurality opinion). As Justice Frankfurter cautioned, "[o]ne must be on guard against finding in personal disapproval a reflection of more or less prevailing condemnation." *Louisiana ex rel. Francis* v. *Resweber*, 329 U. S. 459, 471 (1947) (concurring opinion).

I respectfully dissent.

Syllabus

EXPRESSIONS HAIR DESIGN ET AL. *v.* SCHNEIDERMAN, ATTORNEY GENERAL OF NEW YORK, ET AL.

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

No. 15–1391. Argued January 10, 2017—Decided March 29, 2017

New York General Business Law § 518 provides that "[n]o seller in any sales transaction may impose a surcharge on a holder who elects to use a credit card in lieu of payment by cash, check, or similar means." Petitioners, five New York businesses and their owners who wish to impose surcharges for credit card use, filed suit against state officials, arguing that the law violates the First Amendment by regulating how they communicate their prices, and that it is unconstitutionally vague. The District Court ruled in favor of the merchants, but the Court of Appeals vacated the judgment with instructions to dismiss. The Court of Appeals concluded that in the context of single-sticker pricing—where merchants post one price and would like to charge more to customers who pay by credit card—the law required that the sticker price be the same as the price charged to credit card users. In that context, the law regulated a relationship between two prices. Relying on this Court's precedent holding that price regulation alone regulates conduct, not speech, the Court of Appeals concluded that § 518 did not violate the First Amendment. The Court of Appeals abstained from reaching the merits of the constitutional challenge to pricing practices outside the single-sticker context.

Held:

1. This Court's review is limited to whether § 518 is unconstitutional as applied to the particular pricing scheme that, before this Court, petitioners have argued they seek to employ: a single-sticker regime, in which merchants post a cash price and an additional credit card surcharge. Pp. 43–44.

2. Section 518 prohibits the pricing regime petitioners wish to employ. Section 518 does not define "surcharge." Relying on the term's ordinary meaning, the Court of Appeals concluded that a merchant imposes a surcharge when he posts a single sticker price and charges a credit card user more than that sticker price. This Court "generally accord[s] great deference to the interpretation and application of state law by the courts of appeals." *Pembaur* v. *Cincinnati*, 475 U. S. 469, 484, n. 13. Because the interpretation of the Court of Appeals is not

Syllabus

"clearly wrong," *Brockett* v. *Spokane Arcades, Inc.*, 472 U. S. 491, 500, n. 9, this Court follows that interpretation. Pp. 45–46.

3. Section 518 regulates speech. The Court of Appeals concluded that § 518 posed no First Amendment problem because price controls regulate conduct, not speech. Section 518, however, is not like a typical price regulation, which simply regulates the amount a store can collect. The law tells merchants nothing about the amount they are allowed to collect from a cash or credit card payer. Instead, it regulates how sellers may communicate their prices. In regulating the communication of prices rather than prices themselves, § 518 regulates speech.

Because the Court of Appeals concluded otherwise, it did not determine whether § 518 survives First Amendment scrutiny. On remand the Court of Appeals should analyze § 518 as a speech regulation. Pp. 46–48.

4. Section 518 is not vague as applied to petitioners. As explained, § 518 bans the single-sticker pricing petitioners argue they wish to employ, and "a plaintiff whose speech is clearly proscribed cannot raise a successful vagueness claim," *Holder* v. *Humanitarian Law Project*, 561 U. S. 1, 20. Pp. 48–49.

808 F. 3d 118, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which KENNEDY, THOMAS, GINSBURG, and KAGAN, JJ., joined. BREYER, J., filed an opinion concurring in the judgment, *post*, p. 49. SOTOMAYOR, J., filed an opinion concurring in the judgment, in which ALITO, J., joined, *post*, p. 51.

Deepak Gupta argued the cause for petitioners. With him on the briefs were *Jonathan E. Taylor* and *Matthew Spurlock*.

Eric J. Feigin argued the cause for the United States as *amicus curiae* urging vacatur. With him on the brief were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Stewart*, and *Joseph M. Salzman*.

Stephen C. Wu, Deputy Solicitor General of New York, argued the cause for respondents. With him on the brief were *Eric T. Schneiderman*, Attorney General, *pro se*, *Barbara D. Underwood*, Solicitor General, and *Judith N. Vale*, Assistant Solicitor General.*

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*Briefs of *amici curiae* urging reversal were filed for Ahold U. S. A., Inc., et al. by *Paul D. Clement*, *Jeffrey M. Harris*, *Richard A. Arnold*, *William J. Blechman*, and *James T. Almon*; for CardX, LLC, by *James*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Each time a customer pays for an item with a credit card, the merchant selling that item must pay a transaction fee to the credit card issuer. Some merchants balk at paying the fees and want to discourage the use of credit cards, or at

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R. Leickly; for the Cato Institute et al. by *Ilya Shapiro* and *Lawrence G. Salzman*; for Consumer Action et al. by *Sharon K. Robertson*; for First Amendment Scholars et al. by *Mahesha P. Subbaraman*; for the Institute for Justice by *Paul M. Sherman* and *Justin M. Pearson*; for the James Madison Institute et al. by *Jesse Panuccio*, *Joseph W. Jacquot*, and *Robert Henneke*; for the Retail Litigation Center et al. by *Eric F. Citron*, *Thomas C. Goldstein*, and *Deborah White*; for Scholars of Behavioral Economics by *Adam W. Hofmann* and *Allison L. Ehlert*; for the United States Public Interest Research Group Education Fund, Inc., by *Gregory A. Beck* and *Michael C. Landis*; for Alan S. Frankel by *K. Craig Wildfang*, *Thomas J. Undlin*, and *Ryan W. Marth*; and for Adam J. Levitin by *J. Carl Cecere* and *Mr. Levitin*, *pro se*.

Briefs of *amici curiae* urging affirmance were filed for the State of Florida et al. by *Pamela Jo Bondi*, Attorney General of Florida, *Amit Agarwal*, Solicitor General, and *Denise M. Harle* and *Jordan E. Pratt*, Deputy Solicitors General, and by the Attorneys General for their respective jurisdictions as follows: *Cynthia Coffman* of Colorado, *George Jepsen* of Connecticut, *Karl A. Racine* of the District of Columbia, *Douglas S. Chin* of Hawaii, *Derek Schmidt* of Kansas, *Janet Mills* of Maine, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Peter F. Kilmartin* of Rhode Island, and *Ken Paxton* of Texas; for Action on Smoking and Health et al. by *Thomas Bennigson* and *Seth E. Mermin*; for Constitutional, Administrative, Contracts, and Health Law Scholars by *David A. Schulz* and *John Langford*; for the Credit Union National Association by *Jonathan F. Cohn*, *Ryan C. Morris*, and *J. Lance Noggle*; for First Amendment Scholars by *Elizabeth B. Wydra*, *Brianne J. Gorod*, *David H. Gans*, and *Brian R. Frazelle*; for the International Center for Law & Economics et al. by *Robert M. Loeb*, *E. Joshua Rosenkranz*, and *Ian Fein*; for Labor, Environmental, and Civil Rights Organizations by *Stacey Leyton*, *Rebecca Lee*, *Claire Prestel*, *Judith A. Scott*, *Nicole G. Berner*, and *Jennifer Hunter*; for the National Governors Association et al. by *Charles A. Rothfeld*, *Andrew J. Pincus*, *Paul W. Hughes*, *Michael B. Kimberly*, and *Lisa Soronen*; for the New York Credit Union Association by *Henry C. Meier*; and for Public Citizen, Inc., et al. by *Scott L. Nelson*, *Allison M. Zieve*, *Julie A. Murray*, *George P. Slover*, *Alan B. Morrison*, *Stuart T. Rossman*, and *Mark E. Greenwold*.

least pass on the fees to customers who use them. One method of achieving those ends is through differential pricing—charging credit card users more than customers using cash. Merchants who wish to employ differential pricing may do so in two ways relevant here: impose a surcharge for the use of a credit card, or offer a discount for the use of cash. In N. Y. Gen. Bus. Law § 518, New York has banned the former practice. The question presented is whether § 518 regulates merchants' speech and—if so—whether the statute violates the First Amendment. We conclude that § 518 does regulate speech and remand for the Court of Appeals to determine in the first instance whether that regulation is unconstitutional.

I

A

When credit cards were first introduced, contracts between card issuers and merchants barred merchants from charging credit card users higher prices than cash customers. Congress put a partial stop to this practice in the 1974 amendments to the Truth in Lending Act (TILA). The amendments prohibited card issuers from contractually preventing merchants from giving discounts to customers who paid in cash. See § 306, 88 Stat. 1515. The law, however, said nothing about surcharges for the use of credit.

Two years later, Congress refined its dissimilar treatment of discounts and surcharges. First, the 1976 version of TILA barred merchants from imposing surcharges on customers who use credit cards. Act of Feb. 27, 1976, § 3(c)(1), 90 Stat. 197. Second, Congress added definitions of the two terms. A discount was "a reduction made from the regular price," while a surcharge was "any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means." § 3(a), *ibid.*

In 1981, Congress further delineated the distinction between discounts and surcharges by defining "regular price."

Where a merchant "tagged or posted" a single price, the regular price was that single price. Cash Discount Act, § 102(a), 95 Stat. 144. If no price was tagged or posted, or if a merchant employed a two-tag approach—posting one price for credit and another for cash—the regular price was whatever was charged to credit card users. *Ibid.* Because a surcharge was defined as an increase from the regular price, there could be no credit card surcharge where the regular price was the same as the amount charged to customers using credit cards. The effect of all this was that a merchant could violate the surcharge ban only by posting a single price and charging credit card users more than that posted price.

The federal surcharge ban was short lived. Congress allowed it to expire in 1984 and has not renewed the ban since. See § 201, *ibid.* The provision preventing credit card issuers from contractually barring discounts for cash, however, remained in place. With the lapse of the federal surcharge ban, several States, New York among them, immediately enacted their own surcharge bans. Passed in 1984, N. Y. Gen. Bus. Law § 518 adopted the operative language of the federal ban verbatim, providing that "[n]o seller in any sales transaction may impose a surcharge on a holder who elects to use a credit card in lieu of payment by cash, check, or similar means." N. Y. Gen. Bus. Law Ann. § 518 (West 2012); see also 15 U. S. C. § 1666f(a)(2) (1982 ed.). Unlike the federal ban, the New York legislation included no definition of "surcharge."

In addition to these state legislative bans, credit card companies—though barred from prohibiting discounts for cash—included provisions in their contracts prohibiting merchants from imposing surcharges for credit card use. For most of its history, the New York law was essentially coextensive with these contractual prohibitions. In recent years, however, merchants have brought antitrust challenges to contractual no-surcharge provisions. Those suits have created

uncertainty about the legal validity of such contractual surcharge bans. The result is that otherwise redundant legislative surcharge bans like § 518 have increasingly gained importance, and increasingly come under scrutiny.

B

Petitioners, five New York businesses and their owners, wish to impose surcharges on customers who use credit cards. Each time one of their customers pays with a credit card, these merchants must pay some transaction fee to the company that issued the credit card. The fee is generally two to three percent of the purchase price. Those fees add up, and the merchants allege that they pay tens of thousands of dollars every year to credit card companies. Rather than increase prices across the board to absorb those costs, the merchants want to pass the fees along only to their customers who choose to use credit cards. They also want to make clear that they are not the bad guys—that the credit card companies, not the merchants, are responsible for the higher prices. The merchants believe that surcharges for credit are more effective than discounts for cash in accomplishing these goals.

In 2013, after several major credit card issuers agreed to drop their contractual surcharge prohibitions, the merchants filed suit against the New York Attorney General and three New York District Attorneys to challenge § 518—the only remaining obstacle to their charging surcharges for credit card use. As relevant here, they argued that the law violated the First Amendment by regulating how they communicated their prices, and that it was unconstitutionally vague because liability under the law "turn[ed] on the blurry difference" between surcharges and discounts. App. 39, Complaint ¶51.

The District Court ruled in favor of the merchants. It read the statute as "draw[ing a] line between prohibited 'surcharges' and permissible 'discounts' based on words and labels, rather than economic realities." 975 F. Supp. 2d 430, 444 (SDNY 2013). The court concluded that the law there-

fore regulated speech, and violated the First Amendment under this Court's commercial speech doctrine. In addition, because the law turned on the "virtually incomprehensible distinction between what a vendor can and cannot tell its customers," the District Court found that the law was unconstitutionally vague. *Id.*, at 436.

The Court of Appeals for the Second Circuit vacated the judgment of the District Court with instructions to dismiss the merchants' claims. It began by considering single-sticker pricing, where merchants post one price and would like to charge more to customers who pay by credit card. All the law did in this context, the Court of Appeals explained, was regulate a relationship between two prices—the sticker price and the price charged to a credit card user—by requiring that the two prices be equal. Relying on our precedent holding that price regulation alone regulates conduct, not speech, the Court of Appeals concluded that § 518 did not violate the First Amendment.

The court also considered other types of pricing regimes—for example, posting separate cash and credit prices. The Court of Appeals thought it "far from clear" that § 518 prohibited such pricing schemes. 808 F. 3d 118, 137 (CA2 2015). The federal surcharge ban on which § 518 was modeled did not apply outside the single-sticker context, and the merchants had not clearly shown that § 518 had a "broader reach" than the federal law. *Ibid.* Deciding that petitioners' challenge in this regard "turn[ed] on an unsettled question of state law," the Court of Appeals abstained from reaching the merits of the constitutional question beyond the single-sticker context. *Id.*, at 135 (citing *Railroad Comm'n of Tex.* v. *Pullman Co.*, 312 U. S. 496 (1941)).

We granted certiorari. 579 U. S. 969 (2016).

II

As a preliminary matter, we note that petitioners present us with a limited challenge. Observing that the merchants

were not always particularly clear about the scope of their suit, the Court of Appeals deemed them to be bringing a facial attack on § 518 as well as a challenge to the application of the statute to two particular pricing regimes: single-sticker pricing and two-sticker pricing. Before us, however, the merchants have disclaimed a facial challenge, assuring us that theirs is an as-applied challenge only. See Tr. of Oral Arg. 4–5, 18.

There remains the question of what precise application of the law they seek to challenge. Although the merchants have presented a wide array of hypothetical pricing regimes, they have expressly identified only one pricing scheme that they seek to employ: posting a cash price and an additional credit card surcharge, expressed either as a percentage surcharge or a "dollars-and-cents" additional amount. See, *e. g.*, App. 101–102, 104; Tr. of Oral Arg. 4–5, 18. Under this pricing approach, petitioner Expressions Hair Design might, for example, post a sign outside its salon reading "Haircuts $10 (we add a 3% surcharge if you pay by credit card)." Or, petitioner Brooklyn Farmacy & Soda Fountain might list one of the sundaes on its menu as costing "$10 (with a $0.30 surcharge for credit card users)." We take petitioners at their word and limit our review to the question whether § 518 is unconstitutional as applied to this particular pricing practice.[1]

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[1] Petitioner Expressions Hair Design currently posts separate dollars-and-cents prices for cash and credit—that is, it posts something like "$10 cash, $10.30 credit." It displays its prices in this way, however, only because it considers itself compelled to do so by the challenged law if it wants to charge different prices. Prior to becoming aware of the law, Expressions posted single prices along with a notice informing customers that a three percent surcharge would be added to their bill if they paid by credit card. Expressions has indicated that it would prefer to return to its prior practice. See App. 19, Complaint ¶3; *id.*, at 103–104. Given petitioners' representations about the narrow scope of their as-applied challenge, we limit our consideration to the single-sticker pricing regime for present purposes. Petitioners' affidavits and briefing reference other

III

The next question is whether § 518 prohibits the pricing regime petitioners wish to employ. The Court of Appeals concluded that it does. The court read "surcharge" in § 518 to mean "an additional amount above the seller's regular price," and found it "basically self-evident" how § 518 applies to sellers who post a single sticker price: "the sticker price is the 'regular' price, so sellers may not charge credit-card customers an additional amount above the sticker price that is not also charged to cash customers." 808 F. 3d, at 128. Under this interpretation, signs of the kind that the merchants wish to post—"$10, with a $0.30 surcharge for credit card users"—violate § 518 because they identify one sticker price—$10—and indicate that credit card users are charged more than that amount.

"We generally accord great deference to the interpretation and application of state law by the courts of appeals." *Pembaur* v. *Cincinnati*, 475 U. S. 469, 484, n. 13 (1986). This deference is warranted to "render unnecessary review of their decisions in this respect" and because lower federal courts "are better schooled in and more able to interpret the laws of their respective States." *Brockett* v. *Spokane Arcades, Inc.*, 472 U. S. 491, 500 (1985) (quoting *Cort* v. *Ash*, 422 U. S. 66, 73, n. 6 (1975); internal quotation marks omitted). "[W]e surely have the authority to differ with the lower federal courts as to the meaning of a state statute," and have done so in instances where the lower court's construction was "clearly wrong" or "plain error." 472 U. S., at 500, and n. 9 (internal quotation marks omitted). But that is not the case here. Section 518 does not define "surcharge," but the Court of Appeals looked to the ordinary meaning of the term: "a charge in excess of the usual or

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potential pricing schemes, which may be considered by the Court of Appeals to the extent it deems appropriate. See, *e. g.*, *id.*, at 56; Brief for Petitioners 50.

normal amount." 808 F. 3d, at 127 (quoting Webster's Third New International Dictionary 2299 (2002); internal quotation marks omitted). Where a seller posts a single sticker price, it is reasonable to treat that sticker price as the "usual or normal amount" and conclude, as the court below did, that a merchant imposes a surcharge when he charges a credit card user more than that sticker price. In short, we cannot dismiss the Court of Appeals' interpretation of § 518 as "clearly wrong." Accordingly, consistent with our customary practice, we follow that interpretation.

IV

Having concluded that § 518 bars the pricing regime petitioners wish to employ, we turn to their constitutional arguments: that the law unconstitutionally regulates speech and is impermissibly vague.

A

The Court of Appeals concluded that § 518 posed no First Amendment problem because the law regulated conduct, not speech.[2] In reaching this conclusion, the Court of Appeals began with the premise that price controls regulate conduct alone. See *44 Liquormart, Inc.* v. *Rhode Island*, 517 U. S. 484, 507 (1996) (plurality opinion); *id.*, at 524 (THOMAS, J., concurring in part and concurring in judgment); *id.*, at 530 (O'Connor, J., concurring in judgment). Section 518 regulates the relationship between "(1) the seller's sticker price and (2) the price the seller charges to credit card customers," requiring that these two amounts be equal. 808 F. 3d, at 131. A law regulating the relationship between two prices regulates speech no more than a law regulating a single

[2] Relying fully on their claim that § 518 regulated speech, petitioners did not advance any argument before the Court of Appeals that § 518 was constitutionally problematic even if deemed a regulation of conduct. See 808 F. 3d 118, 135 (CA2 2015) (noting that petitioners had not challenged § 518 under *United States* v. *O'Brien*, 391 U. S. 367 (1968)).

price. The Court of Appeals concluded that § 518 was therefore simply a conduct regulation.

But § 518 is not like a typical price regulation. Such a regulation—for example, a law requiring all New York delis to charge $10 for their sandwiches—would simply regulate the amount that a store could collect. In other words, it would regulate the sandwich seller's conduct. To be sure, in order to actually collect that money, a store would likely have to put "$10" on its menus or have its employees tell customers that price. Those written or oral communications would be speech, and the law—by determining the amount charged—would indirectly dictate the content of that speech. But the law's effect on speech would be only incidental to its primary effect on conduct, and "it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 62 (2006) (quoting *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 502 (1949); internal quotation marks omitted); see also *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 567 (2011).

Section 518 is different. The law tells merchants nothing about the amount they are allowed to collect from a cash or credit card payer. Sellers are free to charge $10 for cash and $9.70, $10, $10.30, or any other amount for credit. What the law does regulate is how sellers may communicate their prices. A merchant who wants to charge $10 for cash and $10.30 for credit may not convey that price any way he pleases. He is not free to say "$10, with a 3% credit card surcharge" or "$10, plus $0.30 for credit" because both of those displays identify a single sticker price—$10—that is less than the amount credit card users will be charged. Instead, if the merchant wishes to post a single sticker price, he must display $10.30 as his sticker price. Accordingly, while we agree with the Court of Appeals that § 518 regu-

lates a relationship between a sticker price and the price charged to credit card users, we cannot accept its conclusion that § 518 is nothing more than a mine-run price regulation. In regulating the communication of prices rather than prices themselves, § 518 regulates speech.

Because it concluded otherwise, the Court of Appeals had no occasion to conduct a further inquiry into whether § 518, as a speech regulation, survived First Amendment scrutiny. On that question, the parties dispute whether § 518 is a valid commercial speech regulation under *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557 (1980), and whether the law can be upheld as a valid disclosure requirement under *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U. S. 626 (1985).

"[W]e are a court of review, not of first view." *Nautilus, Inc.* v. *Biosig Instruments, Inc.*, 572 U. S. 898, 913 (2014) (internal quotation marks omitted). Accordingly, we decline to consider those questions in the first instance. Instead, we remand for the Court of Appeals to analyze § 518 as a speech regulation.[3]

B

Given the way the merchants have presented their case, their vagueness challenge gives us little pause. Before this Court, the only pricing practice they express an interest in employing is a single-sticker regime, listing one price and a separate surcharge amount. As we have explained, § 518 bars them from doing so. "[A] plaintiff whose speech is clearly proscribed cannot raise a successful vagueness claim." *Holder* v. *Humanitarian Law Project*, 561 U. S. 1, 20 (2010). Although the merchants argue that "no one can

[3] To assess the statute's constitutionality, the Court of Appeals may need to consider a question we need not answer here: whether the statute permits two-sticker pricing schemes like the one petitioner Expressions currently uses, see n. 1, *supra*. Respondents' argument that § 518 is a constitutionally valid disclosure requirement rests on an interpretation of the statute that allows such two-sticker schemes.

seem to put a finger on just how far the law sweeps," Brief for Petitioners 51, it is at least clear that §518 proscribes their intended speech. Accordingly, the law is not vague as applied to them.[4]

C

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

It is so ordered.

JUSTICE BREYER, concurring in the judgment.

I agree with the Court that New York's statute regulates speech. But that is because virtually all government regulation affects speech. Human relations take place through speech. And human relations include community activities of all kinds—commercial and otherwise.

When the government seeks to regulate those activities, it is often wiser not to try to distinguish between "speech" and "conduct." See R. Post, Democracy, Expertise, and Academic Freedom 3–4 (2012). Instead, we can, and normally do, simply ask whether, or how, a challenged statute, rule, or regulation affects an interest that the First Amendment protects. If, for example, a challenged government regulation negatively affects the processes through which political discourse or public opinion is formed or expressed (interests close to the First Amendment's protective core), courts normally scrutinize that regulation with great care. See, *e. g.*, *Boos* v. *Barry*, 485 U. S. 312, 321 (1988). If the challenged regulation restricts the "informational function" provided by truthful commercial speech, courts will apply a "lesser" (but still elevated) form of scrutiny. *Central Hudson Gas &*

[4] For similar reasons, petitioners' related argument regarding abstention is no longer at issue. The Court of Appeals abstained from deciding whether §518 was constitutional outside of the single-sticker context, but the merchants have disavowed any intent to challenge the law outside of this context.

Elec. Corp. v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557, 563–564 (1980). If, however, a challenged regulation simply requires a commercial speaker to disclose "purely factual and uncontroversial information," courts will apply a more permissive standard of review. *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U. S. 626, 651 (1985). Because that kind of regulation normally has only a "minimal" effect on First Amendment interests, it normally need only be "reasonably related to the State's interest in preventing deception of consumers." *Ibid.* Courts apply a similarly permissive standard of review to "regulatory legislation affecting ordinary commercial transactions." *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152 (1938). Since that legislation normally does not significantly affect the interests that the First Amendment protects, we normally look only for assurance that the legislation "rests upon some rational basis." *Ibid.*

I repeat these well-known general standards or judicial approaches both because I believe that determining the proper approach is typically more important than trying to distinguish "speech" from "conduct," see *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 582 (2011) (BREYER, J., dissenting), and because the parties here differ as to which approach applies. That difference reflects the fact that it is not clear just what New York's law does. On its face, the law seems simply to tell merchants that they cannot charge higher prices to credit-card users. If so, then it is an ordinary piece of commercial legislation subject to "rational basis" review. See *44 Liquormart, Inc.* v. *Rhode Island*, 517 U. S. 484, 507 (1996) (opinion of Stevens, J.). It may, however, make more sense to interpret the statute as working like the expired federal law that it replaced. If so, it would require a merchant, who posts prices and who wants to charge a higher credit-card price, simply to disclose that credit-card price. See 15 U. S. C. §§ 1602(q), (x), 1666f(a)(2) (1982 ed.); see also *post*, at 59–60 (SOTOMAYOR, J., concurring in judgment). In

that case, though affecting the merchant's "speech," it would not hinder the transmission of information to the public; the merchant would remain free to say whatever it wanted so long as it also revealed its credit-card price to customers. Accordingly, the law would still receive a deferential form of review. See *Zauderer*, *supra*, at 651.

Nonetheless, petitioners suggest that the statute does more. See, *e. g.*, Brief for Petitioners 28 (arguing that the statute forbids "[f]raming the price difference . . . as a credit surcharge"). Because the statute's operation is unclear and because its interpretation is a matter of state law, I agree with the majority that we should remand the case to the Second Circuit. I also agree with JUSTICE SOTOMAYOR that on remand, it may well be helpful for the Second Circuit to ask the New York Court of Appeals to clarify the nature of the obligations the statute imposes. See N. Y. Comp. Code, Rules & Regs., tit. 22, Rule 500.27(a) (2016) (permitting "any United States Court of Appeals" to certify "dispositive questions of [New York] law to the [New York] Court of Appeals").

JUSTICE SOTOMAYOR, with whom JUSTICE ALITO joins, concurring in the judgment.

The Court addresses only one part of one half of petitioners' First Amendment challenge to the New York statute at issue here. This quarter-loaf outcome is worse than none. I would vacate the judgment below and remand with directions to certify the case to the New York Court of Appeals for a definitive interpretation of the statute that would permit the full resolution of petitioners' claims. I thus concur only in the judgment.

I

New York prohibits its merchants from "impos[ing] a surcharge on a [customer] who elects to use a credit card in lieu of payment by cash, check, or similar means." N. Y. Gen. Bus. Law Ann. § 518 (West 2012). A merchant who violates

this prohibition commits a misdemeanor and risks "a fine not to exceed five hundred dollars or a term of imprisonment up to one year, or both." *Ibid.*

A

Section 518 can be interpreted in several ways. On first read, its prohibition on "impos[ing] a surcharge" on credit card customers appears to prohibit charging customers who pay with a credit card more than those who pay by other means. See Black's Law Dictionary 1579 (9th ed. 2009) ("surcharge" means "[a]n additional tax, charge, or cost"). That is, § 518 may require a merchant to charge all customers the same price, no matter the form of payment.

An earlier federal law containing an almost identical prohibition muddies the path to this plain text reading. A 1976 amendment to the Truth in Lending Act set out a temporary prohibition barring a "seller in any sales transaction" from "impos[ing] a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means." § 3(c)(1), 90 Stat. 197. The amendment also defined a "surcharge" as "any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means." § 3(a), *ibid.* "[R]egular price" was later defined to mean the displayed price if a merchant displayed only one price or the credit card price if the merchant either did not display prices or displayed both cash and credit card prices. § 102(a), 95 Stat. 144. Under that definition, a merchant violated the federal prohibition on "impos[ing] a surcharge" by displaying in dollars-and-cents form only one price—the cash price—and then charging credit card customers a higher price.[1]

When the federal law lapsed in 1984, New York enacted § 518, which sets out the same ban on "impos[ing] a sur-

[1] This is the interpretation of the lapsed federal ban offered by the United States and accepted by the majority. For purposes of this opinion, I assume that this interpretation is correct.

charge." New York borrowed the federal prohibition almost verbatim. But it chose, without explanation, not to borrow the federal definitions or to enact clarifying definitions of its own.

The difference between the laws leaves § 518 open to at least three interpretations. It could be read in line with its plain text to require that a merchant charge the same price to all his customers. It could be read in line with the lapsed federal ban to permit a merchant to charge different prices to cash and credit card customers but to prohibit a merchant from displaying in dollars-and-cents form only the cash price and then charging credit card customers a higher price. On this reading, § 518 would not apply where a merchant displays in dollars-and-cents form only the credit card price and then charges a lower price to cash customers, or where a merchant displays both the cash and credit card prices in dollars-and-cents form. Or it could be read more broadly, based on the omission of the definitions that had limited the federal ban's scope. On this reading, § 518 might prohibit a merchant from characterizing the difference between the cash and credit card prices as a "surcharge," no matter how he displays his prices.[2]

[2] Section 518's sparse enforcement history does not clear up the ambiguity. New York has pursued one § 518 prosecution, which resulted in a conviction later set aside on appeal. The decision supports, but does not require, giving § 518 a broader reading than the lapsed federal ban. See *People* v. *Fulvio*, 136 Misc. 2d 334, 345, 517 N. Y. S. 2d 1008, 1015 (1987) (stating that § 518 permits a conviction for being "careless enough to describe the higher price in terms which amount to the 'credit price' having been derived from adding a charge to the lower price" (emphasis deleted)). A more recent enforcement spree is more opaque. A group of merchants state that when a customer called asking for their prices, they would quote the cash price and tell the customers they charged, for example, "a $.05 surcharge" for payment with a credit card. See, *e. g.*, App. 107. They state that in 2009 the New York attorney general's office told them that they had violated § 518, directed them to stop, and explained that they could comply with § 518 by quoting the credit card price and offering a "discoun[t]" for payment with cash. *Ibid.* While these merchants' acts

Confirming the elusive nature of § 518, New York has pressed almost all of these interpretations during this litigation. Before the District Court, it viewed § 518 as mirroring the lapsed federal ban. See 975 F. Supp. 2d 430, 442 (SDNY 2013). Before the Second Circuit, it offered the lapsed federal ban as a narrowing interpretation, thus suggesting that § 518 applies more broadly than that provision. See 808 F. 3d 118, 140, n. 13 (2015). And before this Court, it explained that other prosecutorial entities in New York are not bound by its interpretation of § 518 (or the interpretations of the state district attorneys who are parties to this case), leaving open the possibility of still other interpretations. See Tr. of Oral Arg. 40.[3]

B

Petitioners here are five New York merchants. When a customer pays with a credit card, petitioners (like all merchants) are charged a processing fee by the card issuer. Petitioners want to pass that fee on to their credit card paying customers, but not their cash paying customers. They want to charge cash customers one price and credit card customers a higher price that includes the processing fee. One petitioner, Expressions Hair Design, currently does pass the costs of credit card processing fees on to its credit card paying customers. The other four charge one price to all cus-

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would have violated the lapsed federal ban—by stating a single cash price and then charging a higher price to credit card customers—the recent enforcement actions do not demonstrate that § 518 prohibits only those acts and stretches no further. And because the New York attorney general lacks the authority to adopt an interpretation of § 518 that binds other prosecutorial entities in the State, these enforcement actions speak only to how the attorney general may interpret § 518. See Tr. of Oral Arg. 40–41.

[3] The multiple available interpretations of § 518 do not render § 518 so vague as to violate the Due Process Clause. But they do render § 518 ambiguous enough to warrant asking the New York Court of Appeals to resolve the statute's meaning.

tomers. They set their prices to account for the processing fees they predict they will incur.

All five would prefer to use a different pricing system or display than the ones they use now. Expressions Hair Design and Five Points Academy would like to charge cash and credit card customers two different prices and to display a dollars-and-cents cash price alongside the extra charge for credit card customers—say, "$100 with a 3% credit card charge" or "$100 with a $3 credit card charge." Brooklyn Farmacy & Soda Fountain, Brite Buy Wines & Spirits, and Patio.com want to charge cash and credit card customers two different prices and to characterize the difference in prices as a "surcharge" when they display or convey their prices to customers. App. 47–48, 51, 57.

All five do not use their preferred pricing systems or displays for fear of violating § 518. Expressions Hair Design and Five Points Academy believe § 518 prohibits their pricing display because it would convey the credit card processing costs impermissibly as a surcharge, rather than permissibly as a discount—say, "$103 with a 3% discount for cash payment" or "$103 with a $3 discount for cash payment." The other three petitioners believe that § 518 regulates how they can describe the difference between cash and credit card prices. Because § 518 does not, in their view, clearly state just how it regulates those descriptions, they have decided that the uncertainty counsels against a change.

Petitioners view § 518 as an unconstitutional restriction on their ability to display and describe their prices to their customers. And so they sued and challenged the law on First Amendment grounds.

II

Resolving petitioners' challenge to § 518 requires an accurate picture of how, exactly, the statute works. That understanding is needed both to decide whether § 518 prohibits petitioners' preferred pricing systems and displays and, if so,

whether that prohibition is consistent with the First Amendment. See 808 F. 3d, at 141; *ante,* at 48, n. 3.

But the Second Circuit did not decide just how far § 518 extends. It instead decided how § 518 applies to part of the petitioners' challenge—the pricing display Expressions Hair Design and Five Points Academy wish to use—and declined to decide how, or even if, § 518 applies to the rest of the challenge. While § 518 evades easy interpretation, a partial decision was neither required nor right. The court below erred by not asking the New York Court of Appeals for a definitive interpretation of § 518, and this Court errs by not correcting it.

A

Given a constitutional challenge that turned on the interpretation of an ambiguous state statute not yet definitively interpreted by the state courts, the Second Circuit faced a problem. Any interpretation it gave § 518 would not be authoritative since state courts, not federal courts, have the final word on the interpretation of state statutes. But it had before it two routes—abstention and certification—to a solution. Both would have allowed it to secure an authoritative interpretation of § 518 before resolving the constitutional challenge.

In this context, abstention and certification serve the same goals. Both recognize that when the outcome of a constitutional challenge turns on the proper interpretation of state law, a federal court's resolution of the constitutional question may turn out to be unnecessary. The state courts could later interpret the state statute differently. And the state court's different interpretation might result in a statute that implicates no constitutional question, or that renders the federal court's constitutional analysis irrelevant. See, *e. g., Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 79 (1997); *Brockett* v. *Spokane Arcades, Inc.*, 472 U. S. 491, 507–509 (1985) (O'Connor, J., concurring). Abstention and certi-

fication avoid this risk by deferring a federal court's decision on the constitutionality of the state statute until a state court has authoritatively resolved the antecedent state-law question.

Abstention is a blunt instrument. Under *Railroad Comm'n of Tex.* v. *Pullman Co.*, 312 U. S. 496 (1941), a federal court's decision to abstain sends the plaintiff to state court. Once the plaintiff obtains the state courts' views on the statute, he may return to federal court, state-court decision in hand, for resolution of the constitutional question. *Pullman* abstention thus "entail[s] a full round of litigation in the state court system before any resumption of proceedings in federal court." *Arizonans for Official English*, 520 U. S., at 76.

Certification offers a more precise tool. In States that have authorized certification, a federal court may "put the [state-law] question directly to the State's highest court, reducing the delay, cutting the cost, and increasing the assurance of gaining an authoritative response." *Ibid.* The rule relevant here is typical of certification statutes. New York allows a federal court of appeals to certify "determinative questions of New York law . . . involved in a case pending before that court for which no controlling precedent of the Court of Appeals exists . . . to the [New York] Court of Appeals." N. Y. Comp. Code, Rules & Regs., tit. 22, Rule 500.27(a) (2016).[4]

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[4] The New York Court of Appeals regularly accepts and answers certified questions. See, *e. g.*, *Flo & Eddie, Inc.* v. *Sirius XM Radio, Inc.*, 28 N. Y. 3d 583, 70 N. E. 3d 936 (Dec. 20, 2016) (certified Apr. 13, 2016); *Pasternack* v. *Laboratory Corp. of Am. Holdings*, 27 N. Y. 3d 817, 59 N. E. 3d 485 (June 30, 2016) (certified Nov. 17, 2015); *Matter of Viking Pump, Inc.*, 27 N. Y. 3d 244, 52 N. E. 3d 1144 (May 3, 2016) (certified June 10, 2015); *Beck Chevrolet Co.* v. *General Motors LLC*, 27 N. Y. 3d 379, 53 N. E. 3d 706 (May 3, 2016) (certified May 19, 2015); *Ministers & Missionaries Benefit Bd.* v. *Snow*, 26 N. Y. 3d 466, 45 N. E. 3d 917 (Dec. 15, 2015) (certified Mar. 5, 2015). The Second Circuit has "actively and vigorously em-

While the decision to certify "rests in the sound discretion of the federal court," *Lehman Brothers* v. *Schein*, 416 U. S. 386, 391 (1974), this Court has repeatedly emphasized that certification offers clear advantages over abstention. "[M]ere difficulty in ascertaining local law is no excuse for" abstaining and "remitting the parties to a state tribunal for the start of another lawsuit." *Id.*, at 390. Keeping the case, waiting for an answer on the certified question, and then fully resolving the issues "in the long run save[s] time, energy, and resources and helps build a cooperative judicial federalism." *Id.*, at 391. As a result, "the availability of certification greatly simplifies the analysis" of whether to abstain. *Bellotti* v. *Baird*, 428 U. S. 132, 151 (1976); see also *Arizonans for Official English*, 520 U. S., at 75 ("Certification today covers territory once dominated by a deferral device called *Pullman* abstention" (internal quotation marks omitted)). And this Court has described abstention as particularly problematic where, as here, a challenge to a state statute rests on the First Amendment. Cf. *Virginia* v. *American Booksellers Assn., Inc.*, 484 U. S. 383, 396 (1988) ("Certification, in contrast to the more cumbersome and (in this context) problematic abstention doctrine, is a method by which we may expeditiously obtain that construction"); *Houston* v. *Hill*, 482 U. S. 451, 467–468 (1987).

The court below chose a convoluted course: It rejected certification, abstained in part, and decided the question in part. It did so by dividing petitioners' challenge into two parts. As to the first part, it held that § 518 did prohibit the pricing display that Expressions Hair Design and Five Points Academy prefer: displaying the cash price alongside the credit

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ployed" certification. Kaye, Tribute to Judge Guido Calabresi, 70 N. Y. U. Ann. Survey Am. L. 33, 34 (2014) (noting, based on service as the Chief Judge of the New York Court of Appeals, that certification by the Second Circuit "has done an enormous amount to bridge the gap between our state and federal court systems").

card charge.[5] It found this application of § 518 consistent with the First Amendment. See 808 F. 3d, at 130. As to the second part, it declined to address whether § 518 speaks to, or unconstitutionally restricts, how petitioners who wish to display both the cash and credit card prices in dollars-and-cents form can describe the difference between those prices. See *id.*, at 136. It doubted whether § 518 did reach that broadly and assumed that, even if it did, the New York state courts would construe the statute more narrowly—in line with the lapsed federal provision. And so the court declined to certify the question and chose instead to abstain from deciding this part of petitioners' challenge. See *id.*, at 137–139. It did so even though New York, responsible for enforcing § 518, had "never quite abandon[ed]" its position that § 518 might reach more broadly than the lapsed federal provision. *Id.*, at 140, n. 13.

The Second Circuit should have exercised its discretion to certify the antecedent state-law question here: What pricing schemes or pricing displays does § 518 prohibit? Certification might have avoided the need for a constitutional ruling altogether. If the state court reads § 518 only as a price regulation, no constitutional concerns are implicated. Compare *44 Liquormart, Inc.* v. *Rhode Island*, 517 U. S. 484, 507 (1996) (plurality opinion) ("direct regulation" of prices does "not involve any restriction on speech"), with *Virginia Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U. S. 748, 761 (1976) (price advertisements contain protected speech because they convey a merchant's "'idea'" that "'I will sell you the X prescription drug at the Y price'").

Or certification might have limited the scope of the constitu-

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[5] The court below did not truly engage with the plain text reading of § 518, under which a merchant may not charge different prices to cash and credit card customers. See 808 F. 3d 118, 128 (CA2 2015). It is free to consider that reading on remand in light of the Court's constitutional holding.

tional challenge in the case. If the state court reads § 518 to mirror the lapsed federal ban, that would eliminate the need for a constitutional ruling on the second part of petitioners' challenge (premised on a reading of § 518 that prohibits more than the lapsed federal ban). At the very least, certification would have allowed the court to resolve petitioners' entire challenge in one go.

The Second Circuit declined to exercise its discretion to certify because it viewed the "state of the record" as too underdeveloped. 808 F. 3d, at 141. It thought that the New York Court of Appeals could not interpret § 518, and that it could not resolve the challenge to § 518, based on that record. Both issues are pure questions of law: whether § 518 prohibits petitioners' preferred pricing systems and displays (a statutory interpretation question for the New York Court of Appeals) and whether § 518 survives petitioners' First Amendment challenge (a constitutional question for the Second Circuit). And both issues turn on only a limited set of facts—the pricing systems and displays that petitioners wish to use. As discussed above, the record contains those facts. The "state of the record" thus does not counsel against certification. Given the significant benefits certification offered and given the absence of persuasive downsides identified by the Second Circuit, the decision not to certify was an abuse of discretion.

B

The consequences of the decision not to certify reverberate throughout the Court's opinion today. For lack of a definitive interpretation of § 518, it chooses to address only the first part of petitioners' challenge and to defer to the Second Circuit's partial interpretation of § 518.[6] *Ante*, at 45–46. It

[6] It does so by invoking an interpretive rule of deference to a lower federal court's construction of the law of a State within its jurisdiction, in line with the general principle that this Court does not resolve issues of state law. I do not read the Court's deference to the Second Circuit as holding that this Court will defer to a lower federal court's interpretation of state

then holds that § 518 does restrict constitutionally protected speech. *Ante*, at 46–48. But it does not decide whether § 518's restriction is constitutionally permissible because doing so would require it to answer the ever-present question in this case: "whether the statute permits . . . pricing schemes like the one . . . Expressions currently uses." *Ante*, at 48, n. 3. And so it sends this case back to the Second Circuit for further proceedings. *Ante*, at 48.

III

"The complexity" of this case "might have been avoided," *Arizonans for Official English*, 520 U. S., at 79, had the Second Circuit certified the question of § 518's meaning when the case was first before it. The Court's opinion does not foreclose the Second Circuit from choosing that route on remand. But rather than contributing to the piecemeal resolution of this case, I would vacate the judgment below and remand with instructions to certify the case to the New York Court of Appeals to allow it to definitively interpret § 518. I thus concur only in the judgment.

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law even where doing so would cast serious constitutional doubt on, or invalidate, a state law. Such a rule would be incorrect. See *Frisby* v. *Schultz*, 487 U. S. 474, 483 (1988) (describing lower courts' interpretation as "plain error . . . [t]o the extent they endorsed a broad reading of the" law at issue because "the lower courts ran afoul of the well-established principle that statutes will be interpreted to avoid constitutional difficulties"). The Court's silence on the relevance of the avoidance canon to the Second Circuit's interpretation is consistent with an unexpressed conclusion, with which I disagree, that no narrowing construction is available that would avoid constitutional concerns or that a broader constriction raises no constitutional concerns.

Syllabus

DEAN *v.* UNITED STATES

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

No. 15–9260. Argued February 28, 2017—Decided April 3, 2017

Petitioner Dean and his brother committed two robberies of drug dealers. During each robbery, Dean's brother threatened and assaulted the victim with a gun, while Dean searched the premises for valuables. Dean was convicted of multiple robbery and firearms counts, as well as two counts of possessing a firearm in furtherance of a crime of violence, in violation of 18 U. S. C. § 924(c). Section 924(c) criminalizes using or carrying a firearm during and in relation to a crime of violence or drug trafficking crime, or possessing a firearm in furtherance of such an underlying crime. That provision mandates a distinct penalty to be imposed "in addition to the punishment provided for [the predicate] crime," § 924(c)(1)(A). Further, § 924(c) says that any sentence mandated by that provision must run consecutively to "any other term of imprisonment imposed on the person," including any sentence for the predicate crime, § 924(c)(1)(D)(ii). A first conviction under § 924(c) carries a five-year mandatory minimum penalty, § 924(c)(1)(A)(i), while a second conviction carries an additional 25-year mandatory minimum, § 924(c)(1)(C)(i). For Dean, that meant a 30-year mandatory minimum, to be served after and in addition to any sentence he received for his other counts of conviction.

At sentencing, Dean urged the District Court to consider his lengthy mandatory minimum sentences when calculating the sentences for his other counts and to impose concurrent one-day sentences for those counts. The judge said he would have agreed to Dean's request but understood § 924(c) to preclude a sentence of 30 years plus one day. On appeal, Dean argued that the District Court had erred in concluding that it could not vary from the Guidelines range based on the mandatory minimum sentences he would receive under § 924(c). The Court of Appeals ruled that Dean's argument was foreclosed by Circuit precedent and that his sentence was otherwise substantively reasonable.

Held: Section 924(c) does not prevent a sentencing court from considering a mandatory minimum imposed under that provision when calculating an appropriate sentence for the predicate offense. Pp. 66–71.

(a) Sentencing courts have long enjoyed discretion in the sort of information they may consider when setting an appropriate sentence, and they continue to do so even as federal laws have required them to evalu-

ate certain factors when exercising their discretion. *Pepper* v. *United States*, 562 U. S. 476, 487–489. Section 3553(a) specifies the factors courts are to consider when imposing a sentence. They include "the nature and circumstances of the offense and the history and characteristics of the defendant," as well as "the need for the sentence imposed" to serve the four overarching aims of sentencing: just punishment, deterrence, protection of the public, and rehabilitation. The § 3553(a) factors are used to set both the length of separate prison terms, § 3582(a), and an aggregate prison term comprising separate sentences for multiple counts of conviction, § 3584(b). As a general matter, these sentencing provisions permit a court imposing a sentence on one count of conviction to consider sentences imposed on other counts.

The Government argues that district courts should calculate the appropriate term of imprisonment for each individual offense, disregarding whatever sentences a defendant may face on other counts. Only when determining an aggregate prison sentence, the Government maintains, should a district court consider the effect of those other sentences. Nothing in the law requires such an approach. There is no reason that the § 3553(a) factors may not also be considered when determining a prison sentence for each individual offense in a multicount case. The Government's interpretation is at odds not only with the text of those provisions but also with the Government's own practice in "sentencing package cases." *Greenlaw* v. *United States*, 554 U. S. 237, 253. Pp. 67–69.

(b) The Government points to two limitations in § 924(c) that, in its view, restrict the authority of sentencing courts to consider a sentence imposed under § 924(c) when calculating a just sentence for the predicate count. Neither limitation supports the Government's position. First, that a mandatory sentence under § 924(c) must be imposed "in addition to the punishment provided" for the predicate crime says nothing about the length of a non-§ 924(c) sentence, much less about what information a court may consider in determining that sentence. Second, nothing in the requirement of consecutive sentences prevents a district court from imposing a 30-year mandatory minimum sentence under § 924(c) and a one-day sentence for the predicate crime, provided those terms run one after the other.

The Government would, in effect, have this Court read into § 924(c) the limitation explicitly made in § 1028A(b)(3), which provides that in determining the appropriate length of imprisonment for a predicate felony, "a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment imposed or to be imposed for a violation of this section." But "[d]rawing meaning from silence is particularly

inappropriate" where, as demonstrated in § 1028A, "Congress has shown that it knows how to direct sentencing practices in express terms." *Kimbrough* v. *United States*, 552 U. S. 85, 103. Pp. 69–71.

810 F. 3d 521, reversed and remanded.

ROBERTS, C. J., delivered the opinion for a unanimous Court.

Alan G. Stoler, by appointment of the Court, 580 U. S. 1029, argued the cause for petitioner. With him on the briefs were *Jerry M. Hug*, *Jeffrey T. Green*, *Tobias S. Loss-Eaton*, and *Sarah O'Rourke Schrup*.

Anthony A. Yang argued the cause for the United States. With him on the brief were *Acting Solicitor General Gershengorn*, *Acting Assistant Attorney General Bitkower*, and *Deputy Solicitor General Dreeben*.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Congress has made it a separate offense to use or possess a firearm in connection with a violent or drug trafficking crime. 18 U. S. C. § 924(c). That separate firearm offense carries a mandatory minimum sentence of five years for the first conviction and 25 years for a second. Those sentences must be in addition to and consecutive to the sentence for the underlying predicate offense. The question presented is whether, in calculating the sentence for the predicate offense, a judge must ignore the fact that the defendant will serve the mandatory minimums imposed under § 924(c).

I

Levon Dean, Jr., and his brother robbed a methamphetamine dealer in a Sioux City motel room. Less than two weeks later, they robbed another drug dealer at his home. During each robbery, Dean's brother threatened the victim

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**Craig D. Singer*, *Amy Mason Saharia*, *Barbara E. Bergman*, *Mary Price*, and *Peter Goldberger* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging reversal.

with a modified semiautomatic rifle, later using that rifle to club the victim on the head. Dean, meanwhile, ransacked the area for drugs, money, and other valuables.

A federal grand jury returned a multicount indictment charging Dean and his brother with a host of crimes related to the two robberies. Following a joint trial, a jury convicted Dean of one count of conspiracy to commit robbery, two counts of robbery, and one count of possessing a firearm as a convicted felon. He was also convicted of two counts of possessing and aiding and abetting the possession of a firearm in furtherance of a crime of violence, in violation of 18 U. S. C. §§ 2 and 924(c). Section 924(c) criminalizes using or carrying a firearm during and in relation to a crime of violence or drug trafficking crime, or possessing a firearm in furtherance of such an underlying crime. There is no dispute that Dean's two robbery convictions qualified as predicate crimes of violence for purposes of § 924(c).

Section 924(c) does more than create a distinct offense. It also mandates a distinct penalty, one that must be imposed "*in addition to* the punishment provided for [the predicate] crime of violence or drug trafficking crime." § 924(c)(1)(A) (emphasis added). A first-time offender under § 924(c) receives a five-year mandatory minimum. A "second or subsequent conviction" under § 924(c) carries an additional 25-year mandatory minimum. §§ 924(c)(1)(A)(i), (C)(i).

A sentence imposed under § 924(c) must run consecutively to "any other term of imprisonment imposed on the person," including any sentence for the predicate crime "during which the firearm was used, carried, or possessed." § 924(c)(1)(D)(ii). For Dean, this meant a 30-year mandatory minimum, to be served after and in addition to any sentence he received for his other counts of conviction.

At sentencing Dean did not dispute that each of his four other counts resulted in a sentencing range of 84–105 months under the Sentencing Guidelines. He argued, however, that the court should consider his lengthy mandatory minimum

sentences when calculating the sentences for his other counts, and impose concurrent one-day sentences for those counts.

Finding that Dean was "clearly the follower" and that he lacked "any significant history of any violence," the District Judge agreed that 30 years plus one day was "more than sufficient for a sentence in this case." App. 26. Yet the judge understood § 924(c) to preclude such a sentence. In his view, he was required to disregard Dean's 30-year mandatory minimum when determining the appropriate sentences for Dean's other counts of conviction. Viewed on their own—and not as part of a combined package—those counts plainly warranted sentences longer than one day. In the end, the judge still granted a significant downward variance from the 84–105 month Guidelines range. Dean received concurrent sentences of 40 months for each non-§ 924(c) conviction, which, when added to his 360-month mandatory minimum, yielded a total sentence of 400 months. Dean appealed.

Before the Eighth Circuit, Dean argued that the District Court had erred in concluding that it could not vary from the Guidelines range based on the mandatory minimum sentences he would receive under § 924(c). The Court of Appeals disagreed, ruling that Dean's argument was foreclosed by Circuit precedent and that his sentence was otherwise substantively reasonable. 810 F. 3d 521 (2015). We granted certiorari. 580 U. S. 951 (2016).

II

Sentencing courts have long enjoyed discretion in the sort of information they may consider when setting an appropriate sentence. *Pepper* v. *United States*, 562 U. S. 476, 487–489 (2011). This durable tradition remains, even as federal laws have required sentencing courts to evaluate certain factors when exercising their discretion. *Ibid.*

A

Section 3553(a) of Title 18 specifies the factors courts are to consider in imposing a sentence. The list of factors is preceded by what is known as the parsimony principle, a broad command that instructs courts to "impose a sentence sufficient, but not greater than necessary, to comply with" the four identified purposes of sentencing: just punishment, deterrence, protection of the public, and rehabilitation. *Ibid.* A sentencing court is then directed to take into account "the nature and circumstances of the offense and the history and characteristics of the defendant," as well as "the need for the sentence imposed" to serve the four overarching aims of sentencing. §§3553(a)(1), (2)(A)–(D); see *Gall* v. *United States*, 552 U. S. 38, 50, n. 6 (2007). The court must also consider the pertinent guidelines and policies adopted by the Sentencing Commission. §§3553(a)(4), (5); see *id.*, at 50, n. 6.

The §3553(a) factors are used to set both the length of separate prison terms and an aggregate prison term comprising separate sentences for multiple counts of conviction. Under §3582 a court, "in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a)." §3582(a). And §3584 provides: "[I]n determining whether the terms imposed are to be ordered to run concurrently or consecutively, [the court] shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a)." §3584(b).

As a general matter, the foregoing provisions permit a court imposing a sentence on one count of conviction to consider sentences imposed on other counts. Take the directive that a court assess "the need for the sentence imposed . . . to protect the public from further crimes of the defendant." §3553(a)(2)(C). Dean committed the two robberies at issue

here when he was 23 years old. That he will not be released from prison until well after his fiftieth birthday because of the § 924(c) convictions surely bears on whether—in connection with his predicate crimes—still more incarceration is necessary to protect the public. Likewise, in considering "the need for the sentence imposed . . . to afford adequate deterrence," § 3553(a)(2)(B), the District Court could not reasonably ignore the deterrent effect of Dean's 30-year mandatory minimum.

According to the Government, this is not how sentencing is meant to work. Rather, district courts should calculate the appropriate term of imprisonment for each individual offense. That determination, insists the Government, disregards whatever sentences the defendant may also face on other counts. Not until deciding whether to run sentences consecutively or concurrently—*i. e.*, not until applying § 3584—should a district court consider the effect of those other sentences. Brief for United States 21–26.

Nothing in the law requires such an approach. The Government states that the § 3553(a) factors are "normally relevant in determining the total length of imprisonment" under § 3584. *Id.*, at 28. No doubt they are. But there is no reason they may not also be considered at the front end, when determining a prison sentence for each individual offense in a multicount case.

At odds with the text, the Government's interpretation is also at odds with its own practice in "sentencing package cases." *Greenlaw* v. *United States*, 554 U. S. 237, 253 (2008). "Those cases typically involve multicount indictments and a successful attack by a defendant on some but not all of the counts of conviction." *Ibid.* In those cases—including ones where § 924(c) convictions are invalidated—the Government routinely argues that an appellate court should vacate the entire sentence so that the district court may increase the sentences for any remaining counts up to the limit set by the original aggregate sentence. See *United States* v. *Smith*,

756 F. 3d 1179, 1188–1189, and n. 5 (CA10 2014) (collecting cases). And appellate courts routinely agree. *Id.*, at 1189, and n. 6 (same). As we understand it, the Government's theory in those cases is that the district court may have relied on a now-vacated conviction when imposing sentences for the other counts. But that theory of course directly contradicts the position the Government now advances—that district courts must determine sentences independently of one another, accounting for multiple sentences only when deciding whether to stack them or run them concurrently.

B

Nothing in § 924(c) restricts the authority conferred on sentencing courts by § 3553(a) and the related provisions to consider a sentence imposed under § 924(c) when calculating a just sentence for the predicate count.

The Government points to two limitations in § 924(c). First, the Government notes, a mandatory sentence under § 924(c) must be imposed "*in addition to* the punishment provided" for the predicate crime. § 924(c)(1)(A) (emphasis added). This limitation says nothing about the length of a non-§ 924(c) sentence, much less about what information a court may consider in determining that sentence. Whether the sentence for the predicate offense is one day or one decade, a district court does not violate the terms of § 924(c) so long as it imposes the mandatory minimum "in addition to" the sentence for the violent or drug trafficking crime.

Second, § 924(c) states that "no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the [predicate] crime during which the firearm was used, carried, or possessed." § 924(c)(1)(D)(ii). Nothing in that language prevents a district court from imposing a 30-year mandatory minimum sentence under § 924(c) and a one-day sentence for the predicate violent or drug trafficking crime, provided

those terms run one after the other. The Government emphasizes that the requirement of consecutive sentences removes the discretion to run sentences concurrently that district courts exercise under § 3584. We agree. So does Dean, for that matter. But we fail to see the significance of the point. The bar on imposing concurrent sentences does not affect a court's discretion to consider a mandatory minimum when calculating each individual sentence.

The Government would, in effect, have us read an additional limitation into § 924(c): Where § 924(c) says "in addition to the punishment provided for [the predicate] crime of violence," what the statute *really* means is "in addition to the punishment provided for [the predicate] crime of violence *in the absence of a Section 924(c) conviction*." See Reply Brief 2. We have said that "[d]rawing meaning from silence is particularly inappropriate" where "Congress has shown that it knows how to direct sentencing practices in express terms." *Kimbrough* v. *United States*, 552 U. S. 85, 103 (2007). Congress has shown just that in another statute, 18 U. S. C. § 1028A. That section, which criminalizes the commission of identity theft "during and in relation to" certain predicate felonies, imposes a mandatory minimum sentence "in addition to the punishment provided for" the underlying offense. § 1028A(a)(1). It also says that the mandatory minimum must be consecutive to the sentence for the underlying offense. § 1028A(b)(2). So far, § 1028A tracks § 924(c) in relevant respects. But § 1028A goes further: It provides that in determining the appropriate length of imprisonment for the predicate felony "a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment imposed or to be imposed for a violation of this section." § 1028A(b)(3). Section 1028A says just what the Government reads § 924(c) to say—of course, without *actually* saying it.

The Government responds that § 1028A was passed in 2004, long after Congress enacted the 1984 amendments creating the current sentencing regime in § 924(c). Brief for United States 46. True. But § 1028A confirms that it would have been easy enough to make explicit what the Government argues is implicit in § 924(c). It also underscores that for over a decade Congress has been aware of a clear way to bar consideration of a mandatory minimum, but never during that time changed the language of § 924(c) to mirror that of § 1028A, even as it has amended other aspects of § 924(c).

* * *

The Government speaks of Congress's intent to prevent district courts from bottoming out sentences for predicate § 924(c) offenses whenever they think a mandatory minimum under § 924(c) is already punishment enough. But no such intent finds expression in the language of § 924(c). That language simply requires any mandatory minimum under § 924(c) to be imposed "in addition to" the sentence for the predicate offense, and to run consecutively to that sentence. Nothing in those requirements prevents a sentencing court from considering a mandatory minimum under § 924(c) when calculating an appropriate sentence for the predicate offense.

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

It is so ordered.

Syllabus

McLANE CO., INC. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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

No. 15–1248. Argued February 21, 2017—Decided April 3, 2017

Damiana Ochoa worked for eight years in a physically demanding job for petitioner McLane Co., a supply-chain services company. McLane requires employees in those positions—both new employees and those returning from medical leave—to take a physical evaluation. When Ochoa returned from three months of maternity leave, she failed the evaluation three times and was fired. She then filed a sex discrimination charge under Title VII of the Civil Rights Act of 1964. The Equal Employment Opportunity Commission (EEOC) began an investigation, but McLane declined its request for so-called "pedigree information": names, Social Security numbers, addresses, and telephone numbers of employees asked to take the evaluation. After the EEOC expanded the investigation's scope both geographically (to cover McLane's national operations) and substantively (to investigate possible age discrimination), it issued subpoenas, as authorized by 42 U. S. C. § 2000e–9, requesting pedigree information relating to its new investigation. When McLane refused to provide the information, the EEOC filed two actions in Federal District Court—one arising out of Ochoa's charge and one arising out of the EEOC's own age-discrimination charge—seeking enforcement of its subpoenas. The District Judge declined to enforce the subpoenas, finding that the pedigree information was not relevant to the charges, but the Ninth Circuit reversed. Reviewing the District Court's decision to quash the subpoena *de novo*, the court concluded that the lower court erred in finding the pedigree information irrelevant.

Held: A district court's decision whether to enforce or quash an EEOC subpoena should be reviewed for abuse of discretion, not *de novo*. Pp. 79–85.

(a) Both factors that this Court examines when considering whether such decision should be subject to searching or deferential appellate review point toward abuse-of-discretion review. First, the longstanding practice of the courts of appeals is to review a district court's decision to enforce or quash an administrative subpoena for abuse of discretion. Title VII confers on the EEOC the same authority to issue subpoenas that the National Labor Relations Act (NLRA) confers on

the National Labor Relations Board (NLRB). During the three decades between the NLRA's enactment and the incorporation of its subpoena-enforcement provisions into Title VII, every Circuit to consider the question had held that a district court's decision on enforcement of an NLRB subpoena is subject to abuse-of-discretion review. Congress amended Title VII to authorize EEOC subpoenas against this uniform backdrop of deferential appellate review, and today, nearly every Court of Appeals reviews a district court's decision whether to enforce an EEOC subpoena for abuse of discretion. This "long history of appellate practice," *Pierce* v. *Underwood*, 487 U. S. 552, 558, carries significant persuasive weight.

Second, basic principles of institutional capacity counsel in favor of deferential review. In most cases, the district court's enforcement decision will turn either on whether the evidence sought is relevant to the specific charge or whether the subpoena is unduly burdensome in light of the circumstances. Both of these tasks are well suited to a district judge's expertise. The first requires the district court to evaluate the relationship between the particular materials sought and the particular matter under investigation—an analysis "variable in relation to the nature, purposes and scope of the inquiry." *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 209. And whether a subpoena is overly burdensome turns on the nature of the materials sought and the difficulty the employer will face in producing them—"'fact-intensive, close calls'" better suited to resolution by the district court than the court of appeals. *Cooter & Gell* v. *Hartmarx Corp.*, 496 U. S. 384, 404.

Other functional considerations also show the appropriateness of abuse-of-discretion review. For one, the district courts' considerable experience in making similar decisions in other contexts, see *Buford* v. *United States*, 532 U. S. 59, 66, gives them the "institutional advantag[e]," *id.*, at 64, that comes with greater experience. Deferential review also "streamline[s] the litigation process by freeing appellate courts from the duty of reweighing evidence and reconsidering facts already weighed and considered by the district court," *Cooter & Gell*, 496 U. S., at 404, something particularly important in a proceeding designed only to facilitate the EEOC's investigation. Pp. 79–82.

(b) Court-appointed *amicus*' arguments in support of *de novo* review are not persuasive. *Amicus* claims that the district court's primary task is to test a subpoena's legal sufficiency and thus requires no exercise of discretion. But that characterization is not inconsistent with abuse-of-discretion review, which may be employed to insulate the trial judge's decision from appellate review for the same kind of functional

concerns that underpin the Court's conclusion that abuse of discretion is the appropriate standard.

It is also unlikely that affording deferential review to a district court's subpoena decision would clash with Court of Appeals decisions that instructed district courts to defer to the EEOC's determination about the relevance of evidence to the charge at issue. Such decisions are better read as resting on the established rule that the term "relevant" be understood "generously" to permit the EEOC "access to virtually any material that might cast light on the allegations against the employer." *EEOC* v. *Shell Oil Co.*, 466 U. S. 54, 68–69. Nor do the constitutional underpinnings of the *Shell Oil* standard require a different result. While this Court has described a subpoena as a "'constructive' search," *Oklahoma Press*, 327 U. S., at 202, and implied that the Fourth Amendment is the source of the requirement that a subpoena not be "too indefinite," *United States* v. *Morton Salt Co.*, 338 U. S. 632, 652, not every decision touching on the Fourth Amendment is subject to searching review. See, *e. g.*, *United States* v. *Nixon*, 418 U. S. 683, 702. Cf. *Illinois* v. *Gates*, 462 U. S. 213, 236; *Ornelas* v. *United States*, 517 U. S. 690, distinguished. Pp. 82–85.

(c) The case is remanded so that the Court of Appeals can review the District Court's decision under the appropriate standard in the first instance. In doing so, the Court of Appeals may consider, as and to the extent it deems appropriate, any of McLane's arguments regarding the burdens imposed by the subpoena. P. 85.

804 F. 3d 1051, vacated and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, BREYER, ALITO, and KAGAN, JJ., joined. GINSBURG, J., filed an opinion concurring in part and dissenting in part, *post*, p. 85.

Allyson N. Ho argued the cause for petitioner. With her on the briefs were *Ronald E. Manthey*, *Andrew M. Jacobs*, and *William R. Peterson*.

Rachel P. Kovner argued the cause for respondent. With her on the briefs were *Acting Solicitor General Francisco*, former *Acting Solicitor General Gershengorn*, *Irving L. Gornstein*, *Jennifer S. Goldstein*, *Margo Pave*, and *James M. Tucker*.

Stephen B. Kinnaird, by invitation of the Court, 580 U. S. 985, argued the cause as *amicus curiae* in support of

the judgment below. With him on the brief were *Neal D. Mollen* and *D. Scott Carlton*.*

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Title VII of the Civil Rights Act of 1964 permits the Equal Employment Opportunity Commission (EEOC) to issue a subpoena to obtain evidence from an employer that is relevant to a pending investigation. The statute authorizes a district court to issue an order enforcing such a subpoena. The question presented here is whether a court of appeals should review a district court's decision to enforce or quash an EEOC subpoena *de novo* or for abuse of discretion. This decision should be reviewed for abuse of discretion.

I

A

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of "race, color, religion, sex, or national origin." § 703(a), 78 Stat. 255, 42 U. S. C. § 2000e–2(a). The statute entrusts the enforcement of that prohibition to the EEOC. See § 2000e–5(a); *EEOC* v. *Shell Oil Co.*, 466 U. S. 54, 61–62 (1984). The EEOC's responsibilities "are triggered by the filing of a specific sworn charge of discrimination," *University of Pa.* v. *EEOC*, 493 U. S. 182, 190 (1990), which can be filed either by the person alleging discrimination or by the EEOC itself, see § 2000e–5(b). When it receives a charge, the EEOC must first notify the employer, *ibid.*, and must then investigate "to determine whether there is reasonable cause to believe that the charge is true," *University of Pa.*, 493 U. S., at 190 (internal quotation marks omitted).

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*Briefs of *amici curiae* urging reversal were filed for the Equal Employment Advisory Council et al. by *Michael P. Bracken*, *Rae T. Vann*, *Kathryn Comerford Todd*, *Warren Postman*, *Karen R. Harned*, and *Elizabeth Milito*; and for Law Professors by *Evan A. Young*.

This case is about one of the tools the EEOC has at its disposal in conducting its investigation: a subpoena. In order "[t]o enable the [EEOC] to make informed decisions at each stage of the enforcement process," Title VII "confers a broad right of access to relevant evidence." *Id.*, at 191. It provides that the EEOC "shall . . . have access to, for the purposes of examination, . . . any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by" Title VII and "is relevant to the charge under investigation." 42 U. S. C. § 2000e–8(a). And the statute enables the EEOC to obtain that evidence by "authoriz[ing] [it] to issue a subpoena and to seek an order enforcing [the subpoena]." *University of Pa.*, 493 U. S., at 191; see § 2000e–9.[1] Under that authority, the EEOC may issue "subp[o]enas requiring the attendance and testimony of witnesses or the production of any evidence." 29 U. S. C. § 161(1). An employer may petition the EEOC to revoke the subpoena, see *ibid.*, but if the EEOC rejects the petition and the employer still "refuse[s] to obey [the] subp[o]ena," the EEOC may ask a district court to issue an order enforcing it, see § 161(2).

A district court's role in an EEOC subpoena-enforcement proceeding, we have twice explained, is a straightforward one. See *University of Pa.*, 493 U. S., at 191; *Shell Oil*, 466 U. S., at 72, n. 26. A district court is not to use an enforcement proceeding as an opportunity to test the strength of the underlying complaint. *Ibid.* Rather, a district court should "'satisfy itself that the charge is valid and that the material requested is "relevant" to the charge.'" *University of Pa.*, 493 U. S., at 191. It should do so cognizant of the "generou[s]" construction that courts have given the term "relevant." *Shell Oil*, 466 U. S., at 68–69 ("virtually any ma-

[1] The statute does so by conferring on the EEOC the same authority given to the National Labor Relations Board to conduct investigations. See 42 U. S. C. § 2000e–9 ("For the purpose of all . . . investigations conducted by the Commission . . . section 161 of title 29 shall apply").

terial that might cast light on the allegations against the employer"). If the charge is proper and the material requested is relevant, the district court should enforce the subpoena unless the employer establishes that the subpoena is "too indefinite," has been issued for an "illegitimate purpose," or is unduly burdensome. *Id.*, at 72, n. 26. See *United States* v. *Morton Salt Co.*, 338 U. S. 632, 652–653 (1950) ("The gist of the protection is in the requirement . . . that the disclosure sought shall not be unreasonable" (internal quotation marks omitted)).

B

This case arises out of a Title VII suit filed by a woman named Damiana Ochoa. Ochoa worked for eight years as a "cigarette selector" for petitioner McLane Co., a supply-chain services company. According to McLane, the job is a demanding one: Cigarette selectors work in distribution centers, where they are required to lift, pack, and move large bins containing products. McLane requires employees taking physically demanding jobs—both new employees and employees returning from medical leave—to take a physical evaluation. According to McLane, the evaluation "tests . . . range of motion, resistance, and speed" and "is designed, administered, and validated by a third party." Brief for Petitioner 6. In 2007, Ochoa took three months of maternity leave. When she attempted to return to work, McLane asked her to take the evaluation. Ochoa attempted to pass the evaluation three times, but failed. McLane fired her.

Ochoa filed a charge of discrimination, alleging (among other things) that she had been fired on the basis of her gender. The EEOC began an investigation, and—at its request—McLane provided it with basic information about the evaluation, as well as a list of anonymous employees that McLane had asked to take the evaluation. McLane's list included each employee's gender, role at the company, and evaluation score, as well as the reason each employee had

been asked to take the evaluation. But the company refused to provide what the parties call "pedigree information": the names, Social Security numbers, last known addresses, and telephone numbers of the employees who had been asked to take the evaluation. Upon learning that McLane used the evaluation nationwide, the EEOC expanded the scope of its investigation, both geographically (to focus on McLane's nationwide operations) and substantively (to investigate whether McLane had discriminated against its employees on the basis of age). It issued subpoenas requesting pedigree information as it related to its new investigation. But McLane refused to provide the pedigree information, and so the EEOC filed two actions in Federal District Court—one arising out of Ochoa's charge and one arising out of a separate age-discrimination charge the EEOC itself had filed—seeking enforcement of its subpoenas.

The enforcement actions were assigned to the same District Judge, who, after a hearing, declined to enforce the subpoenas to the extent that they sought the pedigree information. See 2012 WL 1132758, *5 (D Ariz., Apr. 4, 2012) (age-discrimination charge); 2012 WL 5868959, *5–*6 (D Ariz., Nov. 19, 2012) (Title VII charge).[2] In the District Court's view, the pedigree information was not "relevant" to the charges because "'an individual's name, or even an interview he or she could provide if contacted, simply could not shed light on whether the [evaluation] represents a tool of . . . discrimination.'" App. to Pet. for Cert. 29 (quoting 2012 WL 1132758, *5; some internal quotation marks omitted).

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[2] The District Court also refused to enforce the subpoena to the extent that it sought a second category of evidence: information about when and why those employees who had been fired after taking the test had been fired. The District Court provided no explanation for not enforcing the subpoena to the extent it sought this information, and the Court of Appeals reversed on that ground. 804 F. 3d 1051, 1059 (CA9 2015). McLane does not challenge this aspect of the Court of Appeals' decision. See Tr. of Oral Arg. 8.

The Ninth Circuit reversed. See 804 F. 3d 1051 (2015). Consistent with Circuit precedent, the panel reviewed the District Court's decision to quash the subpoena *de novo*, and concluded that the District Court had erred in finding the pedigree information irrelevant. *Id.*, at 1057. But the panel questioned in a footnote why *de novo* review applied, observing that its sister Circuits "appear[ed] to review issues related to enforcement of administrative subpoenas for abuse of discretion." *Id.*, at 1056, n. 3; see *infra*, at 80 (reviewing Court of Appeals' authority).

This Court granted certiorari to resolve the disagreement between the Courts of Appeals over the appropriate standard of review for the decision whether to enforce an EEOC subpoena. 579 U. S. 969 (2016). Because the United States agrees with McLane that such a decision should be reviewed for abuse of discretion, Stephen B. Kinnaird was appointed as *amicus curiae* to defend the judgment below. 580 U. S. 985 (2016). He has ably discharged his duties.

II

A

When considering whether a district court's decision should be subject to searching or deferential appellate review—at least absent "explicit statutory command"—we traditionally look to two factors. *Pierce* v. *Underwood*, 487 U. S. 552, 558 (1988). First, we ask whether the "history of appellate practice" yields an answer. *Ibid.* Second, at least where "neither a clear statutory prescription nor a historical tradition exists," we ask whether, "'as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question.'" *Id.*, at 558, 559–560 (quoting *Miller* v. *Fenton*, 474 U. S. 104, 114 (1985)). Both factors point toward abuse-of-discretion review here.

First, the longstanding practice of the courts of appeals in reviewing a district court's decision to enforce or quash an

administrative subpoena is to review that decision for abuse of discretion. That practice predates even Title VII itself. As noted, Title VII confers on the EEOC the same authority to issue subpoenas that the National Labor Relations Act (NLRA) confers on the National Labor Relations Board (NLRB). See n. 1, *supra*. During the three decades between the enactment of the NLRA and the incorporation of the NLRA's subpoena-enforcement provisions into Title VII, every Circuit to consider the question had held that a district court's decision whether to enforce an NLRB subpoena should be reviewed for abuse of discretion. See *NLRB* v. *Consolidated Vacuum Corp.*, 395 F. 2d 416, 419–420 (CA2 1968); *NLRB* v. *Friedman*, 352 F. 2d 545, 547 (CA3 1965); *NLRB* v. *Northern Trust Co.*, 148 F. 2d 24, 29 (CA7 1945); *Goodyear Tire & Rubber Co.* v. *NLRB*, 122 F. 2d 450, 453–454 (CA6 1941). By the time Congress amended Title VII to authorize EEOC subpoenas in 1972, it did so against this uniform backdrop of deferential appellate review.

Today, nearly as uniformly, the Courts of Appeals apply the same deferential review to a district court's decision as to whether to enforce an EEOC subpoena. Almost every Court of Appeals reviews such a decision for abuse of discretion. See, *e. g.*, *EEOC* v. *Kronos Inc.*, 620 F. 3d 287, 295–296 (CA3 2010); *EEOC* v. *Randstad*, 685 F. 3d 433, 442 (CA4 2012); *EEOC* v. *Roadway Express, Inc.*, 261 F. 3d 634, 638 (CA6 2001); *EEOC* v. *United Air Lines, Inc.*, 287 F. 3d 643, 649 (CA7 2002); *EEOC* v. *Technocrest Systems, Inc.*, 448 F. 3d 1035, 1038 (CA8 2006); *EEOC* v. *Dillon Cos.*, 310 F. 3d 1271, 1274 (CA10 2002); *EEOC* v. *Royal Caribbean Cruises, Ltd.*, 771 F. 3d 757, 760 (CA11 2014) (*per curiam*). As Judge Watford—writing for the panel below—recognized, the Ninth Circuit alone applies a more searching form of review. See 804 F. 3d, at 1056, n. 3 ("Why we review questions of relevance and undue burden de novo is unclear"); see also *EPA* v. *Alyeska Pipeline Serv. Co.*, 836 F. 2d 443, 445–446 (CA9 1988) (holding that *de novo* review applies). To be sure, the

inquiry into the appropriate standard of review cannot be resolved by a headcounting exercise. But the "long history of appellate practice" here, *Pierce*, 487 U. S., at 558, carries significant persuasive weight.

Second, basic principles of institutional capacity counsel in favor of deferential review. The decision whether to enforce an EEOC subpoena is a case-specific one that turns not on "a neat set of legal rules," *Illinois* v. *Gates*, 462 U. S. 213, 232 (1983), but instead on the application of broad standards to "multifarious, fleeting, special, narrow facts that utterly resist generalization," *Pierce*, 487 U. S., at 561–562 (internal quotation marks omitted). In the mine run of cases, the district court's decision whether to enforce a subpoena will turn either on whether the evidence sought is relevant to the specific charge before it or whether the subpoena is unduly burdensome in light of the circumstances. Both tasks are well suited to a district judge's expertise. The decision whether evidence sought is relevant requires the district court to evaluate the relationship between the particular materials sought and the particular matter under investigation—an analysis "variable in relation to the nature, purposes and scope of the inquiry." *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 209 (1946). Similarly, the decision whether a subpoena is overly burdensome turns on the nature of the materials sought and the difficulty the employer will face in producing them. These inquiries are "generally not amenable to broad *per se* rules," *Sprint/United Management Co.* v. *Mendelsohn*, 552 U. S. 379, 387 (2008); rather, they are the kind of "fact-intensive, close calls" better suited to resolution by the district court than the court of appeals, *Cooter & Gell* v. *Hartmarx Corp.*, 496 U. S. 384, 404 (1990) (internal quotation marks omitted).[3]

[3] To be sure, there are pure questions of law embedded in a district court's decision to enforce or quash a subpoena. Whether a charge is "valid," *EEOC* v. *Shell Oil Co.*, 466 U. S. 54, 72, n. 26 (1984)—that is, legally sufficient—is a pure question of law. And the question whether a

Other functional considerations also show that abuse-of-discretion review is appropriate here. For one, district courts have considerable experience in other contexts making decisions similar—though not identical—to those they must make in this one. See *Buford* v. *United States*, 532 U. S. 59, 66 (2001) ("[T]he comparatively greater expertise" of the district court may counsel in favor of deferential review). District courts decide, for instance, whether evidence is relevant at trial, Fed. Rule Evid. 401; whether pretrial criminal subpoenas are unreasonable in scope, Fed. Rule Crim. Proc. 17(c)(2); and more. These decisions are not the same as the decisions a district court must make in enforcing an administrative subpoena. But they are similar enough to give the district court the "institutional advantag[e]," *Buford*, 532 U. S., at 64, that comes with greater experience. For another, as we noted in *Cooter & Gell*, deferential review "streamline[s] the litigation process by freeing appellate courts from the duty of reweighing evidence and reconsidering facts already weighed and considered by the district court," 496 U. S., at 404—a particularly important consideration in a "satellite" proceeding like this one, *ibid.*, designed only to facilitate the EEOC's investigation.

B

Amicus' arguments to the contrary have aided our consideration of this case. But they do not persuade us that *de novo* review is appropriate.

Amicus' central argument is that the decision whether a subpoena should be enforced does not require the exercise of

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district court employed the correct standard of relevance, see *id.*, at 68–69—as opposed to how it applied that standard to the facts of a given case—is a question of law. But "applying a unitary abuse-of-discretion standard" does not shelter a district court that makes an error of law, because "[a] district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." *Cooter & Gell*, 496 U. S., at 403, 405.

discretion on the part of the district court, and so it should not be reviewed for abuse of discretion. On *amicus*' view, the district court's primary role is to test the legal sufficiency of the subpoena, not to weigh whether it should be enforced as a substantive matter. Cf. *Shell Oil*, 466 U. S., at 72, n. 26 (rejecting the argument that the district court should assess the validity of the underlying claim in a proceeding to enforce a subpoena). Even accepting *amicus*' view of the district court's task, however, this understanding of abuse-of-discretion review is too narrow. As commentators have observed, abuse-of-discretion review is employed not only where a decisionmaker has "a wide range of choice as to what he decides, free from the constraints which characteristically attach whenever legal rules enter the decision[making] process"; it is also employed where the trial judge's decision is given "an unusual amount of insulation from appellate revision" for functional reasons. Rosenberg, Judicial Discretion of the Trial Court, Viewed From Above, 22 Syracuse L. Rev. 635, 637 (1971); see also 22 C. Wright & K. Graham, Federal Practice and Procedure § 5166.1 (2d ed. 2012). And as we have explained, it is in large part due to functional concerns that we conclude the district court's decision should be reviewed for abuse of discretion. Even if the district court's decision can be characterized in the way that *amicus* suggests, that characterization would not be inconsistent with abuse-of-discretion review.

Nor are we persuaded by *amicus*' remaining arguments. *Amicus* argues that affording deferential review to a district court's decision would clash with Court of Appeals decisions instructing district courts to defer themselves to the EEOC's determination that evidence is relevant to the charge at issue. See *Director, Office of Thrift Supervision* v. *Vinson & Elkins, LLP*, 124 F. 3d 1304, 1307 (CADC 1997) (district courts should defer to agency appraisals of relevance unless they are "'obviously wrong'"); *EEOC* v. *Lockheed Martin Corp., Aero & Naval Systems*, 116 F. 3d 110, 113

(CA4 1997) (same). In *amicus*' view, it is "analytically impossible" for the court of appeals to defer to the district court if the district court must itself defer to the agency. Tr. of Oral Arg. 29. We think the better reading of those cases is that they rest on the established rule that the term "'relevant'" be understood "generously" to permit the EEOC "access to virtually any material that might cast light on the allegations against the employer." *Shell Oil*, 466 U. S., at 68–69. A district court deciding whether evidence is "relevant" under Title VII need not defer to the EEOC's decision on that score; it must simply answer the question cognizant of the agency's broad authority to seek and obtain evidence. Because the statute does not set up any scheme of double deference, *amicus*' arguments as to the infirmities of such a scheme are misplaced.

Nor do we agree that, as *amicus* suggests, the constitutional underpinnings of the *Shell Oil* standard require a different result. To be sure, we have described a subpoena as a "'constructive' search," *Oklahoma Press*, 327 U. S., at 202, and implied that the Fourth Amendment is the source of the requirement that a subpoena not be "too indefinite," *Morton Salt*, 338 U. S., at 652. But not every decision that touches on the Fourth Amendment is subject to searching review. Subpoenas in a wide variety of other contexts also implicate the privacy interests protected by the Fourth Amendment, but courts routinely review the enforcement of such subpoenas for abuse of discretion. See, *e. g.*, *United States* v. *Nixon*, 418 U. S. 683, 702 (1974) (pretrial subpoenas *duces tecum*); *In re Grand Jury Subpoena*, 696 F. 3d 428, 432 (CA5 2012) (grand jury subpoenas); *In re Grand Jury Proceedings*, 616 F. 3d 1186, 1201 (CA10 2010) (same). And this Court has emphasized that courts should pay "great deference" to a magistrate judge's determination of probable cause, *Gates*, 462 U. S., at 236 (internal quotation marks omitted)—a decision more akin to a district court's preenforcement review of a subpoena than the warrantless searches and seizures we

considered in *Ornelas* v. *United States*, 517 U. S. 690 (1996), on which *amicus* places great weight. The constitutional pedigree of *Shell Oil* does not change our view of the correct standard of review.

III

For these reasons, a district court's decision to enforce an EEOC subpoena should be reviewed for abuse of discretion, not *de novo*.

The United States also argues that the judgment below can be affirmed because it is clear that the District Court abused its discretion. But "we are a court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005), and the Court of Appeals has not had the chance to review the District Court's decision under the appropriate standard. That task is for the Court of Appeals in the first instance. As part of its analysis, the Court of Appeals may also consider, as and to the extent it deems appropriate, any arguments made by McLane regarding the burdens imposed by the subpoena.

The judgment of the Court of Appeals is hereby vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GINSBURG, concurring in part and dissenting in part.

While I agree with the Court that "abuse of discretion" is generally the proper review standard for district court decisions reviewing agency subpoenas, I would nevertheless affirm the Ninth Circuit's judgment in this case. As the Court of Appeals explained, the District Court's refusal to enforce the Equal Employment Opportunity Commission's (EEOC) subpoena for pedigree information rested on a legal error. Lower court resolution of a question of law is ordinarily reviewable *de novo* on appeal. *Highmark Inc.* v. *Allcare Health Management System, Inc.*, 572 U. S. 559, 563,

and n. 2 (2014). According to the District Court, it was not yet "necessary [for the EEOC] to seek such information." 2012 WL 5868959, *6 (D Ariz., Nov. 19, 2012). As the Ninth Circuit correctly conveyed, however: "The EEOC does not have to show a 'particularized necessity of access, beyond a showing of mere relevance,' to obtain evidence." 804 F. 3d 1051, 1057 (2015) (quoting *University of Pa.* v. *EEOC*, 493 U. S. 182, 188 (1990)). Because the District Court erred as a matter of law in demanding that the EEOC show more than relevance in order to gain enforcement of its subpoena, I would not disturb the Court of Appeals' judgment.

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COVENTRY HEALTH CARE OF MISSOURI, INC., FKA GROUP HEALTH PLAN, INC. *v.* NEVILS

CERTIORARI TO THE SUPREME COURT OF MISSOURI

No. 16–149. Argued March 1, 2017—Decided April 18, 2017

The Federal Employees Health Benefits Act of 1959 (FEHBA) authorizes the Office of Personnel Management (OPM) to contract with private carriers for federal employees' health insurance. 5 U. S. C. § 8902(a), (d). FEHBA contains an express-preemption provision, § 8902(m)(1), which states that the "terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law . . . which relates to health insurance or plans."

OPM's contracts have long required private carriers to seek subrogation and reimbursement. Accordingly, OPM's regulations make a carrier's "right to pursue and receive subrogation and reimbursement recoveries . . . a condition of and a limitation on the nature of benefits or benefit payments and on the provision of benefits under the plan's coverage." 5 CFR § 890.106(b)(1). In 2015, OPM published a new rule confirming that a carrier's subrogation and reimbursement rights and responsibilities "relate to the nature, provision, and extent of coverage or benefits (including payments with respect to benefits) within the meaning of" § 8902(m)(1), and "are . . . effective notwithstanding any state or local law, or any regulation issued thereunder, which relates to health insurance or plans." § 890.106(h).

Respondent Jodie Nevils was insured under a FEHBA plan offered by petitioner Coventry Health Care of Missouri. When Nevils was injured in an automobile accident, Coventry paid his medical expenses. Coventry subsequently asserted a lien against part of the settlement Nevils recovered from the driver who caused his injuries. Nevils satisfied the lien, then filed a class action in Missouri state court, alleging that, under Missouri law, which does not permit subrogation or reimbursement in this context, Coventry had unlawfully obtained reimbursement. Coventry countered that § 8902(m)(1) preempted the state law. The trial court granted summary judgment in Coventry's favor, and the Missouri Court of Appeals affirmed. The Missouri Supreme Court reversed. Finding § 8902(m)(1) susceptible to diverse plausible readings, the court invoked a "presumption against preemption" to conclude that the federal statute's preemptive scope excluded subrogation and reimbursement. On remand from this Court for further consideration

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in light of OPM's 2015 rule, the Missouri Supreme Court adhered to its earlier decision. A majority of the Missouri Supreme Court also held that § 8902(m)(1) violates the Supremacy Clause.

Held:

1. Because contractual subrogation and reimbursement prescriptions plainly "relate to . . . payments with respect to benefits," § 8902(m)(1), they override state laws barring subrogation and reimbursement. Pp. 94–97.

(a) This reading best comports with § 8902(m)(1)'s text, context, and purpose. Contractual provisions for subrogation and reimbursement "relate to . . . payments with respect to benefits" because subrogation and reimbursement rights yield just such payments. When a carrier exercises its right to either reimbursement or subrogation, it receives from either the beneficiary or a third party "payment" respecting the benefits the carrier had previously paid. The carrier's very provision of benefits triggers the right to payment. Congress' use of the expansive phrase "relate to," which "express[es] a broad pre-emptive purpose," *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 383, weighs against Nevils' effort to narrow the term "payments" to exclude payments that occur "long after" a carrier's provision of benefits. Nevils' argument that Congress intended to preempt only state coverage requirements, *e. g.*, inclusion of acupuncture and chiropractic services, also miscarries.

The statutory context and purpose reinforce this conclusion. FEHBA concerns "benefits from a federal health insurance plan for federal employees that arise from a federal law." *Bell* v. *Blue Cross & Blue Shield of Okla.*, 823 F. 3d 1198, 1202. Strong and "distinctly federal interests are involved," *Empire HealthChoice Assurance, Inc.* v. *McVeigh*, 547 U. S. 677, 696, in uniform administration of the program, free from state interference, particularly in regard to coverage, benefits, and payments. The Federal Government also has a significant financial stake in subrogation and reimbursement. Pp. 95–96.

(b) *McVeigh*'s suggestion that § 8902(m)(1) has two "plausible" interpretations, 547 U. S., at 698, Nevils asserts, supports application of the presumption against preemption here. But the Court never chose between the two readings set out in *McVeigh*, because doing so was not pertinent to the discrete question whether federal courts have subject-matter jurisdiction over FEHBA reimbursement actions. Having decided in *McVeigh* that § 8902(m)(1) is a "choice-of-law prescription," not a "jurisdiction-conferring provision," *id.*, at 697, the Court had no cause to consider § 8902(m)(1)'s text, context, and purpose, as it does here. P. 97.

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2. The regime Congress enacted is compatible with the Supremacy Clause. The statute itself, not a contract, strips state law of its force. FEHBA contract terms have preemptive force only if they fall within § 8902(m)(1)'s preemptive scope. Many other federal statutes found to preempt state law, including the Employee Retirement Income Security Act of 1974 and the Federal Arbitration Act, leave the context-specific scope of preemption to contractual terms. While § 8902(m)(1)'s phrasing may differ from those other statutes', FEHBA's express-preemption provision manifests the same intent to preempt state law. Pp. 98–99.

492 S. W. 3d 918, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case. THOMAS, J., filed a concurring opinion, *post*, p. 100.

Miguel A. Estrada argued the cause for petitioner. With him on the briefs were *Jonathan C. Bond*, *Thomas N. Sterchi*, and *David M. Eisenberg*.

Zachary D. Tripp argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Kneedler*, *Alisa B. Klein*, and *Henry C. Whitaker*.

Matthew W. H. Wessler argued the cause for respondent. With him on the brief were *Rachel S. Bloomekatz*, *Deepak Gupta*, *Matthew Spurlock*, *Brian Wolfman*, *Ralph K. Phalen*, *Mitchell L. Burgess*, *John Campbell*, and *Erich Vieth*.*

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*Briefs of *amici curiae* urging reversal were filed for America's Health Insurance Plans et al. by *Michael P. Abate*, *Julie Simon Miller*, and *David M. Ermer*; and for the Chamber of Commerce of the United States of America by *Kathleen M. Sullivan*, *Cleland B. Welton II*, *Kate Comerford Todd*, and *Derek L. Shaffer*.

Briefs of *amici curiae* urging affirmance were filed for the State of Montana et al. by *Timothy C. Fox*, Attorney General of Montana, *Dale Schowengerdt*, Solicitor General, and *Matthew T. Cochenour*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Jahna Lindemuth* of Alaska, *Cynthia H. Coffman* of Colorado, *Lisa Madigan* of Illinois, *Curtis T. Hill, Jr.*, of Indiana, *Tom Miller* of Iowa, *Derek Schmidt* of Kansas, *Jeff Landry* of

JUSTICE GINSBURG delivered the opinion of the Court.

In the Federal Employees Health Benefits Act of 1959 (FEHBA), 5 U. S. C. § 8901 *et seq.*, Congress authorized the Office of Personnel Management (OPM) to contract with private carriers for federal employees' health insurance. § 8902(a), (d). FEHBA contains a provision expressly preempting state law. § 8902(m)(1). That provision reads:

> "The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans."

Contracts OPM negotiates with private carriers provide for reimbursement and subrogation. Reimbursement requires an insured employee who receives payment from another source (*e. g.*, the proceeds yielded by a tort claim) to return healthcare costs earlier paid out by the carrier. Subrogation involves transfer of the right to a third-party payment from the insured employee to the carrier, who can then pursue the claim against the third party. Several States, however, Missouri among them, bar enforcement of contractual subrogation and reimbursement provisions.

The questions here presented: Does FEHBA's express-preemption prescription, § 8902(m)(1), override state law

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Louisiana, *Bill Schuette* of Michigan, *Douglas J. Peterson* of Nebraska, *Adam Paul Laxalt* of Nevada, *Joseph A. Foster* of New Hampshire, *Michael DeWine* of Ohio, *Peter F. Kilmartin* of Rhode Island, *Alan Wilson* of South Carolina, *Marty J. Jackley* of South Dakota, *Ken Paxton* of Texas, *Sean D. Reyes* of Utah, *Patrick Morrisey* of West Virginia, and *Peter K. Michael* of Wyoming; for the American Association for Justice by *Jeffrey R. White* and *Julie Braman Kane*; for Constitutional and Administrative Law Scholars by *David Duncan*; and for the Missouri Association of Trial Attorneys by *J. Carl Cecere.*

William R. Stein, *Scott H. Christensen*, and *Lisa Soronen* filed a brief for the National Governors Association et al. as *amici curiae.*

prohibiting subrogation and reimbursement; and if § 8902(m)(1) has that effect, is the statutory prescription consistent with the Supremacy Clause, U. S. Const., Art. VI, cl. 2? We hold, contrary to the decision of the Missouri Supreme Court, that contractual subrogation and reimbursement prescriptions plainly "relate to . . . payments with respect to benefits," § 8902(m)(1); therefore, by statutory instruction, they override state law barring subrogation and reimbursement. We further hold, again contrary to the Missouri Supreme Court, that the regime Congress enacted is compatible with the Supremacy Clause. Section 8902(m)(1) itself, not the contracts OPM negotiates, triggers the federal preemption. As Congress directed, where FEHBA contract terms "relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits)," § 8902(m)(1) ensures that those terms will be uniformly enforceable nationwide, free from state interference.

I

A

FEHBA "establishes a comprehensive program of health insurance for federal employees." *Empire HealthChoice Assurance, Inc.* v. *McVeigh*, 547 U. S. 677, 682 (2006). As just noted, *supra*, at 90, FEHBA contains an express-preemption provision, § 8902(m)(1). FEHBA assigns to OPM broad administrative and rulemaking authority over the program. See §§ 8901–8913. OPM contracts with private insurance carriers to offer a range of healthcare plans. §§ 8902, 8903.

OPM's contracts with private carriers have long included provisions requiring those carriers to seek subrogation and reimbursement. Accordingly, OPM has issued detailed regulations governing subrogation and reimbursement clauses in FEHBA contracts. See 5 CFR § 890.106 (2016). Under those regulations, a carrier's "right to pursue and receive subrogation and reimbursement recoveries constitutes a con-

dition of and a limitation on the nature of benefits or benefit payments and on the provision of benefits under the plan's coverage." § 890.106(b)(1).

In 2015, after notice and comment, OPM published a rule confirming that "[a] carrier's rights and responsibilities pertaining to subrogation and reimbursement under any [FEHBA] contract relate to the nature, provision, and extent of coverage or benefits (including payments with respect to benefits) within the meaning of" § 8902(m)(1). § 890.106(h). Such "rights and responsibilities," OPM's rule provides, "are . . . effective notwithstanding any state or local law, or any regulation issued thereunder, which relates to health insurance or plans." *Ibid.* Its rule, OPM explained, "comports with longstanding Federal policy and furthers Congres[s'] goals of reducing health care costs and enabling uniform, nationwide application of [FEHBA] contracts." 80 Fed. Reg. 29203 (2015) (final rule).

B

Respondent Jodie Nevils is a former federal employee who enrolled in and was insured under a FEHBA plan offered by petitioner Coventry Health Care of Missouri.[1] *Nevils* v. *Group Health Plan, Inc.*, 418 S. W. 3d 451, 453 (Mo. 2014) (*Nevils I*). When Nevils was injured in an automobile accident, Coventry paid his medical expenses. *Ibid.* Nevils sued the driver who caused his injuries and recovered a settlement award. *Ibid.* Based on its contract with OPM, see App. to Pet. for Cert. 129a–130a, Coventry asserted a lien for $6,592.24 against part of the settlement proceeds to cover medical bills it had paid. *Nevils I*, 418 S. W. 3d, at 453. Nevils repaid that amount, thereby satisfying the lien. *Ibid.*

Nevils then filed this class action against Coventry in Missouri state court, alleging that Coventry had unlawfully ob-

[1] Coventry was formerly known as Group Health Plan, Inc. Pet. for Cert. ii. We refer to both the current and former entities as "Coventry."

tained reimbursement. *Ibid.* Nevils premised his claim on Missouri law, which does not permit subrogation or reimbursement in this context, see, *e. g.*, *Benton House, LLC* v. *Cook & Younts Ins., Inc.*, 249 S. W. 3d 878, 881–882 (Mo. App. 2008). Coventry countered that § 8902(m)(1) makes subrogation and reimbursement clauses in FEHBA contracts enforceable notwithstanding state law. The trial court granted summary judgment in Coventry's favor, *Nevils* v. *Group Health Plan, Inc.*, No. 11SL–CC00535 (Cir. Ct., St. Louis Cty., Mo., May 21, 2012), App. to Pet. for Cert. 28a, 32a, and the Missouri Court of Appeals affirmed, *Nevils* v. *Group Health Plan, Inc.*, 2012 WL 6689542, *5 (Dec. 26, 2012).

The Missouri Supreme Court reversed. *Nevils I*, 418 S. W. 3d, at 457. That court began with "the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress." *Id.*, at 454 (quoting *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 516 (1992); alterations in original). Finding § 8902(m)(1) susceptible to diverse "plausible readings," the court invoked a "presumption against preemption" to conclude that the federal statute's preemptive scope excluded subrogation and reimbursement. 418 S. W. 3d, at 455.

Judge Wilson, joined by Judge Breckenridge, concurred in the judgment. *Id.*, at 457. Observing that "it defies logic to insist that benefit repayment terms do not relate to the nature or extent of Nevils' benefits," *id.*, at 460 (emphasis deleted), Judge Wilson concluded that "Congress plainly intended for § 8902(m)(1) to apply to the benefit repayment terms in [Coventry's] contract," *id.*, at 462. He nevertheless concurred, reasoning that the Supremacy Clause did not authorize preemption based on the terms of FEHBA contracts. *Id.*, at 462–465.

Coventry sought our review, and we invited the Solicitor General to file a brief expressing the views of the United States. *Coventry Health Care of Mo., Inc.* v. *Nevils*, 574

U. S. 808 (2014). While Coventry's petition was pending, OPM finalized its rule governing subrogation and reimbursement. See *supra*, at 92. This Court granted certiorari, vacated the Missouri Supreme Court's judgment, and remanded for further consideration in light of OPM's recently adopted rule. *Coventry Health Care of Mo., Inc.* v. *Nevils*, 576 U. S. 1048 (2015).

On remand, the Missouri Supreme Court adhered to its earlier decision. *Nevils* v. *Group Health Plan, Inc.*, 492 S. W. 3d 918, 920, 925 (2016). OPM's rule, the court maintained, "does not overcome the presumption against preemption and demonstrate Congress' clear and manifest intent to preempt state law." *Id.*, at 920.

Judge Wilson again concurred, this time joined by a majority of the judges of the Missouri Supreme Court. *Id.*, at 925.[2] In their view, Congress' "attempt to give preemptive effect to the provisions of a contract between the federal government and a private party is not a valid application of the Supremacy Clause" and, "therefore, does not displace Missouri law here." *Ibid.*

We granted certiorari to resolve conflicting interpretations of § 8902(m)(1). 580 U. S. 977 (2016). Compare 492 S. W. 2d, at 925 (majority opinion), with *Bell* v. *Blue Cross & Blue Shield of Okla.*, 823 F. 3d 1198, 1199 (CA8 2016) (§ 8902(m)(1) preempts state antisubrogation law); *Helfrich* v. *Blue Cross & Blue Shield Assn.*, 804 F. 3d 1090, 1092 (CA10 2015) (same).

II

Section 8902(m)(1) places two preconditions on federal preemption. See *supra*, at 90. The parties agree that Missouri's law prohibiting subrogation and reimbursement meets

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[2] Under Missouri law, a "concurring opinion" in which "a majority of the court concur[s]" is binding precedent. *Mueller* v. *Burchfield*, 359 Mo. 876, 880, 224 S. W. 2d 87, 89 (1949).

one of the two limitations, *i. e.*, the State's law "relates to health insurance or plans." § 8902(m)(1). They dispute only whether the subrogation and reimbursement requirements in OPM's contract with Coventry "relate to the nature, provision, or extent of coverage or benefits," "including payments with respect to benefits." *Ibid.*

Coventry contends that § 8902(m)(1) unambiguously covers the contractual terms at issue here. In any event, Coventry, joined by the United States as *amicus curiae*, urges that the rule published by OPM in 2015 leaves no room for doubt that insurance-contract terms providing for subrogation and reimbursement fall within § 8902(m)(1)'s preemptive scope. See *supra*, at 92. Deference is due to OPM's reading, Coventry and the United States assert, under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). In Nevils' view, by contrast, § 8902(m)(1) does not preempt state antisubrogation and antireimbursement laws in light of the presumption against preemption. Given that presumption, Nevils maintains, OPM's rule is not entitled to deference. Though we have called Nevils' construction "plausible," *McVeigh*, 547 U. S., at 698, the reading advanced by Coventry and the United States best comports with § 8902(m)(1)'s text, context, and purpose.

A

Contractual provisions for subrogation and reimbursement "relate to . . . payments with respect to benefits" because subrogation and reimbursement rights yield just such payments. When a carrier exercises its right to either reimbursement or subrogation, it receives from either the beneficiary or a third party "payment" respecting the benefits the carrier had previously paid. The carrier's very provision of benefits triggers the right to payment. See Tr. of Oral Arg. 31; *Helfrich*, 804 F. 3d, at 1106; *Bell*, 823 F. 3d, at 1204.

Congress' use of the expansive phrase "relate to" shores up that understanding. We have "repeatedly recognized"

that the phrase "relate to" in a preemption clause "express[es] a broad pre-emptive purpose." *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 383 (1992); accord *Northwest, Inc.* v. *Ginsberg*, 572 U. S. 273, 280–281, 284 (2014). Congress characteristically employs the phrase to reach any subject that has "a connection with, or reference to," the topics the statute enumerates. *Morales*, 504 U. S., at 384. The phrase therefore weighs against Nevils' effort to narrow the term "payments" to exclude payments that occur "long after" a carrier's provision of benefits. Brief for Respondent 27 (quoting *McVeigh*, 547 U. S., at 697). See *Nevils I*, 418 S. W. 3d, at 460 (Wilson, J., concurring); cf. *Hillman* v. *Maretta*, 569 U. S. 483, 494 (2013) (in the Federal Employees' Group Life Insurance Act context, it "makes no difference" whether state law withholds benefits in the first instance or instead takes them away after they have been paid). Given language notably "expansive [in] sweep," *Morales*, 504 U. S., at 384 (internal quotation marks omitted), Nevils' argument that Congress intended to preempt only state coverage requirements (*e. g.*, for acupuncture and chiropractic services, see Brief for Respondent 36) also miscarries.

The statutory context and purpose reinforce our conclusion. FEHBA concerns "benefits from a federal health insurance plan for federal employees that arise from a federal law" in an area with a "long history of federal involvement." *Bell*, 823 F. 3d, at 1202. Strong and "distinctly federal interests are involved," *McVeigh*, 547 U. S., at 696, in uniform administration of the program, free from state interference, particularly in regard to coverage, benefits, and payments. The Federal Government, moreover, has a significant financial stake. OPM estimates that, in 2014 alone, FEHBA "carriers were reimbursed by approximately $126 million in subrogation recoveries." 80 Fed. Reg. 29203. Such "recoveries translate to premium cost savings for the federal government and [FEHBA] enrollees." *Ibid.*

B

Invoking our suggestion in *McVeigh* that § 8902(m)(1) has two "plausible" interpretations, 547 U. S., at 698, Nevils nonetheless urges us to apply a presumption against preemption because § 8902(m)(1) does not clearly cover contractual terms pertaining to subrogation and reimbursement. This argument is blind to *McVeigh*'s context.

In *McVeigh*, we considered the discrete question whether 28 U. S. C. § 1331 gives federal courts subject-matter jurisdiction over FEHBA reimbursement actions. See 547 U. S., at 683. Our principal holding was that § 1331 did not confer federal jurisdiction. *Ibid.*; see *Bell*, 823 F. 3d, at 1205.

The carrier in *McVeigh*, as part of its argument in favor of federal jurisdiction, asserted that § 8902(m)(1) itself conferred federal jurisdiction. See 547 U. S., at 697. In responding to that assertion, we summarized competing interpretations of § 8902(m)(1) advanced in briefing, readings that map closely onto the parties' positions here. See *ibid.* (carrier and United States as *amicus curiae* urged interpretation similar to Coventry's; an *amicus* brief in support of beneficiary offered interpretation similar to Nevils').

We made no choice between the two interpretations set out in *McVeigh*, however, because the answer made no difference to the question there presented. *Id.*, at 698. "[E]ven if FEHBA's preemption provision reaches contract-based reimbursement claims," we explained, "that provision is not sufficiently broad to confer federal jurisdiction." *Ibid.* Because § 8902(m)(1) is a "choice-of-law prescription," not a "jurisdiction-conferring provision," *id.*, at 697, we had no cause to consider § 8902(m)(1)'s text, context, and purpose, as we do today, see *supra*, at 95–96.[3]

[3] Because the statute alone resolves this dispute, we need not consider whether *Chevron* deference attaches to OPM's 2015 rule.

III

Nevils further contends that, if § 8902(m)(1) covers subrogation and reimbursement clauses in OPM contracts, then the statute itself would violate the Supremacy Clause by assigning preemptive effect to the terms of a contract, not to the laws of the United States. We conclude, however, that the statute, not a contract, strips state law of its force.

Without § 8902(m)(1), there would be no preemption of state insurance law. FEHBA contract terms have preemptive force only as they "relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits)," § 8902(m)(1)—*i. e.*, when the contract terms fall within the statute's preemptive scope. It is therefore the statute that "ensures that [FEHBA contract] terms will be uniformly enforceable nationwide, notwithstanding any state law relating to health insurance or plans." Brief for United States as *Amicus Curiae* 28 (internal quotation marks omitted).

Many other federal statutes preempt state law in this way, leaving the context-specific scope of preemption to contractual terms. The Employee Retirement Income Security Act of 1974 (ERISA), 29 U. S. C. § 1001 *et seq.*, for example, preempts "any and all State laws insofar as they . . . relate to any employee benefit plan." § 1144(a). And the Federal Arbitration Act (FAA), 9 U. S. C. § 1 *et seq.*, limits the grounds for denying enforcement of "written provision[s] in . . . contract[s]" providing for arbitration, thereby preempting state laws that would otherwise interfere with such contracts. § 2. This Court has several times held that those statutes preempt state law, see, *e. g.*, *Gobeille* v. *Liberty Mut. Ins. Co.*, 577 U. S. 312, 319–326 (2016) (ERISA); *Marmet Health Care Center, Inc.* v. *Brown*, 565 U. S. 530, 532–534 (2012) (*per curiam*) (FAA), and Nevils does not contend that those measures violate the Supremacy Clause, see Brief for Respondent 22.

Nevils instead attempts to distinguish those other statutes by highlighting a particular textual feature of § 8902(m)(1): Section 8902(m)(1) states that the "*terms of any contract*" between OPM and a carrier "shall supersede and preempt" certain state or local laws. (Emphasis added.) That formulation, Nevils asserts, violates the Supremacy Clause's mandate that only the "*Laws* of the United States" may reign supreme over state law. U. S. Const., Art. VI, cl. 2 (emphasis added). Nevils' argument elevates semantics over substance. While Congress' formulation might differ from the phrasing of other statutes, § 8902(m)(1) manifests the same intent to preempt state law.[4] Because we do not require Congress to employ a particular linguistic formulation when preempting state law, Nevils' Supremacy Clause challenge fails.[5]

* * *

For the reasons stated, the judgment of the Supreme Court of Missouri is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

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[4] Congress' choice of language is not unique to § 8902(m)(1). Several related statutes governing federal-employee and military-member benefits employ similar formulations. See § 8959 ("The terms of any contract that relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to dental benefits, insurance, plans, or contracts."); § 8989 (same for vision); § 9005(a) (same for long-term care); 10 U. S. C. § 1103(a) (certain state laws "shall not apply to any contract entered into pursuant to this chapter").

[5] Nevils' speculation about the Government's outsourcing preemption to private entities, see Brief for Respondent 24, is far afield from the matter before us. This case involves only Congress' preemption of state insurance laws to ensure that the terms in contracts negotiated by OPM, a federal agency, operate free from state interference.

JUSTICE THOMAS, concurring.

I join the opinion of the Court with one reservation. A statute that confers on an executive agency the power to enter into contracts that pre-empt state law—such as the Federal Employees Health Benefits Act of 1959, 5 U. S. C. § 8902—might unlawfully delegate legislative power to the President insofar as the statute fails sufficiently to constrain the President's contracting discretion. See *Department of Transportation* v. *Association of American Railroads*, 575 U. S. 43, 76–87 (2015) (THOMAS, J., concurring in judgment); see also *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 472 (2001). Respondent, however, failed to make that argument. The Court therefore appropriately leaves that issue to be decided, if at all, on remand.

Syllabus

GOODYEAR TIRE & RUBBER CO. *v.* HAEGER ET AL.

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

No. 15–1406. Argued January 10, 2017—Decided April 18, 2017

Respondents Leroy, Donna, Barry, and Suzanne Haeger sued petitioner Goodyear Tire & Rubber Company, alleging that the failure of a Goodyear G159 tire caused the family's motorhome to swerve off the road and flip over. After several years of contentious discovery, marked by Goodyear's slow response to repeated requests for internal G159 test results, the parties settled the case. Some months later, the Haegers' lawyer learned that, in another lawsuit involving the G159, Goodyear had disclosed test results indicating that the tire got unusually hot at highway speeds. In subsequent correspondence, Goodyear conceded withholding the information from the Haegers, even though they had requested all testing data. The Haegers then sought sanctions for discovery fraud, urging that Goodyear's misconduct entitled them to attorney's fees and costs expended in the litigation.

The District Court found that Goodyear had engaged in an extended course of misconduct. Exercising its inherent power to sanction bad-faith behavior, the court awarded the Haegers $2.7 million—the entire sum they had spent in legal fees and costs since the moment, early in the litigation, when Goodyear made its first dishonest discovery response. The court said that in the usual case, sanctions ordered pursuant to a court's inherent power to sanction litigation misconduct must be limited to the amount of legal fees caused by that misconduct. But it determined that in cases of particularly egregious behavior, a court can award a party all of the attorney's fees incurred in a case, without any need to find a "causal link between [the expenses and] the sanctionable conduct." 906 F. Supp. 2d 938, 975. As further support for its award, the District Court concluded that full and timely disclosure of the test results would likely have led Goodyear to settle the case much earlier. Acknowledging that the Ninth Circuit might require a link between the misconduct and the harm caused, however, the court also made a contingent award of $2 million. That smaller amount, designed to take effect if the Ninth Circuit reversed the larger award, deducted $700,000 in fees the Haegers incurred in developing claims against other defendants and proving their own medical damages. The Ninth Circuit affirmed the full $2.7 million award, concluding that the District Court

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had properly awarded the Haegers all the fees they incurred during the time when Goodyear was acting in bad faith.

Held: When a federal court exercises its inherent authority to sanction bad-faith conduct by ordering a litigant to pay the other side's legal fees, the award is limited to the fees the innocent party incurred solely because of the misconduct—or put another way, to the fees that party would not have incurred but for the bad faith. Pp. 107–115.

(a) Federal courts possess certain inherent powers, including "the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers* v. *NASCO, Inc.*, 501 U. S. 32, 44–45. One permissible sanction is an assessment of attorney's fees against a party that acts in bad faith. Such a sanction must be compensatory, rather than punitive, when imposed pursuant to civil procedures. See *Mine Workers* v. *Bagwell*, 512 U. S. 821, 826–830. A sanction counts as compensatory only if it is "calibrate[d] to [the] damages caused by" the bad-faith acts on which it is based. *Id.*, at 834. Hence the need for a court to establish a causal link between the litigant's misbehavior and legal fees paid by the opposing party. That kind of causal connection is appropriately framed as a but-for test, meaning a court may award only those fees that the innocent party would not have incurred in the absence of litigation misconduct. That standard generally demands that a district court assess and allocate specific litigation expenses—yet still allows it to exercise discretion and judgment. *Fox* v. *Vice*, 563 U. S. 826, 836. And in exceptional cases, that standard allows a court to avoid segregating individual expense items by shifting all of a party's fees, from either the start or some midpoint of a suit. Pp. 107–111.

(b) Here, the parties largely agree about the pertinent law but dispute what it means for this case. Goodyear contends that it requires throwing out the fee award and instructing the trial court to consider the matter anew. The Haegers maintain, to the contrary, that the award can stand because both courts below articulated and applied the appropriate but-for causation standard, or, even if they did not, the fee award in fact passes a but-for test.

The Haegers' defense of the lower courts' reasoning is a non-starter: Neither court used the correct legal standard. The District Court specifically disclaimed the need for a causal link on the ground that this was a "truly egregious" case. 906 F. Supp. 2d, at 975. And the Ninth Circuit found that the trial court could grant all attorney's fees incurred "during the time when [Goodyear was] acting in bad faith," 813 F. 3d 1233, 1249—a temporal, not causal, limitation. A sanctioning court must determine which fees were incurred because of, and solely because of, the misconduct at issue, and no such finding lies behind the $2.7

million award made and affirmed below. Nor is this Court inclined to fill in the gap, as the Haegers urge. As an initial matter, the Haegers have not shown that this litigation would have settled as soon as Goodyear divulged the heat-test results (a showing that would justify an all-fees award from the moment Goodyear was supposed to disclose). Further, they cannot demonstrate that Goodyear's non-disclosure so permeated the suit as to make that misconduct a but-for cause of every subsequent legal expense, totaling the full $2.7 million.

Although the District Court considered causation in arriving at its back-up award of $2 million, it is unclear whether its understanding of that requirement corresponds to the appropriate standard—an uncertainty pointing toward throwing out the fee award and instructing the trial court to consider the matter anew. However, the Haegers contend that Goodyear has waived any ability to challenge the contingent award since the $2 million sum reflects Goodyear's own submission that only about $700,000 of the fees sought would have been incurred regardless of the company's behavior. The Court of Appeals did not address that issue, and this Court declines to decide it in the first instance. The possibility of waiver should therefore be the initial order of business on remand. Pp. 111–115.

813 F. 3d 1233, reversed and remanded.

KAGAN, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.

Pierre H. Bergeron argued the cause for petitioner. With him on the briefs were *Gonzalo C. Martinez*, *Lauren S. Kuley*, and *Colter L. Paulson*.

John J. Egbert argued the cause for respondents. With him on the brief was *David L. Kurtz*.*

JUSTICE KAGAN delivered the opinion of the Court.

In this case, we consider a federal court's inherent authority to sanction a litigant for bad-faith conduct by ordering it to pay the other side's legal fees. We hold that such an

*Briefs of *amici curiae* urging reversal were filed for the American Bar Association by *Linda A. Klein*, *Laurie Webb Daniel*, and *Samuel Spital*; and for the National Association of Manufacturers by *Philip S. Goldberg*, *Linda E. Kelly*, and *Patrick N. Forrest*.

order is limited to the fees the innocent party incurred solely because of the misconduct—or put another way, to the fees that party would not have incurred but for the bad faith. A district court has broad discretion to calculate fee awards under that standard. But because the court here granted legal fees beyond those resulting from the litigation misconduct, its award cannot stand.

I

Respondents Leroy, Donna, Barry, and Suzanne Haeger sued the Goodyear Tire & Rubber Company (among other defendants) after the family's motorhome swerved off the road and flipped over.[1] The Haegers alleged that the failure of a Goodyear G159 tire on the vehicle caused the accident: Their theory was that the tire was not designed to withstand the level of heat it generated when used on a motorhome at highway speeds. Discovery in the case lasted several years—and itself generated considerable heat. The Haegers repeatedly asked Goodyear to turn over internal test results for the G159, but the company's responses were both slow in coming and unrevealing in content. After making the District Court referee some of their more contentious discovery battles, the parties finally settled the case (for a still-undisclosed sum) on the eve of trial.

Some months later, the Haegers' lawyer learned from a newspaper article that, in another lawsuit involving the G159, Goodyear had disclosed a set of test results he had never seen. That data indicated that the G159 got unusually hot at speeds of between 55 and 65 miles per hour. In ensuing correspondence, Goodyear conceded withholding the information from the Haegers even though they had requested

[1] The additional defendants named in the Haegers' complaint were Gulf Stream Coach, the manufacturer of the motorhome, and Spartan Motors, the manufacturer of the vehicle's chassis. In the course of the litigation, the Haegers reached a settlement with Gulf Stream, and the District Court granted Spartan's motion for summary judgment.

(both early and often) "all testing data" related to the G159. Record in No. 2:05–cv–2046 (D Ariz.), Doc. 938, p. 8; see *id.*, Doc. 938–1, at 24, 36; *id.*, Doc. 1044–2, at 25 (filed under seal). The Haegers accordingly sought sanctions for discovery fraud, claiming that "Goodyear knowingly concealed crucial 'internal heat test' records related to the [G159's] defective design." *Id.*, Doc. 938, at 1. That conduct, the Haegers urged, entitled them to attorney's fees and costs expended in the litigation. See *id.*, at 14.

The District Court agreed to make such an award in the exercise of its inherent power to sanction litigation misconduct.[2] The court's assessment of Goodyear's actions was harsh (and is not contested here). Goodyear, the court found, had engaged in a "years-long course" of bad-faith behavior. 906 F. Supp. 2d 938, 972 (D Ariz. 2012). By withholding the G159's test results at every turn, the company and its lawyers had made "repeated and deliberate attempts to frustrate the resolution of this case on the merits." *Id.*, at 971. But because the case had already settled, the court had limited options. It could not take the measure it most wished: an "entry of default judgment" against Goodyear. *Id.*, at 972. All it could do for the Haegers was to order Goodyear to reimburse them for attorney's fees and costs paid during the suit.

But that award, in the District Court's view, could be comprehensive, covering both expenses that could be causally tied to Goodyear's misconduct and those that could not. The court calculated that the Haegers had spent $2.7 million in legal fees and costs since the moment, early in the litigation, when Goodyear made its first dishonest discovery response.

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[2] The court reasoned that no statute or rule enabled it to reach all the offending behavior. Sanctions under Federal Rule of Civil Procedure 11, the court thought, should not be imposed after final judgment in a case. See 906 F. Supp. 2d 938, 973, n. 24 (D Ariz. 2012). And sanctions under 28 U. S. C. § 1927, it noted, could address the wrongdoing of only Goodyear's attorneys, rather than of Goodyear itself. See 906 F. Supp. 2d, at 973.

And the court awarded the Haegers that entire sum. In the "usual[ ]" case, the court reasoned, "sanctions under a [c]ourt's inherent power must be limited to the amount [of legal fees] caused by the misconduct." *Id.*, at 974–975 (emphasis deleted). But this case was not the usual one: Here, "the sanctionable conduct r[ose] to a truly egregious level." *Id.*, at 975. And when a litigant behaves that badly, the court opined, "all of the attorneys' fees incurred in the case [can] be awarded," without any need to find a "causal link between [those expenses and] the sanctionable conduct." *Ibid.* As further support for its decision, the court considered the chances that full and timely disclosure of the test results would have affected Goodyear's settlement calculus. "While there is some uncertainty," the court stated, "the case more likely than not would have settled much earlier." *Id.*, at 972.

Perhaps sensing thin ice, the District Court also made a "contingent award" in the event that the Court of Appeals reversed its preferred one. App. to Pet. for Cert. 180a. Here, the District Court recognized the possibility that a "linkage between [Goodyear's] misconduct and [the Haegers'] harm is required." *Ibid.* If so, the court stated, its fee award should be reduced to $2 million. The deduction of $700,000, which was based on estimates Goodyear offered, represented fees that the Haegers incurred in developing claims against other defendants and proving their own medical damages. See App. 69.

A divided Ninth Circuit panel affirmed the full $2.7 million award. According to the majority, the District Court acted properly in "award[ing] the amount [it] reasonably believed" the Haegers expended in attorney's fees and costs "during the time when [Goodyear was] acting in bad faith." 813 F. 3d 1233, 1250 (2016). Or repeated in just slightly different words: The District Court "did not abuse its discretion" in "award[ing] the Haegers all their attorneys' fees and costs in prosecuting the action once [Goodyear] began flouting [its]

discovery obligations." *Id.*, at 1249–1250. Judge Watford disagreed. He would have demanded a "causal link between Goodyear's misconduct and the fees awarded." *Id.*, at 1255 (dissenting opinion). The only part of the District Court's opinion that might support such a connection, Judge Watford noted, was its hypothesis that disclosure of the test results would have produced an earlier settlement, and thus obviated the need for further legal expenses. But Judge Watford thought that theory unpersuasive: Because Goodyear would still have had plausible defenses to the Haegers' suit, "[i]t's anyone's guess how the litigation would have proceeded" had timely disclosure occurred. *Ibid.* Accordingly, Judge Watford would have reversed the District Court for awarding fees beyond those "sustained *as a result of* Goodyear's misconduct." *Id.*, at 1256.

The Court of Appeals' decision created a split of authority: Other Circuits have insisted on limiting sanctions like this one to fees or costs that are causally related to a litigant's misconduct.[3] We therefore granted certiorari. 579 U. S. 969 (2016).

II

Federal courts possess certain "inherent powers," not conferred by rule or statute, "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link* v. *Wabash R. Co.*, 370 U. S. 626, 630–631 (1962). That authority includes "the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers* v. *NASCO, Inc.*, 501 U. S. 32, 44–45 (1991). And one permissible sanction is an "assessment of attorney's fees"—an order, like the one issued here, instructing a party that has acted in bad faith to reimburse legal fees and costs incurred by the other side. *Id.*, at 45.

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[3] See, *e. g.*, *Plaintiffs' Baycol Steering Comm.* v. *Bayer Corp.*, 419 F. 3d 794, 808 (CA8 2005); *Bradley* v. *American Household, Inc.*, 378 F. 3d 373, 378 (CA4 2004); *United States* v. *Dowell*, 257 F. 3d 694, 699 (CA7 2001).

This Court has made clear that such a sanction, when imposed pursuant to civil procedures, must be compensatory rather than punitive in nature. See *Mine Workers* v. *Bagwell*, 512 U. S. 821, 826–830 (1994) (distinguishing compensatory from punitive sanctions and specifying the procedures needed to impose each kind).[4] In other words, the fee award may go no further than to redress the wronged party "for losses sustained"; it may not impose an additional amount as punishment for the sanctioned party's misbehavior. *Id.*, at 829 (quoting *United States* v. *Mine Workers*, 330 U. S. 258, 304 (1947)). To level that kind of separate penalty, a court would need to provide procedural guarantees applicable in criminal cases, such as a "beyond a reasonable doubt" standard of proof. See 512 U. S., at 826, 832–834, 838–839. When (as in this case) those criminal-type protections are missing, a court's shifting of fees is limited to reimbursing the victim.

That means, pretty much by definition, that the court can shift only those attorney's fees incurred because of the misconduct at issue. Compensation for a wrong, after all, tracks the loss resulting from that wrong. So as we have previously noted, a sanction counts as compensatory only if it is "calibrate[d] to [the] damages caused by" the bad-faith acts on which it is based. *Id.*, at 834. A fee award is so calibrated if it covers the legal bills that the litigation abuse occasioned. But if an award extends further than that—to fees that would have been incurred without the misconduct—then it crosses the boundary from compensation to punishment. Hence the need for a court, when using its inherent sanctioning authority (and civil procedures), to establish a causal link—between the litigant's misbehavior and legal fees paid by the opposing party.[5]

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[4] *Bagwell* also addressed "coercive" sanctions, designed to make a party comply with a court order. 512 U. S., at 829. That kind of sanction is not at issue here.

[5] Rule-based and statutory sanction regimes similarly require courts to find such a causal connection before shifting fees. For example, the Federal Rules of Civil Procedure provide that a district court may order

That kind of causal connection, as this Court explained in another attorney's fees case, is appropriately framed as a but-for test: The complaining party (here, the Haegers) may recover "only the portion of his fees that he would not have paid but for" the misconduct. *Fox* v. *Vice*, 563 U. S. 826, 836 (2011); see *Paroline* v. *United States*, 572 U. S. 434, 449–450 (2014) ("The traditional way to prove that one event was a factual cause of another is to show that the latter would not have occurred 'but for' the former"). In *Fox*, a prevailing defendant sought reimbursement under a fee-shifting statute for legal expenses incurred in defending against several frivolous claims. See 563 U. S., at 830; 42 U. S. C. § 1988. The trial court granted fees for all legal work relating to those claims—regardless of whether the same work would have been done (for example, the same depositions taken) to contest the *non*-frivolous claims in the suit. We made clear that was wrong. When a "defendant would have incurred [an] expense in any event[,] he has suffered no incremental harm from the frivolous claim," and so the court lacks a basis for shifting the expense. *Fox*, 563 U. S., at 836. Substitute "discovery abuse" for "frivolous claim" in that sentence, and the same thing goes in this case. Or otherwise said (and again borrowing from *Fox*), when "the cost[ ] would have been incurred in the absence of" the discovery violation, then the court (possessing only the power to compensate for harm the misconduct has caused) must leave it alone. *Id.*, at 838.

This but-for causation standard generally demands that a district court assess and allocate specific litigation expenses—yet still allows it to exercise discretion and judg-

a party to pay attorney's fees "caused by" discovery misconduct, Rule 37(b)(2)(C), or "directly resulting from" misrepresentations in pleadings, motions, and other papers, Rule 11(c)(4). And under 28 U. S. C. § 1927, a court may require an attorney who unreasonably multiplies proceedings to pay attorney's fees incurred "because of" that misconduct. Those provisions confirm the need to establish a causal link between misconduct and fees when acting under inherent authority, given that such undelegated powers should be exercised with especial "restraint and discretion." *Roadway Express, Inc.* v. *Piper*, 447 U. S. 752, 764 (1980).

ment. The court's fundamental job is to determine whether a given legal fee—say, for taking a deposition or drafting a motion—would or would not have been incurred in the absence of the sanctioned conduct. The award is then the sum total of the fees that, except for the misbehavior, would not have accrued. See *id.*, at 837–838 (providing illustrative examples). But as we stressed in *Fox*, trial courts undertaking that task "need not, and indeed should not, become green-eyeshade accountants" (or whatever the contemporary equivalent is). *Id.*, at 838. "The essential goal" in shifting fees is "to do rough justice, not to achieve auditing perfection." *Ibid.* Accordingly, a district court "may take into account [its] overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." *Ibid.* The court may decide, for example, that all (or a set percentage) of a particular category of expenses—say, for expert discovery—were incurred solely because of a litigant's bad-faith conduct. And such judgments, in light of the trial court's "superior understanding of the litigation," are entitled to substantial deference on appeal. *Hensley* v. *Eckerhart*, 461 U. S. 424, 437 (1983).

In exceptional cases, the but-for standard even permits a trial court to shift all of a party's fees, from either the start or some midpoint of a suit, in one fell swoop. *Chambers* v. *NASCO* offers one illustration. There, we approved such an award because literally everything the defendant did—"his entire course of conduct" throughout, and indeed preceding, the litigation—was "part of a sordid scheme" to defeat a valid claim. 501 U. S., at 51, 57 (brackets omitted). Thus, the district court could reasonably conclude that all legal expenses in the suit "were caused . . . solely by [his] fraudulent and brazenly unethical efforts." *Id.*, at 58. Or to flip the example: If a plaintiff initiates a case in complete bad faith, so that every cost of defense is attributable only to sanctioned behavior, the court may again make a blanket award. And similarly, if a court finds that a lawsuit, absent litigation

misconduct, would have settled at a specific time—for example, when a party was legally required to disclose evidence fatal to its position—then the court may grant all fees incurred from that moment on. In each of those scenarios, a court escapes the grind of segregating individual expense items (a deposition here, a motion there)—or even categories of such items (again, like expert discovery)—but only because all fees in the litigation, or a phase of it, meet the applicable test: They would not have been incurred except for the misconduct.

III

It is an oddity of this case that both sides agree with just about everything said in the last six paragraphs about the pertinent law. Do legal fees awarded under a court's inherent sanctioning authority have to be compensatory rather than punitive when civil litigation procedures are used? The Haegers and Goodyear alike say yes. Does that mean the fees awarded must be causally related to the sanctioned party's misconduct? A joint yes on that too. More specifically, does the appropriate causal test limit the fees, a la *Fox*, to those that would not have been incurred but for the bad faith? No argument there either. And in an exceptional case, such as *Chambers*, could that test produce an award extending as far as all of the wronged party's legal fees? Once again, agreement (if with differing degrees of enthusiasm). See Brief for Petitioner 17, 23–24, 31; Brief for Respondents 17–18, 22–23; Tr. of Oral Arg. 34–35, 46–47.

All the parties really argue about here is what that law means for this case. Goodyear contends that it requires throwing out the trial court's fee award and instructing the court to consider the matter anew. The Haegers maintain, to the contrary, that the award can stand. They initially contend—pointing to a couple of passages from the Ninth Circuit's opinion—that both courts below articulated and applied the very but-for causation standard we have laid out. See Brief for Respondents 17–18 (highlighting the Ninth Cir-

cuit's statements that Goodyear's "bad faith conduct caused significant harm" and that the District Court "determine[d] the appropriate amount of fees to award as sanctions to compensate the [Haegers] for the damages they suffered as a result of [Goodyear's] bad faith"). And even if we reject that view, the Haegers continue, we may uphold the fee award on the ground that it in fact passes a but-for test. That standard is satisfied (so they say) for either of two reasons. First, because the case would have settled as soon as Goodyear disclosed the requested heat-test results, thus putting an end to the Haegers' legal bills. Or second, because (settlement prospects aside) the withholding of that data so infected the lawsuit as to account for each and every expense the Haegers subsequently incurred. See *id.*, at 14–15, 22, 26.

The Haegers' defense of the lower courts' reasoning is a non-starter: Neither of them used the correct legal standard. As earlier recounted, the District Court specifically disclaimed the "usual[ ]" need to find a "causal link" between misconduct and fees when the sanctioned party's behavior was bad enough—in the court's words, when it "r[ose] to a truly egregious level." 906 F. Supp. 2d, at 975 (emphasis deleted); see *supra*, at 105–106. In such circumstances, the court thought, it could award "all" fees, including those that would have been incurred in the absence of the misconduct. 906 F. Supp. 2d, at 975. And the court confirmed that approach even while conceding that it might be wrong: By issuing a "contingent award" of $2 million, meant to go into effect if the Ninth Circuit demanded a causal "linkage between the misconduct and harm," the District Court made clear that its primary, $2.7 million award was not so confined. App. to Pet. for Cert. 180a; see *supra*, at 106. Still, the Court of Appeals left the larger sanction in place, because it too mistook what findings were needed to support that award. In the Ninth Circuit's view, the trial court could grant all attorney's fees incurred "*during the time when* [Goodyear was] acting

in bad faith." 813 F. 3d, at 1250 (emphasis added); see *id.*, at 1249 (permitting an award of fees incurred "*once* [Goodyear] began flouting [its] discovery obligations" (emphasis added)); *supra*, at 106–107. But that is a temporal limitation, not a causal one; and, like the District Court's "egregiousness" requirement, it is wide of the mark. A sanctioning court must determine which fees were incurred because of, and solely because of, the misconduct at issue (however serious, or concurrent with a lawyer's work, it might have been). No such finding lies behind the $2.7 million award made and affirmed below.

Nor are we tempted to fill in that gap, as the Haegers have invited us to do. As an initial matter, the Haegers have not shown that this litigation would have settled as soon as Goodyear divulged the heat-test results (thus justifying an all-fees award from the moment it was supposed to disclose, see *supra*, at 110–111). Even the District Court did not go quite that far: In attempting to buttress its comprehensive award, it said only (and after expressing "some uncertainty") that the suit probably would have settled "much earlier." 906 F. Supp. 2d, at 972. And that more limited finding is itself subject to grave doubt, even taking into account the deference owed to the trial court. As Judge Watford reasoned, the test results, although favorable to the Haegers' version of events, did not deprive Goodyear of colorable defenses. In particular, Goodyear still could have argued, as it had from the beginning, that "the Haegers' own tire, which had endured more than 40,000 miles of wear and tear, failed because it struck road debris." 813 F. 3d, at 1256 (dissenting opinion). And indeed, that is pretty much the course Goodyear took in another suit alleging that the G159 caused a motorhome accident. See *Schalmo* v. *Goodyear*, No. 51–2006–CA–2064–WS (6th Cir. Ct. Pasco Cty., Fla., June 25, 2010). In that case (as Judge Watford again observed), Goodyear produced the very test results at issue here, yet still elected to go to trial. See 813 F. 3d, at 1256. So we do not

think the record allows a finding, as would support the $2.7 million award, that disclosure of the heat-test results would have led straightaway to a settlement.

Further, the Haegers cannot demonstrate that Goodyear's non-disclosure so permeated the suit as to make that misconduct a but-for cause of every subsequent legal expense, totaling the full $2.7 million. If nothing else, the District Court's back-up fee award belies that theory. After introducing a causal element into the equation, the court found that the $700,000 of fees that the Haegers incurred in litigating against other defendants and proving their own medical damages had nothing to do with Goodyear's discovery decisions. See App. to Pet. for Cert. 180a; *supra*, at 106. The Haegers have failed to offer any concrete reason for questioning that judgment, and we do not see how they could. At a minimum, then, the sanction order could not force Goodyear to reimburse those expenses—because, again, the Haegers would have paid them even had the company behaved immaculately in every respect.

That leaves the question whether the contingent $2 million award should now stand—or, alternatively, whether the District Court must reconsider from scratch which fees to shift. In the absence of any waiver issue, we would insist on the latter course. Although the District Court considered causation in arriving at its back-up award, we cannot tell from its sparse discussion whether its understanding of that requirement corresponds to the standard we have described. That uncertainty points toward demanding a do-over, under the unequivocally right legal rules. But the Haegers contend that Goodyear has waived any ability to challenge the $2 million award. In their view, that sum reflected Goodyear's own submission—which it may not now amend—that only about $700,000 of the fees sought would have been incurred "regardless of Goodyear's behavior." App. 69; see Brief for Respondents 41; *supra*, at 106. The Court of Appeals did not previously address that issue, and we decline

to decide it in the first instance. See *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005) ("[W]e are a court of review, not of first view"). The possibility of waiver should therefore be the initial order of business below. If a waiver is found, that is the end of this case. If not, the District Court must reassess fees in line with a but-for causation requirement.

For these reasons, we reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

Syllabus

MANRIQUE *v.* UNITED STATES

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

No. 15–7250. Argued October 11, 2016—Decided April 19, 2017

After federal agents found child pornography on petitioner's computer, he pleaded guilty to possessing a visual depiction of a minor engaging in sexually explicit conduct, in violation of 18 U. S. C. §§ 2252(a)(4)(B) and (b)(2), an offense requiring a district court to "make restitution to the victim of the offense," § 3663A(a)(1). The District Court entered an initial judgment sentencing petitioner to a term of imprisonment. It also acknowledged that restitution was mandatory but deferred determination of the restitution amount. Petitioner filed a notice of appeal from this initial judgment. Months later, the District Court entered an amended judgment, ordering petitioner to pay restitution to one of his victims. Petitioner did not file a second notice of appeal from the amended judgment. When he nonetheless challenged the restitution amount before the Eleventh Circuit, the Government argued that he had forfeited his right to do so by failing to file a second notice of appeal. The Eleventh Circuit agreed, holding that petitioner could not challenge the restitution amount.

Held: A defendant wishing to appeal an order imposing restitution in a deferred restitution case must file a notice of appeal from that order. If he fails to do so and the Government objects, he may not challenge the restitution order on appeal. Pp. 120–125.

(a) Both 18 U. S. C. § 3742(a), which governs criminal appeals, and Federal Rule of Appellate Procedure 3(a)(1) contemplate that a defendant will file a notice of appeal *after* the district court has decided the issue sought to be appealed. Here, petitioner filed only one notice of appeal, which preceded by many months the sentence and judgment imposing restitution. He therefore failed to properly appeal the amended judgment. Whether or not the requirement that a defendant file a timely notice of appeal from an amended judgment imposing restitution is a jurisdictional prerequisite, it is at least a mandatory claim-processing rule, which is "unalterable" if raised properly by the party asserting a violation of the rule. *Eberhart* v. *United States*, 546 U. S. 12, 15. Because the Government timely raised the issue, "the court's duty to dismiss the appeal was mandatory." *Id.*, at 18. Pp. 120–122.

(b) Petitioner's argument that his single notice of appeal sufficed under the Federal Rules to appeal both judgments depends on two

premises: First, in a deferred restitution case, there is only one "judgment," as that term is used in Rules 4(b)(1) and (b)(2); and second, so long as a notice of appeal is filed after the initial judgment, it "springs forward" under Rule 4(b)(2) to appeal the amended judgment imposing restitution. Each premise is rejected. Pp. 122–124.

(1) This Court's analysis in *Dolan* v. *United States*, 560 U. S. 605, makes clear that deferred restitution cases involve two appealable judgments, not one. The *Dolan* Court did not decide the question presented here, but the Court was not persuaded by the argument that "a sentencing judgment is not 'final' until it contains a definitive determination of the amount of restitution." *Id.*, at 617–618. Instead, the Court recognized, "strong arguments" supported the proposition that both the initial judgment and the restitution order were each immediately appealable final judgments. *Ibid.* Pp. 122–123.

(2) Because petitioner's notice of appeal was filed well before the District Court announced the sentence imposing restitution, the notice of appeal did not "spring forward" to become effective on the date the court entered its amended restitution judgment. By its own terms, Rule 4(b)(2) applies only to a notice of appeal filed after a sentence has been announced and before the judgment imposing the sentence is entered on the docket. Even if the District Court's acknowledgment in the initial judgment that restitution was mandatory could qualify as a "sentence" that the District Court "announced" under Rule 4(b)(2), petitioner has never disputed that restitution is mandatory for his offense. Rather, he argued on appeal that the *amount* imposed is unlawful. Pp. 123–124.

(c) Petitioner's alternative argument that any defect in his notice of appeal should be overlooked as harmless error is rejected. *Lemke* v. *United States*, 346 U. S. 325, on which he relies, has been superseded by the Federal Rules of Appellate Procedure in two ways. First, the *Lemke* petitioner's notice of appeal would now be timely under Rule 4(b)(2). Petitioner in this case cannot take advantage of that Rule. Second, Rule 3(a)(2) now provides the consequences for litigant errors associated with filing a notice of appeal. The court of appeals may, in its discretion, overlook defects in a notice of appeal *other* than the failure to timely file a notice. It may not overlook the failure to file a notice of appeal at all. Pp. 124–125.

618 Fed. Appx. 579, affirmed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, ALITO, and KAGAN, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which SOTOMAYOR, J., joined, *post*, p. 126. GORSUCH, J., took no part in the consideration or decision of the case.

Paul M. Rashkind argued the cause for petitioner. With him on the briefs were *Michael Caruso* and *R. D'Arsey Houlihan*.

Allon Kedem argued the cause for the United States. With him on the brief were *Acting Solicitor General Gershengorn*, *Assistant Attorney General Caldwell*, *Deputy Solicitor General Dreeben*, and *Sangita K. Rao*.

JUSTICE THOMAS delivered the opinion of the Court.

Sentencing courts are required to impose restitution as part of the sentence for specified crimes. But the amount to be imposed is not always known at the time of sentencing. When that is the case, the court may enter an initial judgment imposing certain aspects of a defendant's sentence, such as a term of imprisonment, while deferring a determination of the amount of restitution until entry of a later, amended judgment.

We must decide whether a single notice of appeal, filed between the initial judgment and the amended judgment, is sufficient to invoke appellate review of the later-determined restitution amount. We hold that it is not, at least where, as here, the Government objects to the defendant's failure to file a notice of appeal following the amended judgment.

I

After federal agents found more than 300 files containing child pornography on his computer, petitioner Marcelo Manrique pleaded guilty to possessing a visual depiction of a minor engaging in sexually explicit conduct, in violation of 18 U. S. C. §§ 2252(a)(4)(B) and (b)(2). Under the Mandatory Victims Restitution Act of 1996 (MVRA), the District Court was required to order petitioner to "make restitution to the victim of the offense." § 3663A(a)(1); see §§ 2259(a), (b)(2) ("An order of restitution under this section shall be issued and enforced in accordance with [§] 3664 in the same manner as an order under [§] 3663A").

On June 24, 2014, the District Court entered an initial judgment sentencing petitioner to 72 months of imprisonment and a life term of supervised release. At the sentencing hearing, the court acknowledged that restitution was mandatory. But, consistent with the MVRA, the court postponed determining the victims' damages, which had not yet been ascertained. See, *e. g.*, § 3664(d)(5); *Dolan* v. *United States*, 560 U. S. 605, 607–608 (2010). Accordingly, the judgment expressly deferred "determination of restitution" and noted that an "Amended Judgment . . . w[ould] be entered after such determination." App. 39. On July 8, petitioner filed a notice of appeal "from the final judgment and sentence entered in this action on the 24th day of June, 2014." *Id.*, at 42.

The District Court held a restitution hearing on September 17, 2014. Only one of the victims sought restitution. The court ordered petitioner to pay $4,500 in restitution to her and entered an amended judgment the next day imposing that sentence. Petitioner did not file a second notice of appeal from the court's order imposing restitution or from the amended judgment.

Notwithstanding his failure to file a second notice of appeal, petitioner challenged the restitution amount before the Eleventh Circuit, arguing in his brief that the Government had not shown he was the proximate cause of the victim's injuries and that the restitution amount bore no rational relationship to the damages she claimed. The Government countered that petitioner had forfeited his right to challenge the restitution amount by failing to file a second notice of appeal.

The Court of Appeals agreed that petitioner could not challenge the restitution amount and declined to consider his challenge. 618 Fed. Appx. 579, 583–584 (CA11 2015) (*per curiam*). We granted certiorari, 578 U. S. 944 (2016), and now affirm.

II

A

To secure appellate review of a judgment or order, a party must file a notice of appeal from that judgment or order. Filing a notice of appeal transfers adjudicatory authority from the district court to the court of appeals. The statute that governs appeals of criminal sentences, 18 U. S. C. § 3742(a), provides that a "defendant may file a notice of appeal in the district court for review of an otherwise final sentence" in certain specified circumstances. See *United States* v. *Ruiz*, 536 U. S. 622, 626–628 (2002). And Federal Rule of Appellate Procedure 3(a)(1) specifies that "[a]n appeal permitted by law as of right . . . may be taken *only* by filing a notice of appeal with the district clerk within the time allowed by Rule 4." (Emphasis added.)

Both § 3742(a) and Rule 4 contemplate that the defendant will file the notice of appeal *after* the district court has decided the issue sought to be appealed. Section 3742(a)(1) permits the defendant to file a notice of appeal of a sentence that "*was* imposed in violation of law." (Emphasis added.) And Rule 4(b)(1)(A)(i) provides generally that, "[i]n a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days *after* . . . the entry of either the judgment or the order being appealed." (Emphasis added.)

Petitioner filed only one notice of appeal, which preceded by many months the sentence and judgment imposing restitution. His notice of appeal could not have been "for review" of the restitution order, § 3742(a), and it was not filed within the timeframe allowed by Rule 4. He thus failed to properly appeal under the statute and the Rules the amended judgment imposing restitution.

The Government contends that filing a notice of appeal from the judgment imposing restitution is a jurisdictional prerequisite to securing appellate review of the restitution amount. See, *e. g.*, Brief for United States 28–31. This po-

sition follows, according to the Government, from many of our cases emphasizing the "jurisdictional significance" of a notice of appeal. *E. g.*, *Griggs* v. *Provident Consumer Discount Co.*, 459 U. S. 56, 58 (1982) (*per curiam*). Because the notice of appeal is jurisdictional, the Government explains, the Court of Appeals was required to dismiss petitioner's appeal regardless of whether the Government raised the issue.

We do not need to decide in this case whether the Government is correct. The requirement that a defendant file a timely notice of appeal from an amended judgment imposing restitution is at least a mandatory claim-processing rule. See *Greenlaw* v. *United States*, 554 U. S. 237, 252–253 (2008); see also Rule 3(a)(2) ("An appellant's failure to take any step *other than the timely filing of a notice of appeal* does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal" (emphasis added)). Mandatory claim-processing rules "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Henderson* v. *Shinseki*, 562 U. S. 428, 435 (2011). Unlike jurisdictional rules, mandatory claim-processing rules may be forfeited "if the party asserting the rule waits too long to raise the point." *Eberhart* v. *United States*, 546 U. S. 12, 15 (2005) (*per curiam*) (internal quotation marks omitted). If a party "properly raise[s] them," however, they are "unalterable." *Id.*, at 15, 19.

The Government timely raised petitioner's failure to file a notice of appeal from the amended judgment imposing restitution before the Court of Appeals. See Brief for United States in No. 14–13029 (CA11), pp. 22–25 (arguing that petitioner "waived his right to appeal the district court's order of restitution by failing to file a notice of appeal from that order" (capitalization omitted)). Accordingly, "the court's

duty to dismiss the appeal was mandatory." *Eberhart*, *supra*, at 18.

B

Petitioner disputes this conclusion, arguing that his single notice of appeal sufficed under the Rules to appeal both the initial judgment and the amended judgment imposing restitution. As we understand it, his argument depends on two premises: First, in a deferred restitution case, there is only one "judgment," as that term is used in Rules 4(b)(1) and (b)(2); and second, so long as a notice of appeal is filed after the initial judgment, it "springs forward" under Rule 4(b)(2) to appeal the amended judgment imposing restitution. We reject each of these premises.

1

Petitioner argues that the initial judgment deferring restitution and the amended judgment imposing a specific restitution amount merge to become "the judgment" referenced in the Federal Rules. See Rule 4(b)(1)(A)(i) (notice of appeal must be filed within 14 days after "the entry of . . . the judgment . . . being appealed"); Rule 4(b)(2) ("Filing Before Entry of Judgment"). He argues that his notice of appeal, which was filed within 14 days of the initial judgment, was therefore sufficient to invoke appellate review of the merged judgment.

Petitioner's approach is inconsistent with our reasoning in *Dolan*, 560 U. S. 605. The petitioner in that case argued that the amended judgment imposing restitution is the *only* final, appealable judgment in a deferred restitution case. See *id.*, at 616. Although we did not decide "whether or when a party can, or must, appeal"—the question presented here—we were not persuaded by the argument that "a sentencing judgment is not 'final' until it contains a definitive determination of the amount of restitution." *Id.*, at 617–618. To the contrary, we recognized "strong arguments" supporting the proposition that both the "initial judgment [that] im-

posed a sentence of imprisonment and supervised release" and the subsequent "'sentence that impose[d] an order of restitution'" were each immediately appealable final judgments. *Ibid.* (citing 18 U. S. C. §§3582(b) (imprisonment), 3583(a) (supervised release), and 3664(*o*) (restitution)). Consequently, we were not surprised "to find instances where a defendant ha[d] appealed from the entry of a judgment containing an initial sentence that includes a term of imprisonment" and "subsequently appealed from a later order setting forth the final amount of restitution." 560 U. S., at 618. Our analysis in *Dolan* thus makes clear that deferred restitution cases involve two appealable judgments, not one.*

2

Petitioner's reliance on Rule 4(b)(2) is also misplaced. That Rule provides that a "notice of appeal filed after the court announces a decision, sentence, or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry." A prematurely filed notice of appeal will become effective under the Rule to challenge a later-entered judgment in some circumstances. As this Court explained in construing Rule 4(a)(2)'s parallel provision for civil cases, the Rule "was intended to protect the unskilled litigant who files a notice of appeal from a decision that he reasonably but mistakenly believes to be a final judgment, while failing to file a notice of appeal from the actual final judgment." *FirsTier Mortgage Co.* v. *Investors Mortgage Ins. Co.*, 498 U. S. 269, 276 (1991).

By its own terms, however, Rule 4(b)(2) applies only to a notice of appeal filed after a sentence has been "announce[d]" and before the judgment imposing the sentence is entered on the docket. See Rule 4(b)(6) ("A judgment or order is

*We do not intend to call into question this Court's decision in *Corey* v. *United States*, 375 U. S. 169, 176 (1963) (holding that a defendant may challenge his conviction after a single notice of appeal filed from a final sentence imposed under §4208(b)).

entered for purposes of this Rule 4(b) when it is entered on the criminal docket"). If the court has not yet decided the issue that the appellant seeks to appeal, then the Rule does not come into play. Accordingly, it does not apply where a district court enters an initial judgment deferring restitution and subsequently amends the judgment to include the sentence of restitution. By deferring restitution, the court is *declining* to announce a sentence.

When petitioner filed his notice of appeal in this case, the District Court had observed only that restitution was "mandatory." App. 27. The court did not announce the restitution amount (or even hold a hearing on the issue) until months later. Even if describing restitution as mandatory could qualify as a "sentence" that the District Court "announced" under Rule 4(b)(2), petitioner has never disputed that restitution is mandatory for his offense. Rather, he argued on appeal that the *amount* of the restitution imposed—an issue the court did not consider until months later—is unlawful. Because petitioner's notice of appeal was filed well before the District Court announced the sentence imposing $4,500 in restitution, the notice of appeal did not "spring forward" to become effective on the date the court entered its amended judgment imposing that sentence.

C

Finally, petitioner argues in the alternative that any defect in his notice of appeal should be overlooked as harmless error, citing *Lemke* v. *United States*, 346 U. S. 325 (1953) (*per curiam*). In that case, the petitioner filed a notice of appeal the day after his sentence was announced but three days before the judgment was entered. *Id.*, at 326. His notice of appeal was dismissed as premature under Federal Rule of Criminal Procedure 37(a)(2), which then governed notices of appeal in criminal cases. This Court reversed on the ground that the premature filing was harmless error under Rule 52(a). 346 U. S., at 326.

The Court's holding in *Lemke* does not apply to petitioner's failure to file a notice of appeal from the amended judgment. *Lemke* has been superseded by the Federal Rules of Appellate Procedure in two ways. First, the *Lemke* petitioner's notice of appeal would now be timely under Rule 4(b)(2). As discussed in Part II–B–2, *supra*, petitioner here cannot take advantage of that rule. Second, Rule 3(a)(2) now provides the consequences for litigant errors associated with filing a notice of appeal. The court of appeals may, in its discretion, overlook defects in a notice of appeal *other* than the failure to timely file a notice. It may not overlook the failure to file a notice of appeal at all. The filing of a notice of appeal from an amended judgment imposing restitution is at least a mandatory claim-processing rule, Part II–A, *supra*, meaning that the requirement to file such a notice is unalterable, so long as the opposing party raises the issue. By definition, mandatory claim-processing rules, although subject to forfeiture, are not subject to harmless-error analysis.

Petitioner in this case did not file a defective notice of appeal from the amended judgment imposing restitution, but rather failed altogether to file a notice of appeal from the amended judgment. Courts do not have discretion to overlook such an error, at least where it is called to their attention.

* * *

We hold that a defendant who wishes to appeal an order imposing restitution in a deferred restitution case must file a notice of appeal from that order. Because petitioner failed to do so, and the Government objected, the Court of Appeals properly declined to consider his challenge to the amount of restitution imposed. The judgment of the Court of Appeals, accordingly, is affirmed.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

JUSTICE GINSBURG, with whom JUSTICE SOTOMAYOR joins, dissenting.

Time limits, such as those stated in Federal Rules of Appellate Procedure 3 and 4, and other limitations prescribed in a procedural rule, this Court has held, are claim-processing rules, not jurisdictional requirements. See, *e. g.*, *Eberhart* v. *United States*, 546 U. S. 12, 15–19 (2005) (*per curiam*); *Kontrick* v. *Ryan*, 540 U. S. 443, 448, 452–456 (2004). That matter is settled, and the Court, today, leaves undisturbed prior opinions distinguishing claim-processing rules from jurisdictional orders. See, *e. g.*, *Gonzalez* v. *Thaler*, 565 U. S. 134, 141–143 (2012); *Henderson* v. *Shinseki*, 562 U. S. 428, 435–436, 441–442 (2011); *Scarborough* v. *Principi*, 541 U. S. 401, 413–414 (2004); cf. *Bowles* v. *Russell*, 551 U. S. 205, 209–213 (2007) (distinguishing statutory prescriptions from procedural rules).

As I see it, a defendant wishing to appeal his sentence and conviction when a restitution determination has been deferred has two choices: (1) He may immediately appeal his conviction and sentence of imprisonment, and later appeal the restitution order when made; or (2) he may await the restitution order and then appeal, through a single notice, his conviction, sentence of imprisonment, and restitution order. But even assuming, *arguendo*, that separate appeal notices are ordinarily required, I would hold that Manrique is not barred from appealing the restitution order in the circumstances of this case. Federal Rule of Criminal Procedure 32(j)(1)(B) states:

> "*Appealing a Sentence.* After sentencing—regardless of the defendant's plea—the court must advise the defendant of any right to appeal the sentence."

The District Court gave Manrique the requisite advice upon sentencing him to imprisonment on June 23, 2014, see App. 29; that court gave no such advice upon amending its judgment on September 18, 2014 to include the amount of restitu-

tion ordered, see *id.*, at 10, 46–65. The Government agrees that the District Court was "absolutely" required to advise Manrique of his right to appeal the restitution order, and anticipates that the required advice "will prevent cases like this from arising again in the future." Tr. of Oral Arg. 28.

Aware of its obligation to advise Manrique of his right to appeal, the District Court appears to have assumed that no second notice was required to place the restitution amount before the Court of Appeals. Without awaiting another appeal notice, the District Court Clerk transmitted the amended judgment, five days after its entry, to the Court of Appeals, which filed that judgment on the docket of the appeal from the conviction and sentence already pending in that court. App. 10. In turn, the Eleventh Circuit's Clerk asked the District Court reporter to send up the transcript of, and record from, the restitution hearing. See Docket in No. 14–13029 (CA11).

In light of what occurred here, I would hold that the Clerk's dispatch of the amended judgment to the Court of Appeals "confer[red] jurisdiction on the court of appeals." *Griggs* v. *Provident Consumer Discount Co.*, 459 U. S. 56, 58 (1982) (*per curiam*). In other words, in lieu of trapping an unwary defendant, see Tr. of Oral Arg. 29, I would rank the Clerk's transmission of the amended judgment to the Court of Appeals as an adequate substitute for a second notice of appeal.*

Because I would treat the Clerk's transmission of the amended judgment as tantamount to, or effectively doing service for, a second appeal notice, I would reverse the Eleventh Circuit's judgment and allow Manrique to include the restitution order in his appeal.

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*Given the steps taken by the District Court, Court of Appeals, and the Clerks of those courts, it was likely no surprise to the Government when Manrique challenged the restitution award in his opening brief on appeal. See Brief for Appellant in No. 14–13029 (CA11), pp. 23–29.

Syllabus

NELSON *v.* COLORADO

CERTIORARI TO THE COLORADO SUPREME COURT

No. 15–1256. Argued January 9, 2017—Decided April 19, 2017*

Petitioner Shannon Nelson was convicted by a Colorado jury of two felonies and three misdemeanors arising from the alleged sexual and physical abuse of her four children. The trial court imposed a prison term of 20 years to life and ordered her to pay $8,192.50 in court costs, fees, and restitution. On appeal, Nelson's conviction was reversed for trial error, and on retrial, she was acquitted of all charges.

Petitioner Louis Alonzo Madden was convicted by a Colorado jury of attempting to patronize a prostituted child and attempted sexual assault. The trial court imposed an indeterminate prison sentence and ordered him to pay $4,413.00 in costs, fees, and restitution. After one of Madden's convictions was reversed on direct review and the other vacated on postconviction review, the State elected not to appeal or retry the case.

The Colorado Department of Corrections withheld $702.10 from Nelson's inmate account between her conviction and acquittal, and Madden paid the State $1,977.75 after his conviction. In both cases, the funds were allocated to costs, fees, and restitution. Once their convictions were invalidated, both petitioners moved for return of the funds. Nelson's trial court denied her motion outright, and Madden's postconviction court allowed a refund of costs and fees, but not restitution. The Colorado Court of Appeals concluded that both petitioners were entitled to seek refunds of all they had paid, but the Colorado Supreme Court reversed. It reasoned that Colorado's Compensation for Certain Exonerated Persons statute (Exoneration Act or Act), Colo. Rev. Stat. §§ 13–65–101, 13–65–102, 13–65–103, provided the exclusive authority for refunds and that, because neither Nelson nor Madden had filed a claim under that Act, the courts lacked authority to order refunds. The Colorado Supreme Court also held that there was no due process problem under the Act, which permits Colorado to retain conviction-related assessments unless and until the prevailing defendant institutes a discrete civil proceeding and proves her innocence by clear and convincing evidence.

Held: The Exoneration Act's scheme does not comport with the Fourteenth Amendment's guarantee of due process. Pp. 134–139.

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*Together with *Madden* v. *Colorado*, also on certiorari to the same court (see this Court's Rule 12.4).

Syllabus

(a) The procedural due process inspection required by *Mathews* v. *Eldridge*, 424 U. S. 319, governs these cases. *Medina* v. *California*, 505 U. S. 437, controls when state procedural rules that are part of the criminal process are at issue. These cases, in contrast, concern the continuing deprivation of property after a conviction has been reversed or vacated, with no prospect of reprosecution. Pp. 134–135.

(b) The three considerations balanced under *Mathews*—the private interest affected; the risk of erroneous deprivation of that interest through the procedures used; and the governmental interest at stake—weigh decisively against Colorado's scheme. Pp. 135–139.

(1) Nelson and Madden have an obvious interest in regaining the money they paid to Colorado. The State may not retain these funds simply because Nelson's and Madden's convictions were in place when the funds were taken, for once those convictions were erased, the presumption of innocence was restored. See, *e. g.*, *Johnson* v. *Mississippi*, 486 U. S. 578, 585. And Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions. Pp. 135–137.

(2) Colorado's scheme creates an unacceptable risk of the erroneous deprivation of defendants' property. The Exoneration Act conditions refund on defendants' proof of innocence by clear and convincing evidence, but defendants in petitioners' position are presumed innocent. Moreover, the Act provides no remedy for assessments tied to invalid misdemeanor convictions. And when, as here, the recoupment amount sought is not large, the cost of mounting a claim under the Act and retaining counsel to pursue it would be prohibitive.

Colorado argues that an Act that provides sufficient process to compensate a defendant for the loss of her liberty must suffice to compensate a defendant for the lesser deprivation of money. But Nelson and Madden seek the return of their property, not compensation for its temporary deprivation. Just as restoration of liberty on reversal of a conviction is not compensation, neither is the return of money taken by the State on account of the conviction. Other procedures cited by Colorado—the need for probable cause to support criminal charges, the jury-trial right, and the State's burden to prove guilt beyond a reasonable doubt—do not address the risk faced by a defendant whose conviction has been overturned that she will not recover funds taken from her based solely on a conviction no longer valid. Pp. 137–138.

(3) Colorado has no interest in withholding from Nelson and Madden money to which the State currently has zero claim of right. The State has identified no equitable considerations favoring its position, nor indicated any way in which the Exoneration Act embodies such considerations. P. 139.

362 P. 3d 1070 (first judgment) and 364 P. 3d 866 (second judgment), reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in the judgment, *post*, p. 139. THOMAS, J., filed a dissenting opinion, *post*, p. 148. GORSUCH, J., took no part in the consideration or decision of the cases.

Stuart Banner argued the cause for petitioners. With him on the briefs were *Fred A. Rowley, Jr.*, *Daniel B. Levin*, *Ned R. Jaeckle*, and *Suzan Trinh Almony.*

Frederick R. Yarger, Solicitor General of Colorado, argued the cause for respondent. With him on the brief were *Cynthia H. Coffman*, Attorney General, *L. Andrew Cooper*, Deputy Attorney General, *Christine C. Brady*, Senior Assistant Attorney General, and *Jillian J. Price* and *Brock J. Swanson*, Assistant Attorneys General.†

JUSTICE GINSBURG delivered the opinion of the Court.

When a criminal conviction is invalidated by a reviewing court and no retrial will occur, is the State obliged to refund fees, court costs, and restitution exacted from the defendant upon, and as a consequence of, the conviction? Our answer is yes. Absent conviction of a crime, one is presumed innocent. Under the Colorado law before us in these cases, however, the State retains conviction-related assessments unless and until the prevailing defendant institutes a discrete civil proceeding and proves her innocence by clear and convincing evidence. This scheme, we hold, offends the Fourteenth Amendment's guarantee of due process.

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†Briefs of *amici curiae* urging reversal were filed for the Institute for Justice et al. by *David G. Post*, *Darpana Sheth*, *Robert E. Johnson*, and *Ilya Shapiro*; for the National Association of Criminal Defense Lawyers by *Andrew J. Pincus*, *Charles A. Rothfeld*, *Michael B. Kimberly*, *Paul W. Hughes*, *Barbara Bergman*, and *Eugene R. Fidell*; and for the Pacific Legal Foundation by *M. Reed Hopper.*

I

A

Two cases are before us for review. Petitioner Shannon Nelson, in 2006, was convicted by a Colorado jury of five counts—two felonies and three misdemeanors—arising from the alleged sexual and physical abuse of her four children. 362 P. 3d 1070, 1071 (Colo. 2015); App. 25–26. The trial court imposed a prison sentence of 20 years to life and ordered Nelson to pay court costs, fees, and restitution totaling $8,192.50. 362 P. 3d, at 1071. On appeal, Nelson's conviction was reversed for trial error. *Ibid.* On retrial, a new jury acquitted Nelson of all charges. *Ibid.*

Petitioner Louis Alonzo Madden, in 2005, was convicted by a Colorado jury of attempting to patronize a prostituted child and attempted third-degree sexual assault by force. See 364 P. 3d 866, 867 (Colo. 2015). The trial court imposed an indeterminate prison sentence and ordered Madden to pay costs, fees, and restitution totaling $4,413.00. *Ibid.* The Colorado Supreme Court reversed one of Madden's convictions on direct review, and a postconviction court vacated the other. *Ibid.* The State elected not to appeal or retry the case. *Ibid.*

Between Nelson's conviction and acquittal, the Colorado Department of Corrections withheld $702.10 from her inmate account, $287.50 of which went to costs and fees[1] and $414.60 to restitution. See 362 P. 3d, at 1071, and n. 1. Following Madden's conviction, Madden paid Colorado $1,977.75, $1,220 of which went to costs and fees[2] and $757.75 to restitution. See 364 P. 3d, at 867. The sole legal basis for these assess-

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[1] Of the $287.50 for costs and fees, $125 went to the victim compensation fund and $162.50 to the victims and witnesses assistance and law enforcement fund (VAST fund). See 362 P. 3d 1070, 1071, n. 1 (Colo. 2015).

[2] Of the $1,220 for costs and fees, $125 went to the victim compensation fund and $1,095 to the VAST fund ($1,000 of which was for the special advocate surcharge). See App. 79; 364 P. 3d 866, 869 (Colo. 2015).

ments was the fact of Nelson's and Madden's convictions.[3] Absent those convictions, Colorado would have no legal right to exact and retain petitioners' funds.

Their convictions invalidated, both petitioners moved for return of the amounts Colorado had taken from them. In Nelson's case, the trial court denied the motion outright. 362 P. 3d, at 1071. In Madden's case, the postconviction court allowed the refund of costs and fees, but not restitution. 364 P. 3d, at 867–868.

The same Colorado Court of Appeals panel heard both cases and concluded that Nelson and Madden were entitled to seek refunds of all they had paid, including amounts allocated to restitution. See *People* v. *Nelson*, 369 P. 3d 625, 628–629 (2013); *People* v. *Madden*, 399 P. 3d 706, 707 (2013). Costs, fees, and restitution, the court held, must be "tied to a valid conviction," 369 P. 3d, at 627–628, absent which a court must "retur[n] the defendant to the status quo ante," 399 P. 3d, at 708.

The Colorado Supreme Court reversed in both cases. A court must have statutory authority to issue a refund, that court stated. 362 P. 3d, at 1077; 364 P. 3d, at 868. Colorado's Compensation for Certain Exonerated Persons statute (Exoneration Act or Act), Colo. Rev. Stat. §§ 13–65–101, 13–65–102, 13–65–103 (2016), passed in 2013, "provides the

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[3] See Colo. Rev. Stat. § 24–4.1–119(1)(a) (2005) (levying victim-compensation-fund fees for "each criminal action resulting in a conviction or in a deferred judgment and sentence"); § 24–4.2–104(1)(a)(1)(I) (same, for VAST fund fees); § 24–4.2–104(1)(a)(1)(II) (same, for special advocate surcharge); § 18–1.3–603(1) (2005) (with one exception, "[e]very order of conviction . . . shall include consideration of restitution"). See also 362 P. 3d, at 1073 ("[T]he State pays the cost of criminal cases when a defendant is acquitted." (citing Colo. Rev. Stat. § 16–18–101(1) (2015))). Under Colorado law, a restitution order tied to a criminal conviction is rendered as a separate civil judgment. See § 18–1.3–603(4)(a) (2005). If the conviction is reversed, any restitution order dependent on that conviction is simultaneously vacated. See *People* v. *Scearce*, 87 P. 3d 228, 234–235 (Colo. App. 2003).

proper procedure for seeking a refund," the court ruled. 362 P. 3d, at 1075, 1077. As no other statute addresses refunds, the court concluded that the Exoneration Act is the "exclusive process for exonerated defendants seeking a refund of costs, fees, and restitution." *Id.*, at 1078.[4] Because neither Nelson nor Madden had filed a claim under the Act, the court further determined, their trial courts lacked authority to order a refund. *Id.*, at 1075, 1078; 364 P. 3d, at 867.[5] There was no due process problem, the court continued, because the Act "provides sufficient process for defendants to seek refunds of costs, fees, and restitution that they paid in connection with their conviction." 362 P. 3d, at 1078.

Justice Hood dissented in both cases. Because neither petitioner has been validly convicted, he explained, each must be presumed innocent. *Id.*, at 1079 (*Nelson*); 364 P. 3d, at 870 (adopting his reasoning from *Nelson* in *Madden*). Due process therefore requires some mechanism "for the return of a defendant's money," Justice Hood maintained, 362 P. 3d, at 1080; as the Exoneration Act required petitioners to prove their innocence, the Act, he concluded, did not supply the remedy due process demands, *id.*, at 1081. We granted certiorari. 579 U. S. 969 (2016).

B

The Exoneration Act provides a civil claim for relief "to compensate an innocent person who was wrongly convicted." 362 P. 3d, at 1075. Recovery under the Act is available only to a defendant who has served all or part of a term of incar-

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[4] While these cases were pending in this Court, Colorado passed new legislation to provide "[r]eimbursement of amounts paid following a vacated conviction." See Colo. House Bill 17–1071 (quoting language for Colo. Rev. Stat. § 18–1.3–703, the new provision). That legislation takes effect September 1, 2017, and has no effect on the cases before us.

[5] Prior to the Exoneration Act, the Colorado Supreme Court recognized the competence of courts, upon reversal of a conviction, to order the refund of monetary exactions imposed on a defendant solely by reason of the conviction. *Toland* v. *Strohl*, 147 Colo. 577, 586, 364 P. 2d 588, 593 (1961).

ceration pursuant to a felony conviction, and whose conviction has been overturned for reasons other than insufficiency of evidence or legal error unrelated to actual innocence. See § 13–65–102. To succeed on an Exoneration Act claim, a petitioner must show, by clear and convincing evidence, her actual innocence of the offense of conviction. §§ 13–65–101(1), 13–65–102(1). A successful petitioner may recoup, in addition to compensation for time served,[6] "any fine, penalty, court costs, or restitution . . . paid . . . as a result of his or her wrongful conviction." *Id.*, at 1075 (quoting § 13–65–103(2)(e)(V)).

Under Colorado's legislation, as just recounted, a defendant must prove her innocence by clear and convincing evidence to obtain the refund of costs, fees, and restitution paid pursuant to an invalid conviction. That scheme, we hold, does not comport with due process. Accordingly, we reverse the judgment of the Supreme Court of Colorado.

II

The familiar procedural due process inspection instructed by *Mathews* v. *Eldridge*, 424 U. S. 319 (1976), governs these cases. Colorado argues that we should instead apply the standard from *Medina* v. *California*, 505 U. S. 437, 445 (1992), and inquire whether Nelson and Madden were exposed to a procedure offensive to a fundamental principle of justice. *Medina* "provide[s] the appropriate framework for assessing the validity of state procedural rules" that "are part of the criminal process." *Id.*, at 443. Such rules concern, for example, the allocation of burdens of proof and the

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[6] Compensation under the Exoneration Act includes $70,000 per year of incarceration for the wrongful conviction; additional sums per year served while the defendant is under a sentence of death, or placed on parole or probation or on a sex offender registry; compensation for child support payments due during incarceration; tuition waivers at state institutions of higher education for the exonerated person and for any children conceived or legally adopted before the incarceration; and reasonable attorney's fees for bringing an Exoneration Act claim. § 13–65–103(2), (3) (2016).

type of evidence qualifying as admissible.[7] These cases, in contrast, concern the continuing deprivation of property after a conviction has been reversed or vacated, with no prospect of reprosecution. See *Kaley* v. *United States*, 571 U. S. 320, 350, n. 4 (2014) (ROBERTS, C. J., dissenting) (explaining the different offices of *Mathews* and *Medina*). Because no further criminal process is implicated, *Mathews* "provides the relevant inquiry." 571 U. S., at 350, n. 4.

III

Under the *Mathews* balancing test, a court evaluates (A) the private interest affected; (B) the risk of erroneous deprivation of that interest through the procedures used; and (C) the governmental interest at stake. 424 U. S., at 335. All three considerations weigh decisively against Colorado's scheme.

A

Nelson and Madden have an obvious interest in regaining the money they paid to Colorado. Colorado urges, however, that the funds belong to the State because Nelson's and Madden's convictions were in place when the funds were taken. Tr. of Oral Arg. 29–31. But once those convictions were erased, the presumption of their innocence was restored. See, *e. g.*, *Johnson* v. *Mississippi*, 486 U. S. 578, 585 (1988) (After a "conviction has been reversed, unless and until [the defendant] should be retried, he must be presumed innocent of that charge.").[8] "[A]xiomatic and elementary," the pre-

[7] See *Cooper* v. *Oklahoma*, 517 U. S. 348, 356–362 (1996) (standard of proof to establish incompetence to stand trial); *Dowling* v. *United States*, 493 U. S. 342, 343–344, 352 (1990) (admissibility of testimony about a prior crime of which the defendant was acquitted); *Patterson* v. *New York*, 432 U. S. 197, 198, 201–202 (1977) (burden of proving affirmative defense); *Medina* v. *California*, 505 U. S. 437, 443–446, 457 (1992) (burden of proving incompetence to stand trial).

[8] Citing *Bell* v. *Wolfish*, 441 U. S. 520 (1979), Colorado asserts that "[t]he presumption of innocence applies only at criminal trials" and thus has no application here. Brief for Respondent 40, n. 19. Colorado misapprehends *Wolfish*. Our opinion in that case recognized that "under the Due

sumption of innocence "lies at the foundation of our criminal law." *Coffin* v. *United States*, 156 U. S. 432, 453 (1895).[9] Colorado may not retain funds taken from Nelson and Madden solely because of their now-invalidated convictions, see *supra*, at 131–132, and n. 3, for Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions.[10]

That petitioners prevailed on subsequent review rather than in the first instance, moreover, should be inconsequential. Suppose a trial judge grants a motion to set aside a guilty verdict for want of sufficient evidence. In that event, the defendant pays no costs, fees, or restitution. Now suppose the trial court enters judgment on a guilty verdict, ordering cost, fee, and restitution payments by reason of the conviction, but the appeals court upsets the conviction for evidentiary insufficiency. By what right does the State retain the amount paid out by the defendant? "[I]t should make no difference that the *reviewing* court, rather than the trial court, determined the evidence to be insufficient." *Burks* v. *United States*, 437 U. S. 1, 11 (1978). The vulnerability of the State's argument that it can keep the amounts

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Process Clause," a detainee who "has not been adjudged guilty of any crime" may not be punished. 441 U. S., at 535–536; see *id.*, at 535–540. *Wolfish* held only that the presumption does not prevent the government from "detain[ing a defendant] to ensure his presence at trial . . . so long as [the] conditions and restrictions [of his detention] do not amount to punishment, or otherwise violate the Constitution." *Id.*, at 536–537.

[9] Were *Medina* applicable, Colorado's Exoneration Act scheme would similarly fail due process measurement. Under *Medina*, a criminal procedure violates due process if "it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." 505 U. S., at 445 (quoting *Patterson*, 432 U. S., at 202). The presumption of innocence unquestionably fits that bill.

[10] Colorado invites a distinction between convictions merely "voidable," rather than "void," and urges that the invalidated convictions here fall in the voidable category. See Brief for Respondent 32–33, and n. 11. As Justice Hood noted in dissent, however, "reversal is reversal," regardless of the reason, "[a]nd an invalid conviction is no conviction at all." 362 P. 3d, at 1080.

exacted so long as it prevailed in the court of first instance is more apparent still if we assume a case in which the sole penalty is a fine. On Colorado's reasoning, an appeal would leave the defendant emptyhanded; regardless of the outcome of an appeal, the State would have no refund obligation. See Tr. of Oral Arg. 41, 44.[11]

B

Is there a risk of erroneous deprivation of defendants' interest in return of their funds if, as Colorado urges, the Exoneration Act is the exclusive remedy? Indeed yes, for the Act conditions refund on defendants' proof of innocence by clear and convincing evidence. § 13–65–101(1)(a). But to get their money back, defendants should not be saddled with any proof burden. Instead, as explained *supra*, at 135–136, they are entitled to be presumed innocent.

Furthermore, as Justice Hood noted in dissent, the Act provides no remedy at all for any assessments tied to invalid misdemeanor convictions (Nelson had three). 362 P. 3d, at 1081, n. 1; see § 13–65–102(1)(a). And when amounts a defendant seeks to recoup are not large, as is true in Nelson's and Madden's cases, see *supra*, at 131, the cost of mounting a claim under the Exoneration Act and retaining a lawyer to pursue it would be prohibitive.[12]

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[11] The dissent echoes Colorado's argument. If Nelson and Madden prevailed at trial, the dissent agrees, no costs, fees, or restitution could be exacted. See *post*, at 154. But if they prevailed on appellate inspection, the State gets to keep their money. See *post*, at 153–154. Under Colorado law, as the dissent reads the Colorado Supreme Court's opinion, "moneys lawfully exacted pursuant to a valid conviction become public funds (or[, in the case of restitution,] the victims' money)." *Post*, at 151. Shut from the dissent's sights, however, the convictions pursuant to which the State took petitioners' money were *invalid*, hence the State had no legal right to retain their money. Given the invalidity of the convictions, does the Exoneration Act afford sufficient process to enable the State to retain the money? Surely, it does not.

[12] A successful petitioner under the Exoneration Act can recover reasonable attorney's fees, § 13–65–103(2)(e)(IV), but neither a defendant nor

Colorado argued on brief that if the Exoneration Act provides sufficient process to compensate a defendant for the loss of her liberty, the Act should also suffice "when a defendant seeks compensation for the less significant deprivation of monetary assessments paid pursuant to a conviction that is later overturned." Brief for Respondent 40. The comparison is inapt. Nelson and Madden seek restoration of funds they paid to the State, not compensation for temporary deprivation of those funds. Petitioners seek only their money back, not interest on those funds for the period the funds were in the State's custody. Just as the restoration of liberty on reversal of a conviction is not compensation, neither is the return of money taken by the State on account of the conviction.

Colorado also suggests that "numerous pre- and post-deprivation procedures"—including the need for probable cause to support criminal charges, the jury-trial right, and the State's burden to prove guilt beyond a reasonable doubt—adequately minimize the risk of erroneous deprivation of property. *Id.*, at 31; see *id.*, at 31–35. But Colorado misperceives the risk at issue. The risk here involved is not the risk of wrongful or invalid conviction *any* criminal defendant may face. It is, instead, the risk faced by a defendant whose conviction has already been overturned that she will not recover funds taken from her solely on the basis of a conviction no longer valid. None of the above-stated procedures addresses that risk, and, as just explained, the Exoneration Act is not an adequate remedy for the property deprivation Nelson and Madden experienced.[13]

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counsel is likely to assume the risk of loss when amounts to be gained are not worth the candle.

[13] Colorado additionally argues that defendants can request a stay of sentence pending appeal, thereby reducing the risk of erroneous deprivation. See Brief for Respondent 32; §§ 16–12–103, 18–1.3–702(1)(a) (2016). But the State acknowledged at oral argument that few defendants can meet the requirements a stay pending appeal entails. Tr. of Oral Arg. 33–34. And even when a stay is available, a trial court "may require the

C

Colorado has no interest in withholding from Nelson and Madden money to which the State currently has zero claim of right. "Equitable [c]onsiderations," Colorado suggests, may bear on whether a State may withhold funds from criminal defendants after their convictions are overturned. Brief for Respondent 20–22. Colorado, however, has identified no such consideration relevant to petitioners' cases, nor has the State indicated any way in which the Exoneration Act embodies "equitable considerations."

IV

Colorado's scheme fails due process measurement because defendants' interest in regaining their funds is high, the risk of erroneous deprivation of those funds under the Exoneration Act is unacceptable, and the State has shown no countervailing interests in retaining the amounts in question. To comport with due process, a State may not impose anything more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated.

* * *

The judgments of the Colorado Supreme Court are reversed, and the cases are remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of these cases.

JUSTICE ALITO, concurring in the judgment.

I agree that the judgments of the Colorado Supreme Court must be reversed, but I reach that conclusion by a different route.

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defendant to deposit the whole or any part of the . . . costs." Colo. App. Rule 8.1(a)(3) (2016).

I

The proper framework for analyzing these cases is provided by *Medina* v. *California*, 505 U. S. 437 (1992). *Medina* applies when we are called upon to "asses[s] the validity of state procedural rules which . . . are part of the criminal process," *id.*, at 443, and that is precisely the situation here. These cases concern Colorado's rules for determining whether a defendant can obtain a refund of money that he or she was required to pay pursuant to a judgment of conviction that is later reversed. In holding that these payments must be refunded, the Court relies on a feature of the criminal law, the presumption of innocence. And since the Court demands that refunds occur either automatically or at least without imposing anything more than "minimal" procedures, see *ante*, at 139, it appears that they must generally occur as part of the criminal case. For these reasons, the refund obligation is surely "part of the criminal process" and thus falls squarely within the scope of *Medina*. The only authority cited by the Court in support of its contrary conclusion is a footnote in a dissent. See *ante*, at 135 (citing *Kaley* v. *United States*, 571 U. S. 320, 350, n. 4 (2014) (opinion of ROBERTS, C. J.)). Under *Medina*, a state rule of criminal procedure not governed by a specific rule set out in the Bill of Rights violates the Due Process Clause of the Fourteenth Amendment only if it offends a fundamental and deeply rooted principle of justice. 505 U. S., at 445. And "[h]istorical practice is probative of whether a procedural rule can be characterized as fundamental." *Id.*, at 446. Indeed, petitioners invite us to measure the Colorado scheme against traditional practice, reminding us that our " 'first due process cases' " recognized that " 'traditional practice provides a touchstone for constitutional analysis,' " Brief for Petitioners 26 (quoting *Honda Motor Co.* v. *Oberg*, 512 U. S. 415, 430 (1994)). Petitioners then go on to argue at some length that "[t]he traditional rule has always been that when a judgment is reversed, a person who paid money pursuant to that judg-

ment is entitled to receive the money back." Brief for Petitioners 26; see *id.*, at 26–30. See also Brief for National Association of Criminal Defense Lawyers as *Amicus Curiae* 4–14 (discussing traditional practice).

The Court, by contrast, turns its back on historical practice, preferring to balance the competing interests according to its own lights. The Court applies the balancing test set out in *Mathews* v. *Eldridge*, 424 U. S. 319 (1976), a modern invention "first conceived" to decide what procedures the government must observe before depriving persons of novel forms of property such as welfare or Social Security disability benefits. *Dusenbery* v. *United States*, 534 U. S. 161, 167 (2002). Because these interests had not previously been regarded as "property," the Court could not draw on historical practice for guidance. *Mathews* has subsequently been used more widely in civil cases, but we should pause before applying its balancing test in matters of state criminal procedure. "[T]he States have considerable expertise in matters of criminal procedure and the criminal process is grounded in centuries of common-law tradition." *Medina*, *supra*, at 445–446. Applying the *Mathews* balancing test to established rules of criminal practice and procedure may result in "undue interference with both considered legislative judgments and the careful balance that the Constitution strikes between liberty and order." *Medina*, *supra*, at 443. Where long practice has struck a particular balance between the competing interests of the State and those charged with crimes, we should not lightly disturb that determination. For these reasons, *Medina*'s historical inquiry, not *Mathews*, provides the proper framework for use in these cases.[1]

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[1] In a footnote, the Court briefly opines on how a *Medina* analysis would come out in these cases. The Court's discussion of the issue, which is dictum, is substantially incomplete. The Court suggests that *Medina* would support its judgment because the presumption of innocence is deeply rooted and fundamental. *Ante*, at 136, n. 9. It is true, of course, that this presumption is restored when a conviction is reversed. But that

II

Under *Medina*, the Colorado scheme at issue violates due process. American law has long recognized that when an individual is obligated by a civil judgment to pay money to the opposing party and that judgment is later reversed, the money should generally be repaid. See, *e. g.*, *Northwestern Fuel Co.* v. *Brock*, 139 U. S. 216, 219 (1891) ("The right of restitution of what one has lost by the enforcement of a judgment subsequently reversed has been recognized in the law of England from a very early period . . . "); *Bank of United States* v. *Bank of Washington*, 6 Pet. 8, 17 (1832) ("On the reversal of [an erroneous] judgment, the law raises an obligation in the party to the record, who has received the benefit of the erroneous judgment, to make restitution to the other party for what he has lost"). This was "a remedy well known at common law," memorialized as "a part of the judgment of reversal which directed 'that the defendant be restored to all things which he has lost on occasion of the judgment aforesaid.'" 2 Ruling Case Law § 248, p. 297 (W. McKinney & B. Rich eds. 1914); *Duncan* v. *Kirkpatrick*, 13 Serg. & Rawle 292, 294 (Pa. 1825).

As both parties acknowledge, this practice carried over to criminal cases. When a conviction was reversed, defendants could recover fines and monetary penalties assessed as part of the conviction. Brief for Respondent 20–21, and n. 7; Reply Brief 7–8, 11; see, *e. g.*, Annot., Right To Recover Back Fine or Penalty Paid in Criminal Proceeding, 26 A. L. R. 1523, 1533, § VI(a) (1923) ("When a judgment imposing a fine, which is paid, is vacated or reversed on appeal, the court may order restitution of the amount paid . . . "); 25 C. J. § 39,

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says very little about the question at hand: namely, what must *happen* once that presumption is restored. Notably, the Court cites not a single case applying the presumption of innocence in the refund context. At the same time, the Court ignores cases that bear directly on the question in these cases and thus must be part of a proper *Medina* inquiry. See *infra* this page and 143.

p. 1165 (W. Mack, W. Hale, & D. Kiser eds. 1921) ("Where a fine illegally imposed has been paid, on reversal of the judgment a writ of restitution may issue against the parties who received the fine").

The rule regarding recovery, however, "even though general in its application, [was] not without exceptions." *Atlantic Coast Line R. Co.* v. *Florida*, 295 U. S. 301, 309 (1935) (Cardozo, J.). The remedy was "equitable in origin and function," and return of the money was "'not of mere right,'" but "'rest[ed] in the exercise of a sound discretion.'" *Id.*, at 309, 310 (quoting *Gould* v. *McFall*, 118 Pa. 455, 456 (1888)). This was true in both civil and criminal cases. See, *e. g.*, 25 C. J., at 1165 (noting that "restitution [of fines paid on a conviction later reversed] is not necessarily a matter of right"); Annot., 26 A. L. R., at 1532, § VI(a) (Restitution for fines upon reversal of a conviction "is not a matter of strict legal right, but rather one for the exercise of the court's discretion"). The central question courts have asked is whether "the possessor will give offense to equity and good conscience if permitted to retain [the successful appellant's money]." *Atlantic Coast Line*, *supra*, at 309.

This history supports the Court's rejection of the Colorado Exoneration Act's procedures. The Act places a heavy burden of proof on defendants, provides no opportunity for a refund for defendants (like Nelson) whose misdemeanor convictions are reversed, and excludes defendants whose convictions are reversed for reasons unrelated to innocence. Brief for Respondent 8, 35, n. 18. These stringent requirements all but guarantee that most defendants whose convictions are reversed have no realistic opportunity to prove they are deserving of refunds. Colorado has abandoned historical procedures that were more generous to successful appellants and incorporated a court's case-specific equitable judgment. Instead, Colorado has adopted a system that is harsh, inflexible, and prevents most defendants whose convictions are reversed from demonstrating entitlement to a refund. Indeed,

the Colorado General Assembly made financial projections based on the assumption that only one person every five years would qualify for a financial award under the Exoneration Act. Colorado Legislative Council Staff Fiscal Note, State and Local Revised Fiscal Impact, HB 13–1230, p. 2 (Apr. 22, 2013), online at http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont3/825B615B5119309187257A83006D046D?Open&file=HB1230_r2.pdf (as last visited Apr. 17, 2017). Accordingly, the Exoneration Act does not satisfy due process requirements. See *Cooper* v. *Oklahoma*, 517 U. S. 348, 356 (1996) (A state rule of criminal procedure may violate due process where "a rule significantly more favorable to the defendant has had a long and consistent application").

III

Although long-established practice supports the Court's judgment, the Court rests its decision on different grounds. In its *Mathews* analysis, the Court reasons that the reversal of petitioners' convictions restored the presumption of their innocence and that "Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions." *Ante*, at 136. The implication of this brief statement is that under *Mathews*, reversal restores the defendant to the *status quo ante*, see *ante*, at 132. But the Court does not confront the obvious implications of this reasoning.

For example, if the *status quo ante* must be restored, why shouldn't the defendant be compensated for all the adverse economic consequences of the wrongful conviction?[2] After

[2] The Court's position is also at odds with other principles of our procedural due process jurisprudence. It is well settled, for example, that a plaintiff who is deprived of property with inadequate process is not entitled to be compensated if the defendant can prove the deprivation "would have occurred even if [the plaintiff] had been given due process." *Thompson* v. *District of Columbia*, 832 F. 3d 339, 346 (CADC 2016); see

all, in most cases, the fines and payments that a convicted defendant must pay to the court are minor in comparison to the losses that result from conviction and imprisonment, such as attorney's fees, lost income, and damage to reputation. The Court cannot convincingly explain why *Mathews*' amorphous balancing test stops short of requiring a full return to the *status quo ante* when a conviction is reversed. But *Medina* does.

The American legal system has long treated compensation for the economic consequences of a reversed conviction very differently from the refund of fines and other payments made by a defendant pursuant to a criminal judgment. Statutes providing compensation for time wrongfully spent in prison are a 20th-century innovation: By 1970, only the Federal Government and four States had passed such laws. King, Compensation of Persons Erroneously Confined by the State, 118 U. Pa. L. Rev. 1091, 1109 (1970); *United States* v. *Keegan*, 71 F. Supp. 623, 626 (SDNY 1947) ("[T]here seems to have been no legislation by our Government on this subject" until 1938). Many other jurisdictions have done so since, but under most such laws, compensation is not automatic. Instead, the defendant bears the burden of proving actual innocence (and, sometimes, more). King, *supra*, at 1110 ("The burden of proving innocence in the compensation proceeding has from the start been placed upon the claimant"); see also Kahn, Presumed Guilty Until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims Under State Compensation Statutes, 44 U. Mich. J. L. Reform 123, 145 (2010) (Most U. S. compensation statutes "require that claimants prove their innocence either by a preponderance of the evidence or by clear and convincing evidence" (footnote omitted)). In construing the federal statute, courts have held that a compensation proceeding "is not . . . a criminal trial"

Carey v. *Piphus*, 435 U. S. 247, 260, 263 (1978). This principle is in obvious tension with the Court's holding.

and that the burden of proof can be placed on the petitioner. *United States* v. *Brunner*, 200 F. 2d 276, 279 (CA6 1952). As noted, Colorado and many other States have similar statutes designed narrowly to compensate those few persons who can demonstrate that they are truly innocent. The Court apparently acknowledges that these statutes pose no constitutional difficulty. That is the correct conclusion, but it is best justified by reference to history and tradition.

IV

The Court's disregard of historical practice is particularly damaging when it comes to the question of restitution. The Court flatly declares that the State is "obliged to refund . . . restitution" in just the same way as fees and court costs. *Ante*, at 130. This conclusion is not supported by historical practice, and it overlooks important differences between restitution, which is paid to the victims of an offense, and fines and other payments that are kept by the State.

Although restitution may be included in a criminal judgment, it has many attributes of a civil judgment in favor of the victim. This is clear under Colorado law. Although the obligation to pay restitution is included in the defendant's sentence, restitution results in a final civil judgment against the defendant in favor of the State *and the victim*. Colo. Rev. Stat. § 18–1.3–603(4)(a)(I) (2016). Entitlement to restitution need not be established beyond a reasonable doubt or in accordance with standard rules of evidence or criminal procedure. *People* v. *Pagan*, 165 P. 3d 724, 729 (Colo. App. 2006); Colo. Rev. Stat. §§ 18–1.3–603(2)–(3). And the judgment may be enforced either by the State or the victim. §§ 16–18.5–106(2), 16–18.5–107(1)–(4).

The Court ignores the distinctive attributes of restitution, but they merit attention. Because a restitution order is much like a civil judgment, the reversal of the defendant's criminal conviction does not necessarily undermine the basis for restitution. Suppose that a victim successfully sues a criminal defendant civilly and introduces the defendant's

criminal conviction on the underlying conduct as (potentially preclusive) evidence establishing an essential element of a civil claim. See, *e. g.*, 2 K. Broun, McCormick on Evidence § 298, pp. 473–477 (7th ed. 2013) (discussing the admissibility, and potential preclusive effect, of a criminal conviction in subsequent civil litigation). And suppose that the defendant's criminal conviction is later reversed for a trial error that did not (and could not) infect the later civil proceeding: for example, the admission of evidence barred by the exclusionary rule or a Confrontation Clause violation. It would be unprecedented to suggest that due process requires unwinding the civil judgment simply because it rests in part on a criminal conviction that has since been reversed. And a very similar scenario could unfold with respect to a Colorado restitution judgment. The only salient difference would be that, in the Colorado case, the civil judgment would have been obtained as part of the criminal proceeding itself. It is not clear (and the Court certainly does not explain) why that formal distinction should make a substantive difference.[3]

It is especially startling to insist that a State must provide a refund after enforcing a restitution judgment on the victims' behalf in reliance on a *final* judgment that is then vacated on *collateral* review. Faced with this fact pattern, the Ninth Circuit declined to require reimbursement, reasoning that the Government was a mere "escrow agent" executing a then-valid final judgment in favor of a third party. *United States* v. *Hayes*, 385 F. 3d 1226, 1230 (2004).

The Court regrettably mentions none of this. Its treatment of restitution is not grounded in any historical analysis,

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[3] The Court cites one intermediate appellate case for the proposition that when a "conviction is reversed, any restitution order dependent on that conviction is simultaneously vacated." *Ante*, at 132, n. 3 (citing *People* v. *Scearce*, 87 P. 3d 228 (Colo. App. 2003)). *Scearce* did not discuss whether any payments had been made to victims or—if so—whether they would be recoverable from the State. More important, *Scearce* is hardly the last word on the question whether due process invariably requires the refund of restitution.

and—save for a brief footnote, *ante*, at 132, n. 3—the Court does not account for the distinctive civil status of restitution under Colorado law (or the laws of the many other affected jurisdictions that provide this remedy to crime victims).

Nor does the Court consider how restitution's unique characteristics might affect the balance that it strikes under *Mathews*. *Ante*, at 139. The Court summarily rejects the proposition that "'equitable considerations'" might militate against a blanket rule requiring the refund of money paid as restitution, see *ibid.*, but why is this so? What if the evidence amply establishes that the defendant injured the victims to whom restitution was paid but the defendant's conviction is reversed on a ground that would be inapplicable in a civil suit? In that situation, is it true, as the Court proclaims, that the State would have "no interest" in withholding a refund? Would the Court reach that conclusion if state law mandated a refund from the recipients of the restitution? And if the States and the Federal Government are always required to foot the bill themselves, would that risk discourage them from seeking restitution—or at least from providing funds to victims until the conclusion of appellate review?

It was unnecessary for the Court to issue a sweeping pronouncement on restitution. But if the Court had to address this subject to dispose of these cases, it should have acknowledged that—at least in some circumstances—refunds of restitution payments made under later reversed judgments are not constitutionally required.

* * *

For these reasons, I concur only in the judgment.

JUSTICE THOMAS, dissenting.

The majority and concurring opinions debate whether the procedural due process framework of *Mathews* v. *Eldridge*, 424 U. S. 319 (1976), or that of *Medina* v. *California*, 505

U. S. 437 (1992), governs the question before us. But both opinions bypass the most important question in these cases: whether petitioners can show a *substantive* entitlement to a return of the money they paid pursuant to criminal convictions that were later reversed or vacated.

The Court assumes, without reference to either state or federal law, that defendants whose convictions have been reversed have a substantive right to any money exacted on the basis of those convictions. By doing so, the Court assumes away the real issue in these cases. As the parties have agreed, the existence of Colorado's obligation to provide particular procedures depends on whether petitioners have a substantive entitlement to the money. Colorado concedes that "if [petitioners] have a present entitlement" to the money—that is, if "it is their property"—"then due process requires [the State to accord] them some procedure to get it back." Tr. of Oral Arg. 52. And Colorado acknowledges that the procedural hurdles it could impose before returning the money "would be fairly minimal," *id.*, at 51, because petitioners would need to prove only that their convictions had been reversed and that they had paid a certain sum of money, see *ibid.* Similarly, petitioners concede that if defendants in their position do *not* have a substantive right to recover the money—that is, if the money belongs to the State—then Colorado need not "provide any procedure to give it back." *Id.*, at 53. If defendants in their position have no entitlement to the money they paid pursuant to their reversed convictions, there would be nothing to adjudicate. In light of these concessions, I can see no justification for the Court's decision to address the procedures for adjudicating a substantive entitlement while failing to determine whether a substantive entitlement exists in the first place.

In my view, petitioners have not demonstrated that defendants whose convictions have been reversed possess a substantive entitlement, under either state law or the Constitution, to recover money they paid to the State pursuant

to their convictions. Accordingly, I cannot agree with the Court's decision to reverse the judgments of the Colorado Supreme Court.

I

The Fourteenth Amendment provides that no State shall "deprive any person of *life*, *liberty*, *or property*, without due process of law." U. S. Const., Amdt. 14, § 1 (emphasis added).[1] To show that Colorado has violated the Constitution's procedural guarantees, as relevant here, petitioners must first establish that they have been deprived of a protected property interest. See *Castle Rock* v. *Gonzales*, 545 U. S. 748, 756 (2005) ("The procedural component of the Due Process Clause does not protect everything that might be described as a benefit: To have a property interest in a benefit, a person clearly must have . . . a legitimate claim of entitlement to it" (internal quotation marks omitted)). "Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to 'existing rules or understandings that stem from an independent source such as state law.'" *Phillips* v. *Washington Legal Foundation*, 524 U. S. 156, 164 (1998) (quoting *Board of Regents of State Colleges* v. *Roth*, 408 U. S. 564, 577 (1972)). Petitioners undoubtedly have an "interest in regaining the money they paid to Colorado." *Ante*, at 135. But to succeed on their procedural due process claim, petitioners must first point to a recognized *property* interest

[1] As I have previously observed, the Due Process Clause may have originally been understood to require only "that our Government . . . proceed according to the 'law of the land'—that is, according to written constitutional and statutory provisions"—before depriving someone of life, liberty, or property. *Johnson* v. *United States*, 576 U. S. 591, 623 (2015) (THOMAS, J., concurring in judgment) (quoting *Hamdi* v. *Rumsfeld*, 542 U. S. 507, 589 (2004) (THOMAS, J., dissenting)). Because Colorado does not advance that argument, and because it is unnecessary to resolve the issue in these cases, I assume that the Due Process Clause requires some baseline procedures regardless of the provisions of Colorado law.

in that money, under state or federal law, within the meaning of the Fourteenth Amendment.

A

The parties dispute whether, under Colorado law, the petitioners or the State have a property interest in the money paid by petitioners pursuant to their convictions. Petitioners contend that the money remains their property under state law. Reply Brief 1–3; see also Tr. of Oral Arg. 52–54. Colorado counters that when petitioners paid the money pursuant to their convictions, the costs and fees became property of the State and the restitution became property of the victims. See *id.*, at 28–30; Brief for Respondent 41.

The key premise of the Colorado Supreme Court's holdings in these cases is that moneys lawfully exacted pursuant to a valid conviction become public funds (or the victims' money) under Colorado law. The Colorado Supreme Court explained in petitioner Shannon Nelson's case that "the trial court properly ordered [her] to pay costs, fees, and restitution pursuant to valid statutes" and that "the court correctly distributed th[ose] funds *to victims and public funds*, as ordered by the statutes." 362 P. 3d 1070, 1076 (2015) (emphasis added); accord, 364 P. 3d 866, 868–870 (2016) (applying the same analysis to petitioner Louis Madden's case). The Colorado Supreme Court further noted that, "[o]nce the state disburses restitution to the victims, the state no longer controls that money." 362 P. 3d, at 1077, n. 4.

The Colorado Supreme Court explained that "Colorado's constitution protects" the Colorado Legislature's "control over public money," and thus a "court may authorize refunds from public funds only pursuant to statutory authority." *Id.*, at 1076–1077. The Exoneration Act, the Colorado Supreme Court held, provides the only statutory authority for refunding costs, fees, and restitution when a defendant's conviction is overturned. *Id.*, at 1077–1078. Because petitioners had not sought a refund under the Exoneration Act,

"the trial court lacked the authority to order a refund of Nelson's costs, fees, and restitution." *Id.*, at 1078; 364 P. 3d, at 867.

At no point in this litigation have petitioners attempted to demonstrate that they satisfy the requirements of the Exoneration Act. Under the Act, Colorado recognizes a substantive entitlement to the kind of property at issue in these cases only if, among other things, the defendant can prove that he is "actually innocent."[2] Colo. Rev. Stat. §§ 13–65–101, 13–65–102 (2016). It is the Exoneration Act alone which defines the scope of the substantive entitlement. This Court has interpreted the Due Process Clause to require that the States provide certain procedures, such as notice and a hearing, by which an individual can prove a substantive entitlement to (or defend against a deprivation of) property. But the Clause, properly understood, has nothing to say about the existence or scope of the substantive entitlement itself. See Part I–B, *infra*. If petitioners want this Court to rewrite the contours of the substantive entitlement contained in the Exoneration Act, they err in invoking *procedural* due process. See Reply Brief 1–2 ("Our argument sounds in *procedural* due process").

The majority responds by asserting, without citing any state law, that Colorado "had no legal right to retain [petitioners'] money" once their convictions were invalidated. *Ante*, at 137, n. 11. If this were true as a matter of state law, then certain provisions of the Exoneration Act—which require the State to return costs, fees, and restitution only

[2] More specifically, the Exoneration Act entitles an exonerated defendant to compensation if he was convicted of a felony, was incarcerated, and, among other requirements, can prove by clear and convincing evidence that he is "actually innocent," meaning that his "conviction was the result of a miscarriage of justice" or that he is factually innocent. Colo. Rev. Stat. §§ 13–65–101(1)(a), 13–65–102(1)(a) (2016); see 362 P. 3d, at 1075. "Insufficiency of the evidence or a legal error unrelated to the person's actual innocence cannot support either exoneration or subsequent compensation under the Act." *Ibid.*

in limited circumstances following a conviction's reversal—would be superfluous. Thus, to the extent the majority implicitly suggests that petitioners have a state-law right to an automatic refund (a point about which the majority is entirely unclear), it is plainly incorrect.

B

Because defendants in petitioners' position do not have a substantive right to recover the money they paid to Colorado under state law, petitioners' asserted right to an automatic refund must arise, if at all, from the Due Process Clause itself. But the Due Process Clause confers no substantive rights. *McDonald* v. *Chicago*, 561 U. S. 742, 811 (2010) (THOMAS, J., concurring in part and concurring in judgment) ("The notion that a constitutional provision that guarantees only 'process' before a person is deprived of life, liberty, or property could define the substance of those rights strains credulity for even the most casual user of words"). And, in any event, petitioners appear to disavow any substantive due process right to a return of the funds they paid. See Reply Brief 1–2; Tr. of Oral Arg. 18–19. In the absence of any property right under state law (apart from the right provided by the Exoneration Act, which petitioners decline to invoke), Colorado's refusal to return the money is not a "depriv[ation]" of "property" within the meaning of the Fourteenth Amendment. Colorado is therefore not required to provide any process at all for the return of that money.

II

No one disputes that if petitioners had never been convicted, Colorado could not have required them to pay the money at issue. And no one disputes that Colorado cannot require petitioners to pay any additional costs, fees, or restitution now that their convictions have been invalidated. It does not follow, however, that petitioners have a property right in the money they paid pursuant to their then-valid

convictions, which now belongs to the State and the victims under Colorado law. The Court today announces that petitioners have a right to an automatic refund because the State has "no legal right" to that money. *Ante*, at 137, n. 11. But, intuitive and rhetorical appeal aside, it does not seriously attempt to ground that conclusion in state or federal law. If petitioners' supposed right to an automatic refund arises under Colorado law, then the Colorado Supreme Court remains free on remand to clarify whether that right in fact exists. If it arises under substantive due process, then the Court's procedural due process analysis misses the point.

I respectfully dissent.

Syllabus

LEWIS ET AL. *v.* CLARKE

CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

No. 15–1500. Argued January 9, 2017—Decided April 25, 2017

Petitioners Brian and Michelle Lewis were driving on a Connecticut interstate when they were struck from behind by a vehicle driven by respondent William Clarke, a Mohegan Tribal Gaming Authority employee, who was transporting Mohegan Sun Casino patrons. The Lewises sued Clarke in his individual capacity in state court. Clarke moved to dismiss for lack of subject-matter jurisdiction, arguing that because he was an employee of the Gaming Authority—an arm of the Mohegan Tribe entitled to sovereign immunity—and was acting within the scope of his employment at the time of the accident, he was similarly entitled to sovereign immunity against suit. He also argued, in the alternative, that he should prevail because the Gaming Authority was bound by tribal law to indemnify him. The trial court denied Clarke's motion, but the Supreme Court of Connecticut reversed, holding that tribal sovereign immunity barred the suit because Clarke was acting within the scope of his employment when the accident occurred. It did not consider whether Clarke should be entitled to sovereign immunity based on the indemnification statute.

Held:

1. In a suit brought against a tribal employee in his individual capacity, the employee, not the tribe, is the real party in interest and the tribe's sovereign immunity is not implicated. Pp. 161–164.

(a) In the context of lawsuits against state and federal employees or entities, courts look to whether the sovereign is the real party in interest to determine whether sovereign immunity bars the suit, see *Hafer* v. *Melo*, 502 U. S. 21, 25. A defendant in an official-capacity action—where the relief sought is only nominally against the official and in fact is against the official's office and thus the sovereign itself—may assert sovereign immunity. *Kentucky* v. *Graham*, 473 U. S. 159, 167. But an officer in an individual-capacity action—which seeks "to impose individual liability upon a government officer for actions taken under color of state law," *Hafer*, 502 U. S., at 25—may be able to assert *personal* immunity defenses but not sovereign immunity, *id.*, at 30–31. The Court does not reach Clarke's argument that he is entitled to the personal immunity defense of official immunity, which Clarke raised for the first time on appeal. Pp. 161–163.

(b) Applying these general rules in the context of tribal sovereign immunity, it is apparent that they foreclose Clarke's sovereign immunity

defense. This action arises from a tort committed by Clarke on a Connecticut interstate and is simply a suit against Clarke to recover for his personal actions. Clarke, not the Gaming Authority, is the real party in interest. The State Supreme Court extended sovereign immunity for tribal employees beyond what common-law sovereign immunity principles would recognize for either state or federal employees. Pp. 163–164.

2. An indemnification provision cannot, as a matter of law, extend sovereign immunity to individual employees who would otherwise not fall under its protective cloak. Pp. 164–168.

(a) This conclusion follows naturally from the principles discussed above and previously applied to the different question whether a state instrumentality may invoke the State's immunity from suit even when the Federal Government has agreed to indemnify that instrumentality against adverse judgments, *Regents of Univ. of Cal.* v. *Doe*, 519 U. S. 425. There, this Court held that the indemnification provision did not divest the state instrumentality of Eleventh Amendment immunity, and its analysis turned on where the potential *legal* liability lay, not from whence the money to pay the damages award ultimately came. Here, the Connecticut courts exercise no jurisdiction over the Tribe or Gaming Authority, and their judgments will not bind the Tribe or its instrumentalities in any way. Moreover, indemnification is not a certainty, because Clarke will not be indemnified should the Gaming Authority determine that he engaged in "wanton, reckless, or malicious" activity. Mohegan Tribe Code § 4–52. Pp. 164–166.

(b) Courts have extended sovereign immunity to private healthcare insurance companies under certain circumstances, but those cases rest on the proposition that the fiscal intermediaries are essentially state instrumentalities, and Clarke offers no persuasive reason to depart from precedent and treat a lawsuit against an individual employee as one against a state instrumentality. Similarly, this Court has never held that a civil rights suit under 42 U. S. C. § 1983 against a state officer in his individual capacity implicates the Eleventh Amendment and a State's sovereign immunity from suit. Finally, this Court's conclusion that indemnification provisions do not alter the real-party-in-interest analysis for sovereign immunity purposes is consistent with the practice that applies in the contexts of diversity of citizenship and joinder. Pp. 166–168.

320 Conn. 706, 135 A. 3d 677, reversed and remanded.

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

the judgment. GORSUCH, J., took no part in the consideration or decision of the case.

Eric D. Miller argued the cause for petitioners. With him on the briefs were *Luke M. Rona*, *James M. Harrington*, and *Jennifer A. MacLean.*

Ann O'Connell argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Acting Solicitor General Gershengorn*, *Assistant Attorney General Cruden*, *Deputy Solicitor General Kneedler*, *William B. Lazarus*, and *Mary Gabrielle Sprague.*

Neal Kumar Katyal argued the cause for respondent. With him on the brief were *Morgan L. Goodspeed* and *Daniel J. Krisch.**

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Indian tribes are generally entitled to immunity from suit. This Court has considered the scope of that immunity in a number of circumstances. This case presents an ordinary negligence action brought against a tribal employee in state court under state law. We granted certiorari to resolve whether an Indian tribe's sovereign immunity bars

**Dana M. Hrelic*, *Karen L. Dowd*, *Michael D'Amico*, and *Jeffrey R. White* filed a brief for the Connecticut Trial Lawyers Association et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the National Congress of American Indians et al. by *Jennifer Weddle*, *Troy A. Eid*, *John T. Harrison*, *Ethel Branch*, *Paul Spruhan*, *Naomi Stacy*, *Mark Brnovich*, Attorney General of Arizona, *Cynthia H. Coffman*, Attorney General of Colorado, *Frederick R. Yarger*, Solicitor General of Colorado, *Hector H. Balderas*, Attorney General of New Mexico, *Ellen Rosenblum*, Attorney General of Oregon, and *Ken Paxton*, Attorney General of Texas; for the Ninth and Tenth Circuit Tribes by *Ian R. Barker*, *Paula M. Yost*, *Samuel F. Daughety*, *Harry R. Sachse*, *Richard D. Monkman*, *Frank S. Holleman*, *Bradley G. Bledsoe Downes*, *Conly J. Schulte*, *Carl Bryant Rogers*, *Carolyn J. Abeita*, *Ethel J. Abeita*, *James Burson*, and *Erin Copeland*; for the Otoe-Missouria Tribe of Indians et al. by *Richard Verri*; and for the Seminole Tribe of Florida et al. by *Joseph H. Webster*, *Jennifer P. Hughes*, and *Richard I. Wideman.*

individual-capacity damages actions against tribal employees for torts committed within the scope of their employment and for which the employees are indemnified by the tribe.

We hold that, in a suit brought against a tribal employee in his individual capacity, the employee, not the tribe, is the real party in interest and the tribe's sovereign immunity is not implicated. That an employee was acting within the scope of his employment at the time the tort was committed is not, on its own, sufficient to bar a suit against that employee on the basis of tribal sovereign immunity. We hold further that an indemnification provision does not extend a tribe's sovereign immunity where it otherwise would not reach. Accordingly, we reverse and remand.

I

A

The Mohegan Tribe of Indians of Connecticut traces its lineage back centuries. Originally part of the Lenni Lenape, the Tribe formed the independent Mohegan Tribe under the leadership of Sachem Uncas in the early 1600's. M. Fawcett, The Lasting of the Mohegans 7, 11–13 (1995). In 1994, in accordance with the petition procedures established by the Bureau of Indian Affairs, the Tribe attained federal recognition.[1] See 59 Fed. Reg. 12140 (1994); Mohegan Const., Preamble and Art. II.

As one means of maintaining its economic self-sufficiency, the Tribe entered into a Gaming Compact with the State of Connecticut pursuant to the Indian Gaming Regulatory Act,

[1] There are currently 567 federally recognized Indian and Alaska Native entities. 81 Fed. Reg. 26826–26832 (2016); see also Native Hawaiian Law: A Treatise 303–324 (M. MacKenzie ed. 2015) (discussing the existing relationships between the U. S. Government and federally recognized tribes and other indigenous groups in the United States); F. Cohen, Handbook of Federal Indian Law §§ 1.01–1.07 (2012 and Supp. 2015); V. Deloria & R. DeMallie, Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775–1979 (1999).

102 Stat. 2467, 25 U. S. C. § 2701 *et seq.* The compact authorizes the Tribe to conduct gaming on its land, subject to certain conditions including establishment of the Gaming Disputes Court. See 59 Fed. Reg. 65130 (approving the Tribal-State Compact Between the Mohegan Indian Tribe and the State of Connecticut (May 17, 1994)); Mohegan Const., Art. XIII, § 2; Mohegan Tribe Code § 3–248(a) (Supp. 2016). The Mohegan Tribal Gaming Authority, an arm of the Tribe, exercises the powers of the Mohegan Tribe over tribal gaming activities. Mohegan Const., Art. XIII, § 1; Mohegan Tribe Code § 2–21.

Of particular relevance here, Mohegan law sets out sovereign immunity and indemnification policies applicable to disputes arising from gaming activities. The Gaming Authority has waived its sovereign immunity and consented to be sued in the Mohegan Gaming Disputes Court. Mohegan Const., Art. XIII, § 1; Mohegan Tribe Code § 3–250(b). Neither the Tribe nor the Gaming Authority has consented to suit for claims arising under Connecticut state law. See Mohegan Const., Art. IX, § 2(t); Mohegan Tribe Code § 3–250(g); see also *Blatchford* v. *Native Village of Noatak*, 501 U. S. 775, 782 (1991) (observing that Indian tribes have not surrendered their immunity against suits by States). Further, Mohegan Tribe Code § 4–52 provides that the Gaming Authority "shall save harmless and indemnify its Officer or Employee from financial loss and expense arising out of any claim, demand, or suit by reason of his or her alleged negligence . . . if the Officer or Employee is found to have been acting in the discharge of his or her duties or within the scope of his or her employment." The Gaming Authority does not indemnify employees who engage in "wanton, reckless or malicious" activity. Mohegan Tribe Code § 4–52.

B

Petitioners Brian and Michelle Lewis were driving down Interstate 95 in Norwalk, Connecticut, when a limousine

driven by respondent William Clarke hit their vehicle from behind. Clarke, a Gaming Authority employee, was transporting patrons of the Mohegan Sun Casino to their homes. For purposes of this appeal, it is undisputed that Clarke caused the accident.

The Lewises filed suit against Clarke in his individual capacity in Connecticut state court, and Clarke moved to dismiss for lack of subject-matter jurisdiction on the basis of tribal sovereign immunity. See 2014 WL 5354956, *2 (Super. Ct. Conn., Sept. 10, 2014) (Cole-Chu, J.). Clarke argued that because the Gaming Authority, an arm of the Tribe, was entitled to sovereign immunity, he, an employee of the Gaming Authority acting within the scope of his employment at the time of the accident, was similarly entitled to sovereign immunity against suit. According to Clarke, denying the motion would abrogate the Tribe's sovereign immunity.

The trial court denied Clarke's motion to dismiss. *Id.*, at *8. The court agreed with the Lewises that the sovereign immunity analysis should focus on the remedy sought in their complaint. To that end, the court identified Clarke, not the Gaming Authority or the Tribe, as the real party in interest because the damages remedy sought was solely against Clarke and would in no way affect the Tribe's ability to govern itself independently. The court therefore concluded that tribal sovereign immunity was not implicated. *Id.*, at *2–*8. It also rejected Clarke's alternative argument that because the Gaming Authority was obligated to indemnify him pursuant to Mohegan Tribe Code § 4–52 and would end up paying the damages, he should prevail under the remedy analysis. *Id.*, at *7. The trial court reasoned that a "voluntary undertaking cannot be used to extend sovereign immunity where it did not otherwise exist." *Ibid.*

The Supreme Court of Connecticut reversed, holding that tribal sovereign immunity did bar the suit. 320 Conn. 706, 135 A. 3d 677 (2016). The court agreed with Clarke that "because he was acting within the scope of his employment

for the Mohegan Tribal Gaming Authority and the Mohegan Tribal Gaming Authority is an arm of the Mohegan Tribe, tribal sovereign immunity bars the plaintiffs' claims against him." *Id.*, at 709, 135 A. 3d, at 680. Of particular significance to the court was ensuring that "plaintiffs cannot circumvent tribal immunity by merely naming the defendant, an employee of the tribe, when the complaint concerns actions taken within the scope of his duties and the complaint does not allege, nor have the plaintiffs offered any other evidence, that he acted outside the scope of his authority." *Id.*, at 720, 135 A. 3d, at 685. To do otherwise, the court reasoned, would "'eviscerate'" the protections of tribal immunity. *Id.*, at 717, 135 A. 3d, at 684 (alterations and internal quotation marks omitted). Because the court determined that Clarke was entitled to sovereign immunity on the sole basis that he was acting within the scope of his employment when the accident occurred, *id.*, at 720, 135 A. 3d, at 685–686, it did not consider whether Clarke should be entitled to sovereign immunity on the basis of the indemnification statute.

We granted certiorari to consider whether tribal sovereign immunity bars the Lewises' suit against Clarke, 579 U. S. 969 (2016), and we now reverse the judgment of the Supreme Court of Connecticut.

II

Two issues require our resolution: (1) whether the sovereign immunity of an Indian tribe bars individual-capacity damages against tribal employees for torts committed within the scope of their employment; and (2) what role, if any, a tribe's decision to indemnify its employees plays in this analysis. We decide this case under the framework of our precedents regarding tribal immunity.

A

Our cases establish that, in the context of lawsuits against state and federal employees or entities, courts should look to whether the sovereign is the real party in interest to deter-

mine whether sovereign immunity bars the suit. See *Hafer* v. *Melo*, 502 U. S. 21, 25 (1991). In making this assessment, courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign. See, *e. g.*, *Ex parte New York*, 256 U. S. 490, 500–502 (1921). If, for example, an action is in essence against a State even if the State is not a named party, then the State is the real party in interest and is entitled to invoke the Eleventh Amendment's protection. For this reason, an arm or instrumentality of the State generally enjoys the same immunity as the sovereign itself. *E. g.*, *Regents of Univ. of Cal.* v. *Doe*, 519 U. S. 425, 429–430 (1997). Similarly, lawsuits brought against employees in their official capacity "represent only another way of pleading an action against an entity of which an officer is an agent," and they may also be barred by sovereign immunity. *Kentucky* v. *Graham*, 473 U. S. 159, 165–166 (1985) (internal quotation marks omitted).

The distinction between individual- and official-capacity suits is paramount here. In an official-capacity claim, the relief sought is only nominally against the official and in fact is against the official's office and thus the sovereign itself. *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 71 (1989); *Dugan* v. *Rank*, 372 U. S. 609, 611, 620–622 (1963). This is why, when officials sued in their official capacities leave office, their successors automatically assume their role in the litigation. *Hafer*, 502 U. S., at 25. The real party in interest is the government entity, not the named official. See *Edelman* v. *Jordan*, 415 U. S. 651, 663–665 (1974). "Personal-capacity suits, on the other hand, seek to impose *individual* liability upon a government officer for actions taken under color of state law." *Hafer*, 502 U. S., at 25 (emphasis added); see also *id.*, at 27–31 (discharged employees entitled to bring personal damages action against state auditor general); cf. *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971). "[O]fficers sued in their per-

sonal capacity come to court as individuals," *Hafer*, 502 U. S., at 27, and the real party in interest is the individual, not the sovereign.

The identity of the real party in interest dictates what immunities may be available. Defendants in an official-capacity action may assert sovereign immunity. *Graham*, 473 U. S., at 167. An officer in an individual-capacity action, on the other hand, may be able to assert *personal* immunity defenses, such as, for example, absolute prosecutorial immunity in certain circumstances. *Van de Kamp* v. *Goldstein*, 555 U. S. 335, 342–344 (2009). But sovereign immunity "does not erect a barrier against suits to impose individual and personal liability." *Hafer*, 502 U. S., at 30–31 (internal quotation marks omitted); see *Alden* v. *Maine*, 527 U. S. 706, 757 (1999).

B

There is no reason to depart from these general rules in the context of tribal sovereign immunity. It is apparent that these general principles foreclose Clarke's sovereign immunity defense in this case. This is a negligence action arising from a tort committed by Clarke on an interstate highway within the State of Connecticut. The suit is brought against a tribal employee operating a vehicle within the scope of his employment but on state lands, and the judgment will not operate against the Tribe. This is not a suit against Clarke in his official capacity. It is simply a suit against Clarke to recover for his personal actions, which "will not require action by the sovereign or disturb the sovereign's property." *Larson* v. *Domestic and Foreign Commerce Corp.*, 337 U. S. 682, 687 (1949). We are cognizant of the Supreme Court of Connecticut's concern that plaintiffs not circumvent tribal sovereign immunity. But here, that immunity is simply not in play. Clarke, not the Gaming Authority, is the real party in interest.

In ruling that Clarke was immune from this suit solely because he was acting within the scope of his employment,

the court extended sovereign immunity for tribal employees beyond what common-law sovereign immunity principles would recognize for either state or federal employees. See, *e. g.*, *Graham*, 473 U. S., at 167–168. The protection offered by tribal sovereign immunity here is no broader than the protection offered by state or federal sovereign immunity.

Accordingly, under established sovereign immunity principles, the Gaming Authority's immunity does not, in these circumstances, bar suit against Clarke.[2]

III

The conclusion above notwithstanding, Clarke argues that the Gaming Authority *is* the real party in interest here because it is required by Mohegan Tribe Code § 4–52 to indemnify Clarke for any adverse judgment.[3]

A

We have never before had occasion to decide whether an indemnification clause is sufficient to extend a sovereign immunity defense to a suit against an employee in his individual capacity. We hold that an indemnification provision cannot, as a matter of law, extend sovereign immunity to

[2] There are, of course, personal immunity defenses distinct from sovereign immunity. *E. g.*, *Harlow* v. *Fitzgerald*, 457 U. S. 800, 811–815 (1982). Clarke argues for the first time before this Court that one particular form of personal immunity is available to him here—official immunity. See *Westfall* v. *Erwin*, 484 U. S. 292, 295–297 (1988). That defense is not properly before us now, however, given that Clarke's motion to dismiss was based solely on tribal sovereign immunity. See *Travelers Casualty & Surety Co. of America* v. *Pacific Gas & Elec. Co.*, 549 U. S. 443, 455 (2007).

[3] As noted above, the Supreme Court of Connecticut did not reach whether Clarke should be entitled to sovereign immunity on the basis of the indemnification statute. We nevertheless consider the issue fairly included within the question presented, as it is a purely legal question that is an integral part of Clarke's sovereign immunity argument and that was both raised to and passed on by the trial court. See *Mitchell* v. *Forsyth*, 472 U. S. 511, 530 (1985) ("[T]he purely legal question on which [petitioner's] claim of immunity turns is appropriate for our immediate resolution notwithstanding that it was not addressed by the Court of Appeals" (internal quotation marks omitted)).

individual employees who would otherwise not fall under its protective cloak.

Our holding follows naturally from the principles discussed above. Indeed, we have applied these same principles to a different question before—whether a state instrumentality may invoke the State's immunity from suit even when the Federal Government has agreed to indemnify that instrumentality against adverse judgments. In *Regents of Univ. of Cal.*, an individual brought suit against the University of California, a public university of the State of California, for breach of contract related to his employment at a laboratory operated by the university pursuant to a contract with the Federal Government. We held that the indemnification provision did not divest the state instrumentality of Eleventh Amendment immunity. 519 U. S., at 426. Our analysis turned on where the potential *legal* liability lay, not from whence the money to pay the damages award ultimately came. Because the lawsuit bound the university, we held, the Eleventh Amendment applied to the litigation even though the damages award would ultimately be paid by the federal Department of Energy. *Id.*, at 429–431. Our reasoning remains the same. The critical inquiry is who may be legally bound by the court's adverse judgment, not who will ultimately pick up the tab.[4]

Here, the Connecticut courts exercise no jurisdiction over the Tribe or the Gaming Authority, and their judgments will not bind the Tribe or its instrumentalities in any way. The Tribe's indemnification provision does not somehow convert the suit against Clarke into a suit against the sovereign; when Clarke is sued in his individual capacity, he is held

[4] Our holding in *Hess* v. *Port Authority Trans-Hudson Corporation*, 513 U. S. 30 (1994), is not to the contrary. There the immunity question turned on whether the Port Authority Trans-Hudson Corporation was a state agency cloaked with Eleventh Amendment immunity such that any judgment "*must* be paid out of a State's treasury." *Id.*, at 48, 51 (emphasis added). Here, unlike in *Hess*, the damages judgment would not come from the sovereign.

responsible only for his individual wrongdoing. Moreover, indemnification is not a certainty here. Clarke will not be indemnified by the Gaming Authority should it determine that he engaged in "wanton, reckless, or malicious" activity. Mohegan Tribe Code § 4–52. That determination is not necessary to the disposition of the Lewises' suit against Clarke in the Connecticut state courts, which is a separate legal matter.

B

Clarke notes that courts have extended sovereign immunity to private healthcare insurance companies under certain circumstances. See, *e. g.*, *Pani* v. *Empire Blue Cross Blue Shield*, 152 F. 3d 67, 71–72 (CA2 1998); *Pine View Gardens, Inc.* v. *Mutual of Omaha Ins. Co.*, 485 F. 2d 1073, 1074–1075 (CADC 1973); Brief for Respondent 19, n. 4. But, these cases rest on the proposition that the fiscal intermediaries are essentially state instrumentalities, as the governing regulations make clear. See 42 CFR § 421.5(b) (2016) (providing that the Medicare Administrator "is the real party of interest in any litigation involving the administration of the program"). It is well established in our precedent that a suit against an arm or instrumentality of the State is treated as one against the State itself. See *Regents of Univ. of Cal.*, 519 U. S., at 429. We have not before treated a lawsuit against an individual employee as one against a state instrumentality, and Clarke offers no persuasive reason to do so now.

Nor have we ever held that a civil rights suit under 42 U. S. C. § 1983 against a state officer in his individual capacity implicates the Eleventh Amendment and a State's sovereign immunity from suit.[5] Federal appellate courts that have considered the indemnity question have rejected the argu-

[5] A suit against a state officer in his official, rather than individual, capacity might implicate the Eleventh Amendment. See *Kentucky* v. *Graham*, 473 U. S. 159, 165–166 (1985).

ment that an indemnity statute brings the Eleventh Amendment into play in § 1983 actions. See, *e. g.*, *Stoner* v. *Wisconsin Dept. of Agriculture, Trade and Consumer Protection*, 50 F. 3d 481, 482–483 (CA7 1995); *Blalock* v. *Schwinden*, 862 F. 2d 1352, 1354 (CA9 1988); *Duckworth* v. *Franzen*, 780 F. 2d 645, 650 (CA7 1985). These cases rely on the concern that originally drove the adoption of the Eleventh Amendment—the protection of the States against involuntary liability. See *Hess* v. *Port Authority Trans-Hudson Corporation*, 513 U. S. 30, 39, 48 (1994). But States institute indemnification policies voluntarily. And so, indemnification provisions do not implicate one of the underlying rationales for state sovereign immunity—a government's ability to make its own decisions about "the allocation of scarce resources." *Alden*, 527 U. S., at 751.

Finally, our conclusion that indemnification provisions do not alter the real-party-in-interest analysis for purposes of sovereign immunity is consistent with the practice that applies in the contexts of diversity of citizenship and joinder. In assessing diversity jurisdiction, courts look to the real parties to the controversy. *Navarro Savings Assn.* v. *Lee*, 446 U. S. 458, 460 (1980). Applying this principle, courts below have agreed that the fact that a third party indemnifies one of the named parties to the case does not, as a general rule, influence the diversity analysis. See, *e. g.*, *Corfield* v. *Dallas Glen Hills LP*, 355 F. 3d 853, 865 (CA5 2003); *E. R. Squibb & Sons, Inc.* v. *Accident & Cas. Ins. Co.*, 160 F. 3d 925, 936–937 (CA2 1998). They have similarly held that a party does not become a required party for joinder purposes under Federal Rule of Civil Procedure 19 simply by virtue of indemnifying one of the named parties. See, *e. g.*, *Gardiner* v. *Virgin Islands Water & Power Auth.*, 145 F. 3d 635, 641 (CA3 1998); *Rochester Methodist Hospital* v. *Travelers Ins. Co.*, 728 F. 2d 1006, 1016–1017 (CA8 1984).

In sum, although tribal sovereign immunity is implicated when the suit is brought against individual officers in their

official capacities, it is simply not present when the claim is made against those employees in their individual capacities. An indemnification statute such as the one at issue here does not alter the analysis. Clarke may not avail himself of a sovereign immunity defense.

IV

The judgment of the Supreme Court of Connecticut is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

JUSTICE THOMAS, concurring in the judgment.

I remain of the view that tribal immunity does not extend "to suits arising out of a tribe's commercial activities conducted beyond its territory." *Michigan* v. *Bay Mills Indian Community*, 572 U. S. 782, 815 (2014) (dissenting opinion); see also *Kiowa Tribe of Okla.* v. *Manufacturing Technologies, Inc.*, 523 U. S. 751, 764 (1998) (Stevens, J., dissenting). This suit arose from an off-reservation commercial act. *Ante*, at 159–160. Accordingly, I would hold that respondent cannot assert the Tribe's immunity, regardless of the capacity in which he was sued. Because the Court reaches the same result for different reasons, I concur in its judgment.

JUSTICE GINSBURG, concurring in the judgment.

On the scope of tribal immunity from suit, I adhere to the dissenting views expressed in *Kiowa Tribe of Okla.* v. *Manufacturing Technologies, Inc.*, 523 U. S. 751, 760 (1998) (Stevens, J., dissenting), and *Michigan* v. *Bay Mills Indian Community*, 572 U. S. 782, 814 (2014) (THOMAS, J., dissenting). See also *id.*, at 831 (GINSBURG, J., dissenting). These dissenting opinions explain why tribes, interacting with non-

tribal members outside reservation boundaries, should be subject to nondiscriminatory state laws of general application. I agree with the Court, however, that a voluntary indemnity undertaking does not convert a suit against a tribal employee, in the employee's individual capacity, into a suit against the tribe. I therefore concur in the Court's judgment.

Syllabus

BOLIVARIAN REPUBLIC OF VENEZUELA ET AL. *v.* HELMERICH & PAYNE INTERNATIONAL DRILLING CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15–423. Argued November 2, 2016—Decided May 1, 2017

The Foreign Sovereign Immunities Act (FSIA) shields foreign states from suits in United States courts, 28 U. S. C. § 1604, with specified exceptions. The expropriation exception applies to "any case . . . in which rights in property taken in violation of international law are in issue and that property . . . is owned or operated by an agency or instrumentality of the foreign state . . . engaged in a commercial activity in the United States." § 1605(a)(3).

A wholly owned Venezuelan subsidiary (Subsidiary) of an American company (Parent) has long supplied oil rigs to oil development entities that were part of the Venezuelan Government. The American Parent and its Venezuelan Subsidiary (plaintiffs) filed suit in federal court against those entities (Venezuela), claiming that Venezuela had unlawfully expropriated the Subsidiary's rigs by nationalizing them. Venezuela moved to dismiss the case on the ground that its sovereign immunity deprived the District Court of jurisdiction. Plaintiffs argued that the case falls within the expropriation exception, but Venezuela claimed that international law did not cover the expropriation of property belonging to a country's nationals like the Subsidiary and that the American Parent did not have property rights in the Subsidiary's assets. The District Court agreed as to the Subsidiary, dismissing its claim on jurisdictional grounds. But it rejected the claim that the Parent had no rights in the Subsidiary's property. The District of Columbia Circuit reversed in part and affirmed in part, finding that both claims fell within the exception. With respect to the Subsidiary's claim, it concluded that a sovereign's taking of its own nationals' property would violate international law if the expropriation unreasonably discriminated based on a company's shareholders' nationality. With respect to the Parent's claim, it held that the exception applied because the Parent had raised its rights in a nonfrivolous way. The court decided only whether the plaintiffs might have a nonfrivolous expropriation claim, making clear that, under its standard, a nonfrivolous argument would be sufficient to bring a case within the scope of the exception. Given the factual

stipulations, the court concluded, the Subsidiary had satisfied that standard for purposes of surviving a motion to dismiss.

Held: The nonfrivolous-argument standard is not consistent with the FSIA. A case falls within the scope of the expropriation exception only if the property in which the party claims to hold rights was indeed "property taken in violation of international law." A court should decide the foreign sovereign's immunity defense "[a]t the threshold" of the action, *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 493, resolving any factual disputes as near to the outset of the case as is reasonably possible. Pp. 177–188.

(a) The expropriation exception grants jurisdiction only where there is a legally valid claim that a certain kind of right is at issue (*property* rights) and that the relevant property was taken in a certain way (in violation of international law). Simply making a nonfrivolous argument to that effect is not sufficient. This reading is supported by the provision's language, which applies in a "case . . . in which rights in property taken in violation of international law are in issue." Such language would normally foresee a judicial decision about the jurisdictional matter. This interpretation is supported by precedent. See, *e. g.*, *Permanent Mission of India to United Nations* v. *City of New York*, 551 U. S. 193, 201–202. It is also supported by a basic objective of the FSIA, which is to follow international law principles, namely, that granting foreign sovereigns immunity from suit both recognizes the "absolute independence of every sovereign authority" and helps to "induc[e]" each nation state, as a matter of "international comity," to "respect the independence and dignity of every other," *Berizzi Brothers Co.* v. *S. S. Pesaro*, 271 U. S. 562, 575. Nothing in the FSIA's history suggests that Congress intended a radical departure from these principles in codifying the mid-20th-century doctrine of "restrictive" sovereign immunity, which denies immunity in cases "arising out of a foreign state's strictly commercial acts," but applies immunity in "suits involving the foreign sovereign's public acts," *Verlinden*, *supra*, at 487. It is thus not surprising that the expropriation exception on its face emphasizes conformity with international law, requiring both a commercial connection with the United States and a taking of property "in violation of international law."

A "nonfrivolous-argument" reading of the exception would undermine the objectives embedded in the statute's language, history, and structure. It could also embroil a foreign sovereign in an American lawsuit for some time by adopting a standard limited only by the bounds of a lawyer's (nonfrivolous) imagination. And it could cause friction

with other nations, leading to reciprocal actions against this country. Pp. 177–183.

(b) Plaintiffs' arguments to the contrary are unpersuasive. They suggest that the expropriation exception should be treated similarly to 28 U. S. C. § 1331's "arising under" jurisdiction, which applies if a plaintiff can make a nonfrivolous argument that a federal law provides the relief sought—even if, in fact, it does not, *Bell* v. *Hood*, 327 U. S. 678, 685. But § 1331 differs from the exception in language and concerns. Section 1331 often simply determines which court doors—federal or state—are open, and neither it nor related jurisdictional sections seek to provide a sovereign foreign nation with immunity—the FSIA's basic objective. Nor does the text of § 1331 suggest that consistency with international law is of particular importance.

Plaintiffs also claim that the nonfrivolous-argument approach will work little harm since the matter could be resolved by motion practice before the sovereign bears the expense of a full trial. But resolving a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) or summary judgment under Rule 56 may impose increased burdens of time and expense upon the foreign nation. And a district court's decision that there is a "violation of international law" as a matter of jurisdiction may be immediately appealable as a collateral order, while the same decision made pursuant to a Rule 12(b)(6) or Rule 56 motion would be a decision on the "merits" not subject to immediate appeal. Moreover, the Circuit would part with its nonfrivolous-argument standard where a "violation of international law" is not an element of the claim to be decided on the merits. This bifurcated approach is difficult to reconcile with the statute's language, history, or purpose; and it creates needless complexity for judges and lawyers, domestic and foreign. Pp. 183–187.

784 F. 3d 804, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.

Catherine E. Stetson argued the cause for petitioners. With her on the briefs were *Bruce D. Oakley*, *Mary Helen Wimberly*, *Joseph D. Pizzurro*, *Robert B. García*, and *Kevin A. Meehan*.

Elaine J. Goldenberg argued the cause for the United States as *amicus curiae* urging vacatur. With her on the brief were *Acting Solicitor General Gershengorn*, *Deputy*

Solicitor General Kneedler, Sharon Swingle, and *Lewis S. Yelin.*

Catherine M. A. Carroll argued the cause for respondents. With her on the brief were *David W. Ogden* and *David W. Bowker.**

JUSTICE BREYER delivered the opinion of the Court.

The Foreign Sovereign Immunities Act of 1976 (FSIA or Act) provides, with specified exceptions, that a "foreign state shall be immune from the jurisdiction of the courts of the United States and of the States . . . ." 28 U. S. C. § 1604. One of the jurisdictional exceptions—the expropriation exception—says that

> "[a] foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—
>
> "(3) in which rights in property taken in violation of international law are in issue and that property . . . is owned or operated by an agency or instrumentality of the foreign state . . . engaged in a commercial activity in the United States." § 1605(a)(3).

The question here concerns the phrase "case . . . in which rights in property taken in violation of international law are in issue."

Does this phrase mean that, to defeat sovereign immunity, a party need only make a "nonfrivolous" argument that the case falls within the scope of the exception? Once made, does the existence of that nonfrivolous argument mean that the court retains jurisdiction over the case until the court decides, say, the merits of the case? Or does a more rigorous jurisdictional standard apply? To put the question more generally: What happens in a case where the party seeking to rely on the expropriation exception makes a nonfrivolous,

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**Michael J. Gottlieb* and *Ryan Y. Park* filed a brief for John Norton Moore et al. as *amici curiae* urging affirmance.

but ultimately incorrect, claim that his property was taken in violation of international law?

In our view, a party's nonfrivolous, but ultimately incorrect, argument that property was taken in violation of international law is insufficient to confer jurisdiction. Rather, state and federal courts can maintain jurisdiction to hear the merits of a case only if they find that the property in which the party claims to hold rights was indeed "property taken in violation of international law." Put differently, the relevant factual allegations must make out a legally valid claim that a certain kind of right is at issue (*property* rights) and that the relevant property was taken in a certain way (in violation of international law). A good argument to that effect is not sufficient. But a court normally need not resolve, as a jurisdictional matter, disputes about whether a party actually held rights in that property; those questions remain for the merits phase of the litigation.

Moreover, where jurisdictional questions turn upon further factual development, the trial judge may take evidence and resolve relevant factual disputes. But, consistent with foreign sovereign immunity's basic objective, namely, to free a foreign sovereign from *suit*, the court should normally resolve those factual disputes and reach a decision about immunity as near to the outset of the case as is reasonably possible. See *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 493–494 (1983).

I

Since the mid-1970's a wholly owned Venezuela-incorporated subsidiary (Subsidiary) of an American company (Parent) supplied oil rigs to oil development entities that were part of the Venezuelan Government. In 2011 the American Parent company and its Venezuelan Subsidiary (the respondents here) brought this lawsuit in federal court against those foreign government entities. (The entities go by their initials, PDVSA, but we shall normally refer to them as "Venezuela" or the "Venezuelan Government.") The

American Parent and the Venezuelan Subsidiary claimed that the Venezuelan Government had unlawfully expropriated the Subsidiary's oil rigs. And they sought compensation.

According to stipulated facts, by early 2010 the Venezuelan Government had failed to pay more than $10 million that it owed the Subsidiary. At that point the government sent troops to the equipment yard where the rigs were stored, prevented the Subsidiary from removing the rigs, and issued a "'Decree of Expropriation'" nationalizing the rigs. App. 72–74. Subsequently, the president of the oil development entities led a rally at the Subsidiary's offices, where he referred to the Venezuelan Subsidiary as an "'American company'" with "'foreign gentlemen investors.'" *Id.*, at 54.

Venezuela asked the court to dismiss the case on the ground that Venezuela possessed sovereign immunity and that the court consequently lacked "jurisdiction" to hear the case. See 28 U. S. C. §1604; Fed. Rules Civ. Proc. 12(b)(1) and (b)(2); *Verlinden*, *supra*, at 485, n. 5 (explaining that a court lacks "subject-matter" and "personal" jurisdiction over a foreign sovereign unless an FSIA exception applies). The companies replied that the case falls within the expropriation exception. Venezuela in turn argued that the Subsidiary's expropriation claim did not satisfy the exception because "'international law does not cover expropriations of property belonging to a country's own nationals'"; the taking was not "'in violation of international law,'" and the exception thus does not apply. Record in No. 11–cv–01735 (DC), Doc. 22, p. 13. Venezuela further argued that the American Parent's nationality makes no difference because, "as a corporate parent, [it] does not own [the Subsidiary's] assets." *Id.*, Doc. 24, at 12.

The parties agreed that the District Court should then decide whether the exception applies, and it should do so on the basis of governing law, taking all of the plaintiffs' well-pleaded allegations as true and construing the complaint in

the light most favorable to the plaintiffs. App. 119. The court decided, in relevant part, that the exception did not apply to the Venezuelan Subsidiary's claim because the Subsidiary was a national of Venezuela. See 971 F. Supp. 2d 49, 57–61 (DC 2013). The court concluded that Venezuela consequently possessed sovereign immunity, and it dismissed the Subsidiary's claim on jurisdictional grounds. It rejected, however, Venezuela's argument that the Parent had no rights in property in the Subsidiary. It concluded that Venezuela's "actions have deprived [the Parent], individually, of its essential and unique rights as sole shareholder . . . by dismantling its voting power, destroying its ownership, and frustrating its control over the company." *Id.*, at 73.

The Venezuelan Subsidiary appealed the dismissal of its expropriation claim, and Venezuela appealed the court's refusal to dismiss the Parent's claim. The Court of Appeals for the District of Columbia Circuit reversed in part and affirmed in part the District Court's conclusions. It decided that *both* the Subsidiary's and the Parent's claims fell within the exception.

With respect to the Subsidiary's claim, the court agreed that a sovereign's taking of its own nationals' property *normally* does not violate international law. But, the court said, there is an "exception" to this rule. And that exception applies when a sovereign's expropriation unreasonably discriminates on the basis of a company's shareholders' nationality, 784 F. 3d 804, 812 (CADC 2015) (citing *Banco Nacional de Cuba* v. *Sabbatino*, 307 F. 2d 845 (CA2 1962)). That exception, it added, might apply here, in which case the expropriation would violate international law, the FSIA's expropriation exception would apply, and the federal courts would possess jurisdiction over the case. 784 F. 3d, at 813. With respect to the Parent's expropriation claim, the court agreed with the District Court that the expropriation exception applied because the Parent had "'put its rights in property in issue in a non-frivolous way.'" *Id.*, at 816.

For present purposes, it is important to keep in mind that the Court of Appeals did not decide (on the basis of the stipulated facts) that the plaintiffs' allegations *are* sufficient to show their property was taken in violation of international law. It decided instead that the plaintiffs *might* have such a claim. And it made clear the legal standard that it would apply. It said that, in deciding whether the expropriation exception applies, it would set an "exceptionally low bar." *Id.*, at 812. Any possible, *i. e.*, "'non-frivolous,'" *ibid.*, claim of expropriation is sufficient, in the Court of Appeals' view, to bring a case within the scope of the FSIA's exception. In particular: If a plaintiff alleges facts and claims that permit the plaintiff to make an expropriation claim that is *not* "'*wholly insubstantial or frivolous*,'" then the exception permits the suit and the sovereign loses its immunity. *Ibid.* (emphasis added). Given the factual stipulations, the Court of Appeals did not suggest further factfinding on this jurisdictional issue but, rather, decided that the Subsidiary had "satisfied this Circuit's forgiving standard for surviving a motion to dismiss in an FSIA case." *Id.*, at 813.

Venezuela filed a petition for certiorari asking us to decide whether the Court of Appeals had applied the correct standard in deciding that the companies had met the expropriation exception's requirements. We agreed to do so.

II

Foreign sovereign immunity is jurisdictional in this case because explicit statutory language makes it so. See § 1604 ("[A] foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided" by the FSIA's exceptions); § 1605(a) ("A foreign state shall not be immune from the jurisdiction" of federal and state courts if the exception at issue here is satisfied). Given the parties' stipulations as to all relevant facts, our inquiry poses a "'pure question of statutory construction,'" *Republic of Austria* v. *Altmann*, 541 U. S. 677,

701 (2004). In our view, the expropriation exception grants jurisdiction only where there is a valid claim that "property" has been "taken in violation of international law." § 1605(a)(3). A nonfrivolous argument to that effect is insufficient.

For one thing, the provision's language, while ambiguous, supports such a reading. It says that there is jurisdiction in a "case . . . in which rights in property taken in violation of international law are in issue." *Ibid.* Such language would normally foresee a judicial decision about the jurisdictional matter. And that matter is whether a certain kind of "right" is "at issue," namely, a *property* right *taken in violation of international law.* To take a purely hypothetical example, a party might assert a claim to a house in a foreign country. If the foreign country nationalized the house and, when sued, asserted sovereign immunity, then the claiming party would as a jurisdictional matter prove that he claimed "property" (which a house obviously is) and also that the property was "taken in violation of international law." He need not show as a *jurisdictional* matter that he, rather than someone else, owned the house. That question is part of the merits of the case and remains "at issue."

We recognize that merits and jurisdiction will sometimes come intertwined. Suppose that the party asserted a claim to architectural plans for the house. It might be necessary to decide whether the law recognizes the kind of right that he asserts, or whether it is a right in "property" that was "taken in violation of international law." Perhaps that is the only serious issue in the case. If so, the court must still answer the jurisdictional question. If to do so, it must inevitably decide some, or all, of the merits issues, so be it.

Our reading of the statute is consistent with its language. The case is one which the existence of "rights" remains "at issue" until the court decides the merits of the case. But whether the rights asserted are rights of a certain kind, namely, rights in "property taken in violation of interna-

tional law," is a jurisdictional matter that the court must typically decide at the outset of the case, or as close to the outset as is reasonably possible.

Precedent offers a degree of support for our interpretation. In *Permanent Mission of India to United Nations* v. *City of New York*, 551 U. S. 193 (2007), we interpreted a different FSIA exception for cases "in which . . . rights in immovable property situated in the United States are in issue." § 1605(a)(4). We held that there was jurisdiction over the case because the plaintiff's lawsuit to enforce a tax lien "directly implicate[d]" the property rights described by the FSIA exception. See *id.*, at 200–201. We did not simply rely upon a finding that the plaintiff had made a nonfrivolous argument that the exception applied.

For another thing, one of the FSIA's basic objectives, as shown by its history, supports this reading. The Act for the most part embodies basic principles of international law long followed both in the United States and elsewhere. See *Schooner Exchange* v. *McFaddon*, 7 Cranch 116, 136–137 (1812); see also *Verlinden*, 461 U. S., at 493 (explaining that the Act "comprehensively regulat[es] the amenability of foreign nations to suit in the United States"). Our courts have understood, as international law itself understands, foreign nation states to be "independent sovereign" entities. To grant those sovereign entities an immunity from suit in our courts both recognizes the "absolute independence of every sovereign authority" and helps to "'induc[e]'" each nation state, as a matter of "'international comity,'" to "'respect the independence and dignity of every other,'" including our own. *Berizzi Brothers Co.* v. *S. S. Pesaro*, 271 U. S. 562, 575 (1926) (quoting *The Parlement Belge*, [1880] 5 P. D. 197, 214–215 (appeal taken from Admiralty Div.)).

In the mid-20th century, we, like many other nations, began to treat nations acting in a commercial capacity like other commercial entities. See *Permanent Mission*, *supra*, at 199–200. And we consequently began to limit our recog-

nition of sovereign immunity, denying that immunity in cases "arising out of a foreign state's strictly commercial acts," but continuing to apply that doctrine in "suits involving the foreign sovereign's *public acts*," *Verlinden*, 461 U. S., at 487 (emphasis added).

At first, our courts, aware of the expertise of the Executive Branch in matters of foreign affairs, relied heavily upon the advice of that branch when deciding just when and how this "restrictive" sovereign immunity doctrine applied. *Ibid.* See also H. R. Rep. No. 94–1487, pp. 8–9 (1976) (similar). But in 1976, Congress, at the urging of the Department of State and Department of Justice, began to codify the doctrine. The resulting statute, the FSIA, "starts from a premise of immunity and then creates exceptions to the general principle." *Id.*, at 17; *Verlinden*, *supra*, at 493. Almost all the exceptions involve commerce or immovable property located in the United States. *E. g.*, §§ 1605(a)(2) and (a)(4); see also § 1602 (expressing the finding that "[u]nder international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned"). The statute thereby creates a doctrine that by and large continues to reflect basic principles of international law, in particular those principles embodied in what jurists refer to as the "restrictive" theory of sovereign immunity. See, *e. g.*, Restatement (Third) of Foreign Relations Law of the United States § 451, and Comment *a* (1986) (describing the restrictive theory of immunity); United Nations General Assembly, Convention on Jurisdictional Immunities of States and Their Property, Res. 59/38, Arts. 5, 10–12 (Dec. 2, 2004) (adopting a restrictive theory of immunity and withdrawing immunity for loss of property where, among other requirements, "the act or omission occurred in whole or in part in the territory of th[e] other State"); United Nations General Assembly, Report of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property, Supp. A/59/22 No. 1, pp. 7–11 (Mar. 1–5, 2004) (same).

We have found nothing in the history of the statute that suggests Congress intended a radical departure from these basic principles. To the contrary, the State Department, which helped to draft the FSIA's language (and to whose views on sovereign immunity this Court, like Congress, has paid special attention, *Altmann*, 541 U. S., at 696), told Congress that the Act was "drafted keeping in mind what we believe to be the general state of the law internationally, so that we conform fairly closely . . . to our accepted international standards," Hearing on H. R. 3493 before the Subcommittee on Claims and Governmental Relations of the House of Representatives Committee on the Judiciary, 93d Cong., 1st Sess., 18 (1973). The Department added that, by doing so, we would diminish the likelihood that other nations would each go their own way, thereby "subject[ing]" the United States "abroad" to more claims "than we permit in this country . . . ." *Ibid.* It is consequently not surprising to find that the expropriation exception on its face emphasizes conformity with international law by requiring not only a commercial connection with the United States but also a taking of property "*in violation of international law.*"

We emphasize this point, embedded in the statute's language, history, and structure, because doing so reveals a basic objective of our sovereign immunity doctrine, which a "nonfrivolous-argument" reading of the expropriation exception would undermine. A sovereign's taking or regulating of its own nationals' property within its own territory is often just the kind of foreign sovereign's public act (a "*jure imperii*") that the restrictive theory of sovereign immunity ordinarily leaves immune from suit. See *Permanent Mission*, 551 U. S., at 199 (describing the FSIA's distinction between public acts, or *jure imperii*, and purely commercial ones); Restatement (Third) of Foreign Relations Law of the United States § 712, at 196 (noting that, under international law, a state is responsible for a "taking of the property of a *national of another state*" (emphasis added)). See also

Restatement (Fourth) of Foreign Relations Law of the United States § 455, Reporter's Note 12, p. 9 (Tent. Draft No. 2, Mar. 22, 2016) (noting that "[n]o provision comparable" to the exception "has yet been adopted in the domestic immunity statutes of other countries" and that expropriations are considered acts *jure imperii*); *United States* v. *Belmont*, 301 U. S. 324, 332 (1937); B. Cheng & G. Schwarzberger, General Principles of Law as Applied by International Courts and Tribunals 37–38 (1953) (collecting cases describing "the power of the sovereign State to expropriate" (internal quotation marks omitted)); *Jurisdictional Immunities of the State* (*Germany* v. *Italy*), 2012 I. C. J. 99, 123–125, ¶¶56–60 (Judgt. of Feb. 3) (noting consistent state practice in respect to the distinction between public and commercial acts and describing an international law of immunity recognizing such a difference); *Altmann*, *supra*, at 708 (BREYER, J., concurring) (describing the French Court of Appeals' decision about whether a King who has abdicated the throne is "'entitled to claim . . . immunity'" as "'Hea[d] of State'" when his sovereign status at the time of suit was in doubt (quoting *Ex-King Farouk of Egypt* v. *Christian Dior*, 84 Clunet 717, 24 I. L. R. 228, 229 (CA Paris 1957))).

To be sure, there are fair arguments to be made that a sovereign's taking of its own nationals' property sometimes amounts to an expropriation that violates international law, and the expropriation exception provides that the general principle of immunity for these otherwise public acts should give way. But such arguments are about whether such an expropriation does violate international law. To find jurisdiction only where a taking *does violate* international law is thus consistent with basic international law and the related statutory objectives and principles that we have mentioned. But to find jurisdiction where a taking does *not* violate international law (*e. g.*, where there is a nonfrivolous but ultimately *incorrect* argument that the taking violates international law) is inconsistent with those objectives. And it

is difficult to understand why Congress would have wanted that result.

Moreover, the "nonfrivolous-argument" interpretation would, in many cases, embroil the foreign sovereign in an American lawsuit for an increased period of time. It would substitute for a more workable standard ("violation of international law") a standard limited only by the bounds of a lawyer's (nonfrivolous) imagination. It would create increased complexity in respect to a jurisdictional matter where clarity is particularly important. *Hertz Corp.* v. *Friend*, 559 U. S. 77, 94–95 (2010). And clarity is doubly important here where foreign nations and foreign lawyers must understand our law.

Finally, the Solicitor General and the Department of State also warn us that the nonfrivolous-argument interpretation would "affron[t]" other nations, producing friction in our relations with those nations and leading some to reciprocate by granting their courts permission to embroil the United States in "expensive and difficult litigation, based on legally insufficient assertions that sovereign immunity should be vitiated." Brief for United States as *Amicus Curiae* 21–22. (At any given time the Department of Justice's Office of Foreign Litigation represents the United States in about 1,000 cases in 100 courts around the world. *Ibid.*) See also *National City Bank of N. Y.* v. *Republic of China*, 348 U. S. 356, 362 (1955) (noting that our grant of immunity to foreign sovereigns dovetails with our own interest in receiving similar treatment).

III

The plaintiffs make two important arguments to the contrary. First, they point to the federal statute that gives federal courts jurisdiction over cases "arising under the Constitution, laws, or treaties of the United States," 28 U. S. C. § 1331. They note that in *Bell* v. *Hood*, 327 U. S. 678 (1946), this Court held that the "arising under" statute confers jurisdiction if a plaintiff can make a nonfrivolous argument

that a federal law provides the relief he seeks—even if, in fact, it does not. See *id.*, at 685 (jurisdiction exists where, if the "Constitution and laws of the United States are given one construction," a claim will be "sustained," but if the laws are given a different construction, the claim "will be defeated"). And the plaintiffs say we should treat the expropriation exception similarly.

Section 1331, however, uses different language from the expropriation exception ("arising under") and focuses on different concerns. Section 1331 often simply determines which court's doors are open (federal or state). Cf. *Mims* v. *Arrow Financial Services, LLC*, 565 U. S. 368, 375–379 (2012). Unlike the FSIA, neither that jurisdictional section nor related jurisdictional sections seek to provide a sovereign foreign nation (or any party) with immunity—the basic FSIA objective. See *Dole Food Co.* v. *Patrickson*, 538 U. S. 468, 479 (2003) (FSIA's objective is to give "protection from the inconvenience of suit as a gesture of comity"); *Republic of Philippines* v. *Pimentel*, 553 U. S. 851, 866 (2008). And unlike the expropriation exception, the "arising under" statute's language does not suggest that consistency with international law is of particular importance.

Moreover, this Court has interpreted other jurisdictional statutes differently. Where jurisdiction depends on diversity of citizenship, for example, courts will look to see whether the parties are in fact diverse, not simply whether they are arguably so. See *Indianapolis* v. *Chase Nat. Bank*, 314 U. S. 63, 69 (1941); *McNutt* v. *General Motors Acceptance Corp.*, 298 U. S. 178, 189 (1936); see also 13E C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3611 (2009). We do not believe either jurisdictional analogy (28 U. S. C. § 1331 or § 1332) is particularly helpful, but the expropriation exception's substantive goals suggest that the diversity jurisdiction example provides a marginally closer analogy.

Second, the plaintiffs argue that the nonfrivolous-argument approach will work little harm. They say that a

court faced with an arguable but ultimately incorrect claim of jurisdiction can simply decide the same question—say, whether there was a "violation of international law"—as part of its decision on the merits. Thus a foreign sovereign defendant (in court because a plaintiff has made a nonfrivolous but incorrect argument that its property was taken in violation of international law) can simply move for judgment on the merits under Rule 12(b)(6), which provides for judgment where a plaintiff does not "state a claim upon which relief can be granted." Or the defendant could move for summary judgment under Rule 56. In a word, the defendant may not need to undergo a full trial and judgment, remaining in court until the bitter end.

These alternatives, however, have their own problems. For one thing, they will sometimes mean increased delay, imposing increased burdens of time and expense upon the foreign nation. For another, where a district court decides that there is a "violation of international law" as a matter of *jurisdiction*, then (according to the Courts of Appeals) the losing sovereign nation can immediately appeal the decision as a collateral order. But the same decision made to dispose of, say, a Rule 12(b)(6) motion or a Rule 56 motion would not be a "collateral order." It would be a decision on the "merits." And the foreign sovereign would not enjoy a right to take an immediate appeal. See *Coopers & Lybrand* v. *Livesay*, 437 U. S. 463, 468 (1978) (permitting interlocutory appeal of a collateral order that "resolve[s] an important issue completely separate from the merits of the action"); *Will* v. *Hallock*, 546 U. S. 345, 349 (2006) (same). See also *Intel Corp.* v. *Commonwealth Scientific*, 455 F. 3d 1364, 1366 (CA Fed. 2006) (permitting collateral appeal of an FSIA jurisdictional decision denying immunity); *Rubin* v. *Islamic Republic of Iran*, 637 F. 3d 783, 785 (CA7 2011) (same); *Compania Mexicana de Aviacion* v. *Central Dist. of Cal.*, 859 F. 2d 1354, 1356 (CA9 1988) (*per curiam*) (same); *Foremost-McKesson* v. *Islamic Republic of Iran*, 905 F. 2d 438, 443 (CADC 1990) (same).

Moreover, what is a court to do in a case where a "violation of international law," while a jurisdictional prerequisite, is *not* an element of the claim to be decided on the merits? The Circuit has suggested that they arise when the plaintiffs' claim is not an "expropriation claim" but rather a simple common-law claim of conversion, restitution, or breach of contract, the merits of which do not involve the merits of international law. See *Simon* v. *Republic of Hungary*, 812 F. 3d 127, 141–142 (2016). The Circuit has recognized that there are such cases, *id.*, at 141, and a cursory survey of the principal district courts in which these cases are brought confirms the reality of the problem. See, *e. g.*, *Philipp* v. *Federal Republic of Germany*, 248 F. Supp. 3d 59 (DC 2017) (deciding whether the expropriation exception is satisfied where the complaint pleads only common-law or statutory claims for relief); *De Csepel* v. *Republic of Hungary*, 169 F. Supp. 3d 143 (DC 2016) (similar); *Pablo Star Ltd.* v. *Welsh Government*, 170 F. Supp. 3d 597 (SDNY 2016) (similar); *Chettri* v. *Nepal*, 2014 WL 4354668 (SDNY, Sept. 2, 2014) (similar); Order Granting Defendants' Motion To Dismiss in *Lu* v. *Central Bank of Republic of China*, No. 2:12–cv–317 (CD Cal., June 13, 2013) (similar); *Orkin* v. *Swiss Confederation*, 770 F. Supp. 2d 612 (SDNY 2011) (similar); *Hammerstein* v. *Federal Republic of Germany*, 2011 WL 9975796 (EDNY, Aug. 1, 2011) (similar); *Cassirer* v. *Kingdom of Spain*, 461 F. Supp. 2d 1157 (CD Cal. 2006) (similar). Indeed, cases in which the jurisdictional inquiry does not overlap with the elements of a plaintiff's claims have been the norm in cases arising under other exceptions to the FSIA. *E. g.*, *Republic of Argentina* v. *Weltover, Inc.*, 504 U. S. 607, 610 (1992) (deciding whether a plaintiffs' breach-of-contract claim satisfied the jurisdictional requirements of the commercial-activity exception, § 1605(a)(2)).

To address the problem raised by these cases in which the "jurisdictional and merits inquiries" are not fully "overlap-[ping]," the Circuit has held that a district court is not to

apply its nonfrivolous-argument standard in such cases. *Simon*, 812 F. 3d, at 141. Rather, a court is to ask "whether the plaintiffs' allegations satisfy the jurisdictional standard." *Ibid.*

We can understand why the Circuit has departed from its nonfrivolous-argument standard in these latter cases. For, unless it did so, how could a foreign nation ever obtain a decision on the merits of the nonfrivolous argument that a plaintiff has advanced? But what in the statutory provision suggests that sometimes courts should, but sometimes they should not, simply look to the existence of a nonfrivolous argument when they decide whether the requirements of the expropriation exception are satisfied? It is difficult, if not impossible, to reconcile this bifurcated approach with the statute's language. It receives little, if any, support from the statute's history or purpose. And it creates added complexity, making it more difficult for judges and lawyers, domestic and foreign, to understand the intricacies of the law.

IV

We conclude that the nonfrivolous-argument standard is not consistent with the statute. Where, as here, the facts are not in dispute, those facts bring the case within the scope of the expropriation exception only if they do show (and not just arguably show) a taking of property in violation of international law. Simply making a nonfrivolous argument to that effect is not sufficient. Moreover, as we have previously stated, a court should decide the foreign sovereign's immunity defense "[a]t the threshold" of the action. *Verlinden*, 461 U. S., at 493. As we have said, given the parties' stipulations as to all relevant facts, the question before us is purely a legal one and can be resolved at the outset of the case. If a decision about the matter requires resolution of factual disputes, the court will have to resolve those disputes, but it should do so as near to the outset of the case as is reasonably possible.

* * *

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 GORSUCH took no part in the consideration or decision of this case.

Syllabus

BANK OF AMERICA CORP. ET AL. *v.* CITY OF MIAMI, FLORIDA

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

No. 15–1111. Argued November 8, 2016—Decided May 1, 2017*

The city of Miami (City) filed suit against Bank of America and Wells Fargo (Banks), alleging violations of the Fair Housing Act (FHA or Act). The FHA prohibits, among other things, racial discrimination in connection with real-estate transactions, 42 U. S. C. §§3604(b), 3605(a), and permits any "aggrieved person" to file a civil damages action for a violation of the Act, §§3613(a)(1)(A), (c)(1). The City's complaints charge that the Banks intentionally targeted predatory practices at African-American and Latino neighborhoods and residents, lending to minority borrowers on worse terms than equally creditworthy nonminority borrowers and inducing defaults by failing to extend refinancing and loan modifications to minority borrowers on fair terms. The City alleges that the Banks' discriminatory conduct led to a disproportionate number of foreclosures and vacancies in majority-minority neighborhoods, which impaired the City's effort to assure racial integration, diminished the City's property-tax revenue, and increased demand for police, fire, and other municipal services. The District Court dismissed the complaints on the grounds that (1) the harms alleged fell outside the zone of interests the FHA protects and (2) the complaints failed to show a sufficient causal connection between the City's injuries and the Banks' discriminatory conduct. The Eleventh Circuit reversed.

Held:

1. The City is an "aggrieved person" authorized to bring suit under the FHA. In addition to satisfying constitutional standing requirements, see *Spokeo, Inc.* v. *Robins*, 578 U. S. 330, 338, a plaintiff must show that the statute grants the plaintiff the cause of action he or she asserts. It is presumed that a statute ordinarily provides a cause of action "only to plaintiffs whose interests 'fall within the zone of interests protected by the law invoked.'" *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U. S. 118, 129.

The City's claims of financial injury are, at the least, "arguably within the zone of interests" the FHA protects. *Association of Data Process-*

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*Together with No. 15–1112, *Wells Fargo & Co. et al.* v. *City of Miami, Florida*, also on certiorari to the same court.

ing Service Organizations, Inc. v. *Camp*, 397 U. S. 150, 153. The FHA defines an "aggrieved person" as "any person who" either "claims to have been injured by a discriminatory housing practice" or believes that such an injury "is about to occur," 42 U. S. C. § 3602(i). This Court has said that the definition of "person aggrieved" in the original version of the FHA "showed 'a congressional intention to define standing as broadly as is permitted by Article III of the Constitution,'" *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U. S. 205, 209; and has held that the Act permits suit by parties similarly situated to the City, see, *e. g.*, *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S. 91 (village alleging that it lost tax revenue and had the racial balance of its community undermined by racial-steering practices). Against the backdrop of those decisions, Congress did not materially alter the definition of person "aggrieved" when it reenacted the current version of the Act.

The Banks nonetheless contend that the definition sets boundaries that fall short of those the Constitution sets. Even assuming that some form of their argument is valid, this Court concludes that the City's financial injuries fall within the zone of interests that the FHA protects. The City's claims are similar in kind to those of the Village of Bellwood, which the Court held in *Gladstone*, *supra*, could bring suit under the FHA. The Court explained that the defendants' discriminatory conduct adversely affected the village by, among other things, producing a "significant reduction in property values [that] directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services." *Id.*, at 110–111. The City's alleged economic injuries thus arguably fall within the FHA's zone of interests, as this Court has previously interpreted that statute. *Stare decisis* principles compel the Court's adherence to those precedents, and principles of statutory interpretation demand that the Court respect Congress' decision to ratify those precedents when it reenacted the relevant statutory text. Pp. 196–201.

2. The Eleventh Circuit erred in concluding that the complaints met the FHA's proximate-cause requirement based solely on the finding that the City's alleged financial injuries were foreseeable results of the Banks' misconduct. A claim for damages under the FHA is akin to a "tort action," *Meyer* v. *Holley*, 537 U. S. 280, 285, and is thus subject to the common-law requirement that loss is attributable "'to the proximate cause, and not to any remote cause,'" *Lexmark*, 572 U. S., at 132. The proximate-cause analysis asks "whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits." *Id.*, at 133. With respect to the FHA, foreseeability alone does not ensure

the required close connection. Nothing in the statute suggests that Congress intended to provide a remedy for any foreseeable result of an FHA violation, which may "'cause ripples of harm to flow'" far beyond the defendant's misconduct, *Associated Gen. Contractors of Cal., Inc.* v. *Carpenters*, 459 U. S. 519, 534; and doing so would risk "massive and complex damages litigation," *id.*, at 545. Rather, proximate cause under the FHA requires "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes* v. *Securities Investor Protection Corporation*, 503 U. S. 258, 268. The Court has repeatedly applied directness principles to statutes with "common-law foundations." *Anza* v. *Ideal Steel Supply Corp.*, 547 U. S. 451, 457. "'The general tendency'" in these cases, "'in regard to damages at least, is not to go beyond the first step.'" *Hemi Group, LLC* v. *City of New York*, 559 U. S. 1, 10. What falls within that step depends in part on the "nature of the statutory cause of action," *Lexmark*, *supra*, at 133, and an assessment "'of what is administratively possible and convenient,'" *Holmes*, *supra*, at 268.

The Court declines to draw the precise boundaries of proximate cause under the FHA, particularly where neither the Eleventh Circuit nor other courts of appeals have weighed in on the issue. Instead, the lower courts should define, in the first instance, the contours of proximate cause under the FHA and decide how that standard applies to the City's claims for lost property-tax revenue and increased municipal expenses. Pp. 201–203.

No. 15–1111, 800 F. 3d 1262, and No. 15–1112, 801 F. 3d 1258, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which KENNEDY and ALITO, JJ., joined, *post*, p. 204. GORSUCH, J., took no part in the consideration or decision of the cases.

Neal Kumar Katyal argued the cause for petitioners in both cases. With him on the briefs for petitioners in No. 15–1112 were *Frederick Liu*, *Morgan L. Goodspeed*, *Carol A. Licko*, *John F. O'Sullivan*, *Paul F. Hancock*, and *Andrew C. Glass*. *William M. Jay*, *Thomas M. Hefferon*, *Matthew S. Sheldon*, *Andrew Kim*, and *David J. Zimmer* filed briefs for petitioners in No. 15–1111.

Counsel

Robert S. Peck argued the cause for respondent in both cases. With him on the brief were *Victoria Méndez*, *Erwin Chemerinsky*, *Rachel Geman*, *Joel Liberson*, *Sherrie R. Savett*, *Sarah R. Schalman-Bergen*, and *Patrick F. Madden*.

Curtis E. Gannon argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant Attorney General Gupta*, *Irving L. Gornstein*, *Sharon M. McGowan*, *April J. Anderson*, and *Michelle Aronowitz*.†

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†Briefs of *amici curiae* urging reversal in both cases were filed for the American Bankers Association et al. by *Robert A. Long, Jr.*, and *David M. Zionts*; for the Cato Institute by *Steven G. Bradbury, Thaya Brook Knight*, and *Ilya Shapiro*; for the Chamber of Commerce of the United States of America et al. by *Brent J. McIntosh, H. Rodgin Cohen, Jeffrey B. Wall*, and *Kate Comerford Todd*; and for DRI–The Voice of the Defense Bar by *Matthew T. Nelson, Gaëtan Gerville-Réache*, and *Laura E. Proctor*.

Briefs of *amici curiae* urging affirmance in both cases were filed for AARP et al. by *Susan Ann Silverstein* and *William Alvarado Rivera*; for Asian Americans Advancing Justice | AAJC et al. by *Karla McKanders, Eugene Chay*, and *Juan Cartagena*; for the City and County of San Francisco et al. by *Michael N. Feuer, James P. Clark, G. Nicholas Herman, Benna Ruth Solomon, Dennis J. Herrera, Christine Van Aken, Aileen M. McGrath, Marc P. Hansen, John P. Markovs, Paula Boggs Muething, Barbara A. Langhenry, David J. Worley, Patrick Baker, Domenick Stampone, Danny Y. Chou, William D. Geary, Adam Loukx* and *Karl A. Racine*, Attorney General for the District of Columbia; for the Constitutional Accountability Center by *Brianne J. Gorod, Elizabeth B. Wydra, David H. Gans*, and *Brian R. Frazelle*; for Current and Former Members of Congress by *Thomas J. Henderson*; for the Fraternal Order of Police, Miami Lodge 20, et al. by *Debra L. Greenberger, Diane L. Houk, Robert D. Klausner*, and *Richard A. Sicking*; for the Lawyers' Committee for Civil Rights Under Law et al. by *Joseph M. Sellers, Kalpana Kotagal, Thomas Silverstein, Morgan Williams, Steven R. Shapiro, Sandra S. Park, Stuart T. Rossman, Philip D. Tegeler, Wade J. Henderson, Lisa M. Bornstein*, and *Jocelyn Larkin*; for the NAACP Legal Defense & Educational Fund, Inc., by *Ajmel Quereshi, John Paul Schnapper-Casteras, Sherrilyn Ifill, Janai Nelson*, and *Christina Swarns*; for the National Association of Counties et al. by *Deepak Gupta, Rachel S. Bloomekatz*, and

JUSTICE BREYER delivered the opinion of the Court.

The Fair Housing Act (FHA or Act) forbids

> "discriminat[ing] against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race . . . ." 42 U. S. C. § 3604(b).

It further makes it unlawful for

> "any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race . . . ." § 3605(a).

The statute allows any "aggrieved person" to file a civil action seeking damages for a violation of the statute. §§ 3613(a)(1)(A), 3613(c)(1). And it defines an "aggrieved person" to include "any person who . . . claims to have been injured by a discriminatory housing practice." § 3602(i)(1).

The city of Miami (City) claims that two banks, Bank of America and Wells Fargo (Banks), intentionally issued riskier mortgages on less favorable terms to African-American and Latino customers than they issued to similarly situated white, non-Latino customers, in violation of §§ 3604(b) and 3605(a). App. 185–197, 244–245, 350–362, 428. The City, in amended complaints, alleges that these discriminatory practices have (1) "adversely impacted the racial composition of the City," *id.*, at 232, 416; (2) "impaired the City's goals to assure racial integration and desegregation," *ibid.*; (3) "frustrate[d] the City's longstanding and active interest in promoting fair housing and securing the benefits of an integrated community," *id.*, at 232–233, 416–417; and (4)

Lisa Soronen; and for Anita Trafficante et al. by *John P. Relman*, *Sasha Samberg-Champion*, and *Stephen M. Dane*.

Franklin Siegel and *Justin Steil*, *pro se*, filed a brief for Housing Scholars as *amici curiae* in both cases.

Aderson Bellegarde Francois filed a brief for Leo Hollis as *amicus curiae* in No. 15–1112 urging affirmance.

disproportionately "cause[d] foreclosures and vacancies in minority communities in Miami," *id.*, at 229, 413. Those foreclosures and vacancies have harmed the City by decreasing "the property value of the foreclosed home as well as the values of other homes in the neighborhood," thereby (a) "reduc[ing] property tax revenues to the City," *id.*, at 234, 418, and (b) forcing the City to spend more on "municipal services that it provided and still must provide to remedy blight and unsafe and dangerous conditions which exist at properties that were foreclosed as a result of [the Banks'] illegal lending practices," *id.*, at 233–234, 417. The City claims that those practices violate the FHA and that it is entitled to damages for the listed injuries.

The Banks respond that the complaints do not set forth a cause of action for two basic reasons. First, they contend that the City's claimed harms do not "arguably" fall within the "zone of interests" that the statute seeks to protect, *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U. S. 150, 153 (1970); hence, the City is not an "aggrieved person" entitled to sue under the Act, § 3602(i). Second, they say that the complaint fails to draw a "proximate-cause" connection between the violation claimed and the harm allegedly suffered. In their view, even if the City proves the violations it charges, the distance between those violations and the harms the City claims to have suffered is simply too great to entitle the City to collect damages.

We hold that the City's claimed injuries fall within the zone of interests that the FHA arguably protects. Hence, the City is an "aggrieved person" able to bring suit under the statute. We also hold that, to establish proximate cause under the FHA, a plaintiff must do more than show that its injuries foreseeably flowed from the alleged statutory violation. The lower court decided these cases on the theory that foreseeability is all that the statute requires, so we vacate and remand for further proceedings.

I

In 2013, the City of Miami brought lawsuits in federal court against two banks, Bank of America and Wells Fargo. The City's complaints charge that the Banks discriminatorily imposed more onerous, and indeed "predatory," conditions on loans made to minority borrowers than to similarly situated nonminority borrowers. App. 185–197, 350–362. Those "predatory" practices included, among others, excessively high interest rates, unjustified fees, teaser low-rate loans that overstated refinancing opportunities, large prepayment penalties, and—when default loomed—unjustified refusals to refinance or modify the loans. *Id.*, at 225, 402. Due to the discriminatory nature of the Banks' practices, default and foreclosure rates among minority borrowers were higher than among otherwise similar white borrowers and were concentrated in minority neighborhoods. *Id.*, at 225–232, 408–415. Higher foreclosure rates lowered property values and diminished property-tax revenue. *Id.*, at 234, 418. Higher foreclosure rates—especially when accompanied by vacancies—also increased demand for municipal services, such as police, fire, and building and code enforcement services, all needed "to remedy blight and unsafe and dangerous conditions" that the foreclosures and vacancies generate. *Id.*, at 238–240, 421–423. The complaints describe statistical analyses that trace the City's financial losses to the Banks' discriminatory practices. *Id.*, at 235–237, 419–420.

The District Court dismissed the complaints on the grounds that (1) the harms alleged, being economic and not discriminatory, fell outside the zone of interests the FHA protects; (2) the complaints fail to show a sufficient causal connection between the City's injuries and the Banks' discriminatory conduct; and (3) the complaints fail to allege unlawful activity occurring within the Act's 2-year statute of limitations. The City then filed amended complaints (the complaints now before us) and sought reconsideration. The District Court held that the amended complaints could solve

only the statute of limitations problem. It consequently declined to reconsider the dismissals.

The Court of Appeals reversed the District Court. 800 F. 3d 1262 (CA11 2015); 801 F. 3d 1258 (CA11 2015). It held that the City's injuries fall within the "zone of interests," *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U. S. 118, 129 (2014), that the FHA protects. 800 F. 3d, at 1274–1275, 1277 (relying on *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U. S. 205 (1972); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S. 91 (1979); and *Havens Realty Corp.* v. *Coleman*, 455 U. S. 363 (1982)); 801 F. 3d, at 1266–1267 (similar). It added that the complaints adequately allege proximate cause. 800 F. 3d, at 1278; 801 F. 3d, at 1267. And it remanded the cases while ordering the District Court to accept the City's complaints as amended. 800 F. 3d, at 1286; 801 F. 3d, at 1267.

The Banks filed petitions for certiorari, asking us to decide whether, as the Court of Appeals had in effect held, the amended complaints satisfied the FHA's zone-of-interests and proximate-cause requirements. We agreed to do so.

II

To satisfy the Constitution's restriction of this Court's jurisdiction to "Cases" and "Controversies," Art. III, § 2, a plaintiff must demonstrate constitutional standing. To do so, the plaintiff must show an "injury in fact" that is "fairly traceable" to the defendant's conduct and "that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc.* v. *Robins*, 578 U. S. 330, 338 (2016) (citing *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992)). This Court has also referred to a plaintiff's need to satisfy "prudential" or "statutory" standing requirements. See *Lexmark*, 572 U. S., at 125–128, and n. 4. In *Lexmark*, we said that the label "'prudential standing'" was misleading, for the requirement at issue is in reality tied to a particular statute. *Ibid.* The question is whether the statute grants the plain-

tiff the cause of action that he asserts. In answering that question, we presume that a statute ordinarily provides a cause of action "only to plaintiffs whose interests fall within the zone of interests protected by the law invoked." *Id.*, at 129 (internal quotation marks omitted). We have added that "[w]hether a plaintiff comes within 'the zone of interests' is an issue that requires us to determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiff 's claim." *Id.*, at 127 (some internal quotation marks omitted).

Here, we conclude that the City's claims of financial injury in their amended complaints—specifically, lost tax revenue and extra municipal expenses—satisfy the "cause-of-action" (or "prudential standing") requirement. To use the language of *Data Processing*, the City's claims of injury it suffered as a result of the statutory violations are, at the least, "*arguably* within the zone of interests" that the FHA protects. 397 U. S., at 153 (emphasis added).

The FHA permits any "aggrieved person" to bring a housing-discrimination lawsuit. 42 U. S. C. § 3613(a). The statute defines "aggrieved person" as "any person who" either "claims to have been injured by a discriminatory housing practice" or believes that such an injury "is about to occur." § 3602(i).

This Court has repeatedly written that the FHA's definition of person "aggrieved" reflects a congressional intent to confer standing broadly. We have said that the definition of "person aggrieved" in the original version of the FHA, § 810(a), 82 Stat. 85, "showed 'a congressional intention to define standing as broadly as is permitted by Article III of the Constitution.' " *Trafficante*, *supra*, at 209 (quoting *Hackett* v. *McGuire Brothers, Inc.*, 445 F. 2d 442, 446 (CA3 1971)); see *Gladstone*, *supra*, at 109 (similar); *Havens Realty*, *supra*, at 372, 375–376 (similar); see also *Thompson* v. *North American Stainless, LP*, 562 U. S. 170, 176 (2011) ("Later

opinions, we must acknowledge, reiterate that the term 'aggrieved' [in the FHA] reaches as far as Article III permits"); *Bennett* v. *Spear*, 520 U. S. 154, 165–166 (1997) ("[*Trafficante*] held that standing was expanded to the full extent permitted under Article III by § 810(a) of the Civil Rights Act of 1968").

Thus, we have held that the Act allows suits by white tenants claiming that they were deprived benefits from interracial associations when discriminatory rental practices kept minorities out of their apartment complex, *Trafficante*, *supra*, at 209–212; a village alleging that it lost tax revenue and had the racial balance of its community undermined by racial-steering practices, *Gladstone*, *supra*, at 110–111; and a nonprofit organization that spent money to combat housing discrimination, *Havens Realty*, *supra*, at 379. Contrary to the dissent's view, those cases did more than "sugges[t]" that plaintiffs similarly situated to the City have a cause of action under the FHA. *Post*, at 208 (THOMAS, J., concurring in part and dissenting in part). They held as much. And the dissent is wrong to say that we characterized those cases as resting on "ill-considered dictum." *Post*, at 206 (quoting *Thompson*, *supra*, at 176). The "dictum" we cast doubt on in *Thompson* addressed who may sue under Title VII, the employment discrimination statute, not under the FHA.

Finally, in 1988, when Congress amended the FHA, it retained without significant change the definition of "person aggrieved" that this Court had broadly construed. Compare § 810(a), 82 Stat. 85, with § 5(b), 102 Stat. 1619–1620 (codified at 42 U. S. C. § 3602(i)) (changing "person aggrieved" to "aggrieved person" and making other minor changes to the definition). Indeed, Congress "was aware of" our precedent and "made a considered judgment to retain the relevant statutory text," *Texas Dept. of Housing and Community Affairs* v. *Inclusive Communities Project, Inc.*, 576 U. S. 519, 536 (2015). See H. R. Rep. No. 100–711, p. 23 (1988) (stating that the "bill adopts as its definition language similar

to that contained in Section 810 of existing law, as modified to reaffirm the broad holdings of these cases" and discussing *Gladstone* and *Havens Realty*); cf. *Lorillard* v. *Pons*, 434 U. S. 575, 580 (1978) (Congress normally adopts our interpretations of statutes when it reenacts those statutes without change).

The Banks do not deny the broad reach of the words "aggrieved person" as defined in the FHA. But they do contend that those words nonetheless set boundaries that fall short of those the Constitution sets. Brief for Petitioners in No. 15–1112, p. 12 (Brief for Wells Fargo); Brief for Petitioners in No. 15–1111, pp. 19–20 (Brief for Bank of America). The Court's language in *Trafficante*, *Gladstone*, and *Havens Realty*, they argue, was exaggerated and unnecessary to decide the cases then before the Court. See Brief for Wells Fargo 19–23; Brief for Bank of America 27–33. Moreover, they warn that taking the Court's words literally—providing everyone with constitutional standing a cause of action under the FHA—would produce a legal anomaly. After all, in *Thompson*, 562 U. S., at 175–177, we held that the words "'person claiming to be aggrieved'" in Title VII of the Civil Rights Act of 1964, the employment discrimination statute, did not stretch that statute's zone of interest to the limits of Article III. We reasoned that such an interpretation would produce farfetched results, for example, a shareholder in a company could bring a Title VII suit against the company for discriminatorily firing an employee. *Ibid.* The Banks say it would be similarly farfetched if restaurants, plumbers, utility companies, or any other participant in the local economy could sue the Banks to recover business they lost when people had to give up their homes and leave the neighborhood as a result of the Banks' discriminatory lending practices. Brief for Wells Fargo 18–19; Brief for Bank of America 22, 24–25. That, they believe, cannot have been the intent of the Congress that enacted or amended the FHA.

We need not discuss the Banks' argument at length, for even if we assume for argument's sake that some form of it is valid, we nonetheless conclude that the City's financial injuries fall within the zone of interests that the FHA protects. Our case law with respect to the FHA drives that conclusion. The City's complaints allege that the Banks "intentionally targeted predatory practices at African-American and Latino neighborhoods and residents," App. 225; *id.*, at 409 (similar). That unlawful conduct led to a "concentration" of "foreclosures and vacancies" in those neighborhoods. *Id.*, at 226, 229, 410, 413. Those concentrated "foreclosures and vacancies" caused "stagnation and decline in African-American and Latino neighborhoods." *Id.*, at 225, 409. They hindered the City's efforts to create integrated, stable neighborhoods. *Id.*, at 186, 351. And, highly relevant here, they reduced property values, diminishing the City's property-tax revenue and increasing demand for municipal services. *Id.*, at 233–234, 417.

Those claims are similar in kind to the claims the village of Bellwood raised in *Gladstone*. There, the plaintiff village had alleged that it was " 'injured by having [its] housing market . . . wrongfully and illegally manipulated to the economic and social detriment of the citizens of [the] village.' " 441 U. S., at 95 (quoting the complaint; alterations in original). We held that the village could bring suit. We wrote that the complaint in effect alleged that the defendant-realtors' racial steering "affect[ed] the village's racial composition," "reduce[d] the total number of buyers in the Bellwood housing market," "precipitate[d] an exodus of white residents," and caused "prices [to] be deflected downward." *Id.*, at 110. Those circumstances adversely affected the village by, among other things, *producing a "significant reduction in property values [that] directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services."* *Id.*, at 110–111 (emphasis added).

The upshot is that the City alleges economic injuries that arguably fall within the FHA's zone of interests, as we have previously interpreted that statute. Principles of *stare decisis* compel our adherence to those precedents in this context. And principles of statutory interpretation require us to respect Congress' decision to ratify those precedents when it reenacted the relevant statutory text. See *supra*, at 198–199.

III

The remaining question is one of causation: Did the Banks' allegedly discriminatory lending practices proximately cause the City to lose property-tax revenue and spend more on municipal services? The Eleventh Circuit concluded that the answer is "yes" because the City plausibly alleged that its financial injuries were foreseeable results of the Banks' misconduct. We conclude that foreseeability alone is not sufficient to establish proximate cause under the FHA, and therefore vacate the judgment below.

It is a " 'well established principle of [the common] law that in all cases of loss, we are to attribute it to the proximate cause, and not to any remote cause.' " *Lexmark*, 572 U. S., at 132. We assume Congress "is familiar with the common-law rule and does not mean to displace it *sub silentio*" in federal causes of action. *Ibid.* A claim for damages under the FHA—which is akin to a "tort action," *Meyer* v. *Holley*, 537 U. S. 280, 285 (2003)—is no exception to this traditional requirement. "Proximate-cause analysis is controlled by the nature of the statutory cause of action. The question it presents is whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits." *Lexmark*, *supra*, at 133.

In these cases, the "conduct the statute prohibits" consists of intentionally lending to minority borrowers on worse terms than equally creditworthy nonminority borrowers and inducing defaults by failing to extend refinancing and loan modifications to minority borrowers on fair terms. The City

alleges that the Banks' misconduct led to a disproportionate number of foreclosures and vacancies in specific Miami neighborhoods. These foreclosures and vacancies purportedly harmed the City, which lost property-tax revenue when the value of the properties in those neighborhoods fell and was forced to spend more on municipal services in the affected areas.

The Eleventh Circuit concluded that the City adequately pleaded that the Banks' misconduct proximately caused these financial injuries. 800 F. 3d, at 1282. The court held that in the context of the FHA "the proper standard" for proximate cause "is based on foreseeability." *Id.*, at 1279, 1282. The City, it continued, satisfied that element: Although there are "several links in the causal chain" between the charged discriminatory lending practices and the claimed losses, the City plausibly alleged that "none are unforeseeable." *Id.*, at 1282.

We conclude that the Eleventh Circuit erred in holding that foreseeability is sufficient to establish proximate cause under the FHA. As we have explained, proximate cause "generally bars suits for alleged harm that is 'too remote' from the defendant's unlawful conduct." *Lexmark*, *supra*, at 133. In the context of the FHA, foreseeability alone does not ensure the close connection that proximate cause requires. The housing market is interconnected with economic and social life. A violation of the FHA may, therefore, "'be expected to cause ripples of harm to flow'" far beyond the defendant's misconduct. *Associated Gen. Contractors of Cal., Inc.* v. *Carpenters*, 459 U. S. 519, 534 (1983). Nothing in the statute suggests that Congress intended to provide a remedy wherever those ripples travel. And entertaining suits to recover damages for any foreseeable result of an FHA violation would risk "massive and complex damages litigation." *Id.*, at 545.

Rather, proximate cause under the FHA requires "some direct relation between the injury asserted and the injurious

conduct alleged." *Holmes* v. *Securities Investor Protection Corporation*, 503 U. S. 258, 268 (1992). A damages claim under the statute "is analogous to a number of tort actions recognized at common law," *Curtis* v. *Loether*, 415 U. S. 189, 195 (1974), and we have repeatedly applied directness principles to statutes with "common-law foundations," *Anza* v. *Ideal Steel Supply Corp.*, 547 U. S. 451, 457 (2006). "'The general tendency'" in these cases, "'in regard to damages at least, is not to go beyond the first step.'" *Hemi Group, LLC* v. *City of New York*, 559 U. S. 1, 10 (2010). What falls within that "first step" depends in part on the "nature of the statutory cause of action," *Lexmark*, *supra*, at 133, and an assessment "'of what is administratively possible and convenient,'" *Holmes*, *supra*, at 268.

The parties have asked us to draw the precise boundaries of proximate cause under the FHA and to determine on which side of the line the City's financial injuries fall. We decline to do so. The Eleventh Circuit grounded its decision on the theory that proximate cause under the FHA is "based on foreseeability" alone. 800 F. 3d, at 1282. We therefore lack the benefit of its judgment on how the contrary principles we have just stated apply to the FHA. Nor has any other court of appeals weighed in on the issue. The lower courts should define, in the first instance, the contours of proximate cause under the FHA and decide how that standard applies to the City's claims for lost property-tax revenue and increased municipal expenses.

IV

The judgments of the Court of Appeals for the Eleventh Circuit are vacated, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of these cases.

JUSTICE THOMAS, with whom JUSTICE KENNEDY and JUSTICE ALITO join, concurring in part and dissenting in part.

These cases arise from lawsuits filed by the city of Miami alleging that residential mortgage lenders engaged in discriminatory lending practices in violation of the Fair Housing Act (FHA). The FHA prohibits "discrimination" against "any person" because of "race, color, religion, sex, handicap, familial status, or national origin" with respect to the "sale or rental" of "a dwelling." 42 U. S. C. § 3604; accord, §§ 3605(a), 3606. Miami's complaints do not allege that any defendant discriminated against it within the meaning of the FHA. Neither is Miami attempting to bring a lawsuit on behalf of its residents against whom petitioners allegedly discriminated. Rather, Miami's theory is that, between 2004 and 2012, petitioners' allegedly discriminatory mortgage-lending practices led to defaulted loans, which led to foreclosures, which led to vacant houses, which led to decreased property values, which led to reduced property taxes and urban blight. See 800 F. 3d 1262, 1268 (CA11 2015); 801 F. 3d 1258, 1266 (CA11 2015). Miami seeks damages from the lenders for reduced property tax revenues and for the cost of increased municipal services—"police, firefighters, building inspectors, debris collectors, and others"—deployed to attend to the blighted areas. 800 F. 3d, at 1269; 801 F. 3d, at 1263.

The Court today holds that Congress intended to remedy those kinds of injuries when it enacted the FHA, but leaves open the question whether Miami sufficiently alleged that the discriminatory lending practices caused its injuries. For the reasons explained below, I would hold that Miami's injuries fall outside the FHA's zone of interests. I would also hold that, in any event, Miami's alleged injuries are too remote to satisfy the FHA's proximate-cause requirement.

I

A plaintiff seeking to bring suit under a federal statute must show not only that he has standing under Article III, *ante*, at 196, but also that his "complaint fall[s] within the zone of interests protected by the law" he invokes, *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U. S. 118, 126 (2014) (internal quotation marks omitted). The zone-of-interests requirement is "root[ed]" in the "common-law rule" providing that a plaintiff may "recover under the law of negligence for injuries caused by violation of a statute" only if "the statute 'is interpreted as designed to protect the class of persons in which the plaintiff is included, against the risk of the type of harm which has in fact occurred as a result of its violation.'" *Id.*, at 130, n. 5 (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 36, pp. 229–230 (5th ed. 1984)). We have "made clear" that "Congress is presumed to legislate against the background" of that common-law rule. *Lexmark*, 572 U. S., at 129 (internal quotation marks and alteration omitted). We thus apply it "to all statutorily created causes of action . . . unless it is *expressly* negated." *Ibid.* (emphasis added; internal quotation marks omitted). "Whether a plaintiff comes within the zone of interests is an issue that requires us to determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." *Id.*, at 127 (internal quotation marks omitted).

A

Nothing in the text of the FHA suggests that Congress intended to deviate from the zone-of-interests limitation. The statute's private-enforcement mechanism provides that only an "aggrieved person" may sue, § 3613(a)(1)(A), and the statute defines "aggrieved person" to mean someone who "claims to have been injured by a discriminatory housing

practice" or who believes he "will be injured by a discriminatory housing practice that is about to occur," §§ 3602(i)(1), (2). That language does not hint—much less expressly provide—that Congress sought to depart from the common-law rule.

We have considered similar language in other statutes and reached the same conclusion. In *Thompson* v. *North American Stainless, LP*, 562 U. S. 170 (2011), for example, we considered Title VII's private-enforcement provision, which provides that "'a person claiming to be aggrieved'" may file an employment discrimination charge with the Equal Employment Opportunity Commission. *Id.*, at 173 (quoting § 2000e–5(b)). We unanimously concluded that Congress did not depart from the zone-of-interests limitation in Title VII by using that language. *Id.*, at 175–178. And in *Lexmark*, we interpreted a provision of the Lanham Act that permitted "any person who believes that he or she is likely to be damaged by a defendant's false advertising" to sue. 572 U. S., at 129 (internal quotation marks omitted). Even when faced with the broader "any person" language, we expressly rejected the argument that the statute conferred a cause of action upon anyone claiming an Article III injury in fact. We observed that it was unlikely that "Congress meant to allow all factually injured plaintiffs to recover," and we concluded that the zone-of-interests test was the "appropriate tool for determining who may invoke the cause of action" under the statute. *Id.*, at 129, 130 (internal quotation marks omitted).

To be sure, some language in our older precedents suggests that the FHA's zone of interests extends to the limits of Article III. See *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U. S. 205, 209 (1972); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S. 91, 109 (1979); *Havens Realty Corp.* v. *Coleman*, 455 U. S. 363, 372 (1982). But we have since described that language as "ill-considered" dictum leading to "absurd consequences." *Thompson*, 562 U. S., at 176. And

we have observed that the "holdings of those cases are compatible with the 'zone of interests' limitation" described in *Thompson*. *Ibid.* That limitation provides that a plaintiff may not sue when his "interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot be assumed that Congress intended to permit the suit." *Id.*, at 178 (internal quotation marks omitted). It thus "exclud[es] plaintiffs who might technically be injured in an Article III sense but whose interests are unrelated to the statutory prohibitions." *Ibid.*

B

In my view, Miami's asserted injuries are "so marginally related to or inconsistent with the purposes" of the FHA that they fall outside the zone of interests. Here, as in any other case, the text of the FHA defines the zone of interests that the statute protects. See *Lexmark*, *supra*, at 128. The FHA permits "[a]n aggrieved person" to sue, § 3613(a)(1)(A), if he "claims to have been injured by a *discriminatory housing practice*" or believes that he "will be injured by a *discriminatory housing practice* that is about to occur," §§ 3602(i)(1), (2) (emphasis added). Specifically, the FHA makes it unlawful to do any of the following on the basis of "race, color, religion, sex, handicap, familial status, or national origin": "refuse to sell or rent . . . a dwelling," § 3604(a); discriminate in the "terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith," § 3604(b); "make, print, or publish . . . any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination," § 3604(c); "represent to any person . . . that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available," § 3604(d); "induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of"

certain characteristics, § 3604(e); or discriminate in the provision of real estate or brokerage services, §§ 3605, 3606. The quintessential "aggrieved person" in cases involving violations of the FHA is a prospective home buyer or lessee discriminated against during the home-buying or leasing process. Our cases have also suggested that the interests of a person who lives in a neighborhood or apartment complex that remains segregated (or that risks becoming segregated) as a result of a discriminatory housing practice may be arguably within the outer limit of the interests the FHA protects. See *Trafficante*, *supra*, at 211 (concluding that one purpose of the FHA was to promote "truly integrated and balanced living patterns" (internal quotation marks omitted)).

Miami's asserted injuries are not arguably related to the interests the statute protects. Miami asserts that it received "reduced property tax revenues," App. 233, 417, and that it was forced to spend more money on "municipal services that it provided and still must provide to remedy blight and unsafe and dangerous conditions," *id.*, at 417; see also *ante*, at 194. The city blames these expenditures on the falling property values and vacant homes that resulted from foreclosures. But nothing in the text of the FHA suggests that Congress was concerned about decreased property values, foreclosures, and urban blight, much less about strains on municipal budgets that might follow.

Miami's interests are markedly distinct from the interests this Court confronted in *Trafficante*, *Gladstone*, and *Havens*. In *Trafficante*, one white and one black tenant of an apartment complex sued on the ground that the complex discriminated against nonwhite rental applicants. 409 U. S., at 206–208. They argued that this discrimination deprived them of the social and economic benefits of living in an integrated community. *Id.*, at 208. In *Gladstone*, residents in a village sued based on alleged discrimination in the home-buying process. 441 U. S., at 93–95. They contended that white home buyers were steered away from a racially integrated

neighborhood and toward an all-white neighborhood, whereas black home buyers were steered away from the all-white neighborhood and toward the integrated neighborhood. *Id.*, at 95. The plaintiffs thus alleged that they were "denied their right to select housing without regard to race." *Ibid.* (internal quotation marks omitted). The village also sued, alleging that the FHA violations were affecting its "racial composition, replacing what is presently an integrated neighborhood with a segregated one" and that its budget was strained from resulting lost tax revenues. *Id.*, at 110. Finally, in *Havens*, one white and one black plaintiff sued after having posed as "testers," for the purpose of "collecting evidence of unlawful steering practices." 455 U. S., at 373. According to their complaint, the owner of an apartment complex had told the white plaintiff that apartments were available, but had told the black plaintiff that apartments were not. *Id.*, at 368. The Court held that the white plaintiff could *not* sue, because he had been provided truthful information, but that the black plaintiff *could* sue, because the FHA requires truthful information about housing without regard to race. *Id.*, at 374–375. In all three of these cases, the plaintiffs claimed injuries based on racial steering and segregation—interests that, under this Court's precedents, at least arguably fall within the zone of interests that the FHA protects.

Miami's asserted injuries implicate none of those interests. Miami does not assert that it was injured based on efforts by the lenders to steer certain residents into one neighborhood rather than another. Miami does not even assert that it was injured because its neighborhoods were segregated. Miami therefore is not, as the majority describes, "similarly situated" to the plaintiffs in *Trafficante*, *Gladstone*, and *Havens*. *Ante,* at 198. Rather, Miami asserts injuries allegedly resulting from foreclosed-upon and then vacant homes. The FHA's zone of interests is not so expansive as to include those kinds of injuries.

C

The Court today reaches the opposite conclusion, resting entirely on the brief mention in *Gladstone* of the village's asserted injury of reduced tax revenues, and on principles of *stare decisis*. See *ante*, at 200–201. I do not think *Gladstone* compels the conclusion the majority reaches. Unlike these cases, *Gladstone* involved injuries to interests in "racial balance and stability," 441 U. S., at 111, which, our cases have suggested, arguably fall within the zone of interests protected by the FHA, see *supra*, at 208–209. The fact that the village plaintiff asserted a budget-related injury *in addition to* its racial-steering injury does not mean that a city alleging *only* a budget-related injury is authorized to sue. A budget-related injury might be necessary to establish a sufficiently concrete and particularized injury for purposes of Article III, but it is not sufficient to satisfy the FHA's zone-of-interests limitation.

Although the Court's reliance on *Gladstone* is misplaced, its opinion today is notable primarily for what it does not say. First, the Court conspicuously does not reaffirm the broad language from *Trafficante*, *Gladstone*, and *Havens* suggesting that Congress intended to permit any person with Article III standing to sue under the FHA. The Court of Appeals felt bound by that language, see 800 F. 3d, at 1277; 801 F. 3d, at 1266, and we granted review, despite the absence of a circuit conflict, to decide whether the language survived *Thompson* and *Lexmark*, see Brief for Petitioners in No. 15–1111, p. i ("By limiting suit to 'aggrieved person[s],' did Congress require that an FHA plaintiff plead more than just Article III injury-in-fact?"); Brief for Petitioners in No. 15–1112, p. i ("Whether the term 'aggrieved' in the Fair Housing Act imposes a zone-of-interests requirement more stringent than the injury-in-fact requirement of Article III"). Today's opinion avoids those questions presented and thus cannot be read as retreating from our more recent precedents on the zone-of-interests limitation.

Second, the Court does not reject the lenders' arguments about many other kinds of injuries that fall outside of the FHA's zone of interests. We explained in *Thompson* that an expansive reading of Title VII's zone of interests would allow a shareholder "to sue a company for firing a valuable employee for racially discriminatory reasons, so long as he could show that the value of his stock decreased as a consequence." 562 U. S., at 177. Petitioners similarly argue that, if Miami can sue for lost tax revenues under the FHA, then "plumbers, utility companies, or any other participant in the local economy could sue the Banks to recover business they lost when people had to give up their homes and leave the neighborhood as a result of the Banks' discriminatory lending practices." *Ante*, at 199 (citing petitioners' briefs). The Court today decides that it "need not discuss" this argument because *Gladstone* and *stare decisis* compel the conclusion that Miami can sue. *Ante*, at 200. That conclusion is wrong, but at least it is narrow. Accordingly, it should not be read to authorize suits by local businesses alleging the same injuries that Miami alleges here.

II

Although I disagree with its zone-of-interests holding, I agree with the Court's conclusions about proximate cause, as far as they go. The Court correctly holds that "foreseeability alone is not sufficient to establish proximate cause under the FHA." *Ante*, at 201. Instead, the statute requires "'some direct relation between the injury asserted and the injurious conduct alleged.'" *Ante*, at 202–203 (quoting *Holmes* v. *Securities Investor Protection Corporation*, 503 U. S. 258, 268 (1992)).

After articulating this test for proximate cause, the Court remands to the Court of Appeals because it "decline[s]" to "draw the precise boundaries of proximate cause under the FHA" or to "determine on which side of the line the City's financial injuries fall." *Ante*, at 203. But these cases come

to the Court on a motion to dismiss, and the Court of Appeals has no advantage over us in evaluating the complaint's proximate-cause theory. Moreover, the majority opinion leaves little doubt that neither Miami nor any similarly situated plaintiff can satisfy the rigorous standard for proximate cause that the Court adopts and leaves to the Court of Appeals to apply. See *ante*, at 203 ("The general tendency in these cases, in regard to damages at least, is not to go beyond the first step" (internal quotation marks omitted)).

Miami's own account of causation shows that the link between the alleged FHA violation and its asserted injuries is exceedingly attenuated. According to Miami, the lenders' injurious conduct was "target[ing] black and Latino customers in Miami for predatory loans." Brief for Respondent in No. 15–1111, p. 4 (internal quotation marks omitted). And according to Miami, the injuries asserted are its "loss of tax revenues" and its expenditure of "additional monies on municipal services to address" the consequences of urban blight. *Id.*, at 6.

As Miami describes it, the chain of causation between the injurious conduct and its asserted injuries proceeds as follows: As a result of the lenders' discriminatory loan practices, borrowers from predominantly minority neighborhoods were likely to default on their home loans, leading to foreclosures. *Id.*, at 5–6. The foreclosures led to vacant houses. *Id.*, at 6. The vacant houses, in turn, led to decreased property values for the surrounding homes. *Ibid.* Finally, those decreased property values resulted in homeowners paying lower property taxes to the city government. *Ibid.* Also, Miami explains, the foreclosed-upon, vacant homes eventually led to "vagrancy, criminal activity, and threats to public health and safety," which the city had to address through the expenditures of municipal resources. *Ibid.* And all this occurred, according to Miami, between 2004 and 2012. See *ibid.* The Court of Appeals will not need to look far to discern other, independent events that might well have caused the injuries Miami alleges in these cases.

In light of this attenuated chain of causation, Miami's asserted injuries are too remote from the injurious conduct it has alleged. See *Associated Gen. Contractors of Cal., Inc.* v. *Carpenters*, 459 U. S. 519, 532, n. 25 (1983). Indeed, any other conclusion would lead to disquieting consequences. Under Miami's own theory of causation, its injuries are one step further removed from the allegedly discriminatory lending practices than the injuries suffered by the neighboring homeowners whose houses declined in value. No one suggests that those homeowners could sue under the FHA, and I think it is clear that they cannot. Accordingly, I would hold that Miami has failed to sufficiently plead proximate cause under the FHA.

III

For the foregoing reasons, I would reverse the Court of Appeals.

Syllabus

HOWELL *v.* HOWELL

CERTIORARI TO THE SUPREME COURT OF ARIZONA

No. 15–1031. Argued March 20, 2017—Decided May 15, 2017

The Uniformed Services Former Spouses' Protection Act authorizes States to treat veterans' "disposable retired pay" as community property divisible upon divorce, 10 U. S. C. § 1408, but expressly excludes from its definition of "disposable retired pay" amounts deducted from that pay "as a result of a waiver . . . required by law in order to receive" disability benefits, § 1408(a)(4)(B). The divorce decree of petitioner John Howell and respondent Sandra Howell awarded Sandra 50% of John's future Air Force retirement pay, which she began to receive when John retired the following year. About 13 years later, the Department of Veterans Affairs found that John was partially disabled due to an earlier service-related injury. To receive disability pay, federal law required John to give up an equivalent amount of retirement pay. 38 U. S. C. § 5305. By his election, John waived about $250 of his retirement pay, which also reduced the value of Sandra's 50% share. Sandra petitioned the Arizona family court to enforce the original divorce decree and restore the value of her share of John's total retirement pay. The court held that the original divorce decree had given Sandra a vested interest in the prewaiver amount of John's retirement pay and ordered John to ensure that she receive her full 50% without regard for the disability waiver. The Arizona Supreme Court affirmed, holding that federal law did not pre-empt the family court's order.

Held: A state court may not order a veteran to indemnify a divorced spouse for the loss in the divorced spouse's portion of the veteran's retirement pay caused by the veteran's waiver of retirement pay to receive service-related disability benefits. This Court's decision in *Mansell* v. *Mansell*, 490 U. S. 581, determines the outcome here. There, the Court held that federal law completely pre-empts the States from treating waived military retirement pay as divisible community property. *Id.*, at 594–595. The Arizona Supreme Court attempted to distinguish *Mansell* by emphasizing the fact that the veteran's waiver in that case took place before the divorce proceeding while the waiver here took place several years after the divorce. This temporal difference highlights only that John's military pay at the time it came to Sandra was subject to a future contingency, meaning that the value of Sandra's share of military retirement pay was possibly worth less at the time of the divorce. Nothing in this circumstance makes the Arizona

courts' reimbursement award to Sandra any the less an award of the portion of military pay that John waived in order to obtain disability benefits. That the Arizona courts referred to her interest in the waivable portion as having "vested" does not help: State courts cannot "vest" that which they lack the authority to give. Neither can the State avoid *Mansell* by describing the family court order as an order requiring John to "reimburse" or to "indemnify" Sandra, rather than an order dividing property, a semantic difference and nothing more. Regardless of their form, such orders displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress. Family courts remain free to take account of the contingency that some military retirement pay might be waived or take account of reductions in value when calculating or recalculating the need for spousal support. Here, however, the state courts made clear that the original divorce decree divided the whole of John's military pay, and their decisions rested entirely upon the need to restore Sandra's lost portion. Pp. 220–223.

238 Ariz. 407, 361 P. 3d 936, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 223. GORSUCH, J., took no part in the consideration or decision of the case.

Adam G. Unikowsky argued the cause for petitioner. With him on the briefs was *Keith Berkshire*.

Charles W. Wirken argued the cause and filed a brief for respondent.

Ilana H. Eisenstein argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Acting Solicitor General Francisco*, *Acting Assistant Attorney General Readler*, *Deputy Solicitor General Stewart*, *Alisa B. Klein*, and *Katherine Twomey Allen*.*

JUSTICE BREYER delivered the opinion of the Court.

A federal statute provides that a State may treat as community property, and divide at divorce, a military veteran's

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**Carson J. Tucker* filed a brief for Veterans of Foreign Wars et al. as *amici curiae* urging reversal.

retirement pay. See 10 U. S. C. § 1408(c)(1). The statute, however, exempts from this grant of permission any amount that the Government deducts "as a result of a waiver" that the veteran must make "in order to receive" disability benefits. § 1408(a)(4)(B). We have held that a State cannot treat as community property, and divide at divorce, this portion (the waived portion) of the veteran's retirement pay. See *Mansell* v. *Mansell*, 490 U. S. 581, 594–595 (1989).

In this case a State treated as community property and awarded to a veteran's spouse upon divorce a portion of the veteran's total retirement pay. Long after the divorce, the veteran waived a share of the retirement pay in order to receive nontaxable disability benefits from the Federal Government instead. Can the State subsequently increase, pro rata, the amount the divorced spouse receives each month from the veteran's retirement pay in order to indemnify the divorced spouse for the loss caused by the veteran's waiver? The question is complicated, but the answer is not. Our cases and the statute make clear that the answer to the indemnification question is "no."

I

A

The Federal Government has long provided retirement pay to those veterans who have retired from the Armed Forces after serving, *e. g.*, 20 years or more. It also provides disabled members of the Armed Forces with disability benefits. In order to prevent double counting, however, federal law typically insists that, to receive disability benefits, a retired veteran must give up an equivalent amount of retirement pay. And, since retirement pay is taxable while disability benefits are not, the veteran often elects to waive retirement pay in order to receive disability benefits. See 10 U. S. C. § 3911 *et seq.* (Army retirement benefits); § 6321 *et seq.* (Navy and Marines retirement benefits); § 8911 *et seq.* (Air Force retirement benefits); 38 U. S. C. § 5305 (requiring

a waiver to receive disability benefits); § 5301(a)(1) (exempting disability benefits from taxation). See generally *McCarty* v. *McCarty*, 453 U. S. 210, 211–215 (1981) (describing the military's nondisability retirement system).

In 1981 we considered federal military retirement pay alone, *i. e.*, not in the context of pay waived to receive disability benefits. The question was whether a State could consider any of a veteran's retirement pay to be a form of community property, divisible at divorce. The Court concluded that the States could not. See *McCarty*, *supra*. We noted that the relevant legislative history referred to military retirement pay as a "'personal entitlement.'" *Id.*, at 224. We added that other language in the statute as well as its history made "clear that Congress intended that military retired pay 'actually reach the beneficiary.'" *Id.*, at 228. We found a "conflict between the terms of the federal retirement statutes and the [state-conferred] community property right." *Id.*, at 232. And we concluded that the division of military retirement pay by the States threatened to harm clear and substantial federal interests. Hence federal law pre-empted the state law. *Id.*, at 235.

In 1982 Congress responded by passing the Uniformed Services Former Spouses' Protection Act, 10 U. S. C. § 1408. Congress wrote that a State may treat veterans' "disposable retired pay" as divisible property, *i. e.*, community property divisible upon divorce. § 1408(c)(1). But the new Act expressly excluded from its definition of "disposable retired pay" amounts deducted from that pay "as a result of a waiver . . . required by law in order to receive" disability benefits. § 1408(a)(4)(B). (A recent amendment to the statute renumbered the waiver provision. It now appears at § 1408(a)(4)(A)(ii). See Pub. L. 114–328, § 641(a), 130 Stat. 2164.)

In 1989 we interpreted the new federal language in *Mansell*, 490 U. S. 581. Major Gerald E. Mansell and his wife had divorced in California. At the time of the divorce,

they entered into a "property settlement which provided, in part, that Major Mansell would pay Mrs. Mansell 50 percent of his total military retirement pay, including that portion of retirement pay waived so that Major Mansell could receive disability benefits." *Id.*, at 586. The divorce decree incorporated this settlement and permitted the division. Major Mansell later moved to modify the decree so that it would omit the portion of the retirement pay that he had waived. The California courts refused to do so. But this Court reversed. It held that federal law prohibited California from treating the waived portion as community property divisible at divorce.

Justice Thurgood Marshall, writing for the Court, pointed out that federal law, as construed in *McCarty*, "completely pre-empted the application of state community property law to military retirement pay." 490 U. S., at 588. He noted that Congress could "overcome" this pre-emption "by enacting an affirmative grant of authority giving the States the power to treat military retirement pay as community property." *Ibid.* He recognized that Congress, with its new Act, had done that, but only to a limited extent. The Act provided a "precise and limited" grant of the power to divide federal military retirement pay. *Ibid.* It did not "gran[t]" the States "the authority to treat total retired pay as community property." *Id.*, at 589. Rather, Congress excluded from its grant of authority the disability-related waived portion of military retirement pay. Hence, in respect to the waived portion of retirement pay, *McCarty*, with its rule of federal pre-emption, still applies. *Mansell*, 490 U. S., at 589.

B

John Howell, the petitioner, and Sandra Howell, the respondent, were divorced in 1991, while John was serving in the Air Force. Anticipating John's eventual retirement, the divorce decree treated John's future retirement pay as community property. It awarded Sandra "as her sole and sepa-

rate property FIFTY PERCENT (50%) of [John's] military retirement when it begins." App. to Pet. for Cert. 41a. It also ordered John to pay child support of $585 per month and spousal maintenance of $150 per month until the time of John's retirement.

In 1992 John retired from the Air Force and began to receive military retirement pay, half of which went to Sandra. About 13 years later the Department of Veterans Affairs found that John was 20% disabled due to a service-related shoulder injury. John elected to receive disability benefits and consequently had to waive about $250 per month of the roughly $1,500 of military retirement pay he shared with Sandra. Doing so reduced the amount of retirement pay that he and Sandra received by about $125 per month each. *In re Marriage of Howell*, 238 Ariz. 407, 408, 361 P. 3d 936, 937 (2015).

Sandra then asked the Arizona family court to enforce the original decree, in effect restoring the value of her share of John's total retirement pay. The court held that the original divorce decree had given Sandra a "vested" interest in the prewaiver amount of that pay, and ordered John to ensure that Sandra "receive her full 50% of the military retirement without regard for the disability." App. to Pet. for Cert. 28a.

The Arizona Supreme Court affirmed the family court's decision. See 238 Ariz. 407, 361 P. 3d 936. It asked whether the family court could "order John to indemnify Sandra for the reduction" of her share of John's military retirement pay. *Id.*, at 409, 361 P. 3d, at 938. It wrote that the family court order did not "divide" John's waived military retirement pay, the order did not require John "to rescind" his waiver, nor did the order "direct him to pay any amount to Sandra from his disability pay." *Id.*, at 410, 361 P. 3d, at 939. Rather the family court simply ordered John to "reimburse" Sandra for "reducing . . . her share" of military retirement pay. *Ibid.* The high court concluded that because

John had made his waiver after, rather than before, the family court divided his military retirement pay, our decision in *Mansell* did not control the case, and thus federal law did not pre-empt the family court's reimbursement order. 238 Ariz., at 410, 361 P. 3d, at 939.

Because different state courts have come to different conclusions on the matter, we granted John Howell's petition for certiorari. Compare *Glover* v. *Ranney*, 314 P. 3d 535, 539–540 (Alaska 2013); *Krapf* v. *Krapf*, 439 Mass. 97, 106–107, 786 N. E. 2d 318, 325–326 (2003); and *Johnson* v. *Johnson*, 37 S. W. 3d 892, 897–898 (Tenn. 2001), with *Mallard* v. *Burkhart*, 95 So. 3d 1264, 1269–1272 (Miss. 2012); and *Youngbluth* v. *Youngbluth*, 2010 VT 40, 188 Vt. 53, 62–65, 6 A. 3d 677, 682–685.

II

This Court's decision in *Mansell* determines the outcome here. In *Mansell*, the Court held that federal law completely pre-empts the States from treating waived military retirement pay as divisible community property. 490 U. S., at 594–595. Yet that which federal law pre-empts is just what the Arizona family court did here. App. to Pet. for Cert. 28a, 35a (finding that the divorce decree gave Sandra a "vested" interest in John's retirement pay and ordering that Sandra receive her share "without regard for the disability").

The Arizona Supreme Court, the respondent, and the Solicitor General try to distinguish *Mansell*. But we do not find their efforts convincing. The Arizona Supreme Court, like several other state courts, emphasized the fact that the veteran's waiver in *Mansell* took place before the divorce proceeding; the waiver here took place several years after the divorce proceedings. See 238 Ariz., at 410, 361 P. 3d, at 939; see also *Abernethy* v. *Fishkin*, 699 So. 2d 235, 240 (Fla. 1997) (noting that a veteran had not yet waived retirement pay at the time of the divorce and permitting indemnification in light of the parties' "intent to maintain level monthly pay-

ments pursuant to their property settlement agreement"). Hence here, as the Solicitor General emphasizes, the nonmilitary spouse and the family court were likely to have assumed that a full share of the veteran's retirement pay would remain available after the assets were distributed.

Nonetheless, the temporal difference highlights only that John's military retirement pay at the time it came to Sandra was subject to later reduction (should John exercise a waiver to receive disability benefits to which he is entitled). The state court did not extinguish (and most likely would not have had the legal power to extinguish) that future contingency. The existence of that contingency meant that the value of Sandra's share of military retirement pay was possibly worth less—perhaps less than Sandra and others thought—at the time of the divorce. So too is an ownership interest in property (say, A's property interest in Blackacre) worth less if it is subject to defeasance or termination upon the occurrence of a later event (say, B's death). See generally Restatement (Third) of Property § 24.3 (2010) (describing property interests that are defeasible); *id.*, § 25.3, and Comment *a* (describing contingent future interests subject to divestment).

We see nothing in this circumstance that makes the reimbursement award to Sandra any the less an award of the portion of military retirement pay that John waived in order to obtain disability benefits. And that is the portion that Congress omitted from the Act's definition of "disposable retired pay," namely, the portion that federal law prohibits state courts from awarding to a divorced veteran's former spouse. *Mansell*, *supra*, at 589. That the Arizona courts referred to Sandra's interest in the waivable portion as having "vested" does not help. State courts cannot "vest" that which (under governing federal law) they lack the authority to give. Cf. 38 U. S. C. § 5301(a)(1) (providing that disability benefits are generally nonassignable). Accordingly, while the divorce decree might be said to "vest" Sandra with an

immediate right to half of John's military retirement pay, that interest is, at most, contingent, depending for its amount on a subsequent condition: John's possible waiver of that pay.

Neither can the State avoid *Mansell* by describing the family court order as an order requiring John to "reimburse" or to "indemnify" Sandra, rather than an order that divides property. The difference is semantic and nothing more. The principal reason the state courts have given for ordering reimbursement or indemnification is that they wish to restore the amount previously awarded as community property, *i. e.*, to restore that portion of retirement pay lost due to the postdivorce waiver. And we note that here, the amount of indemnification mirrors the waived retirement pay, dollar for dollar. Regardless of their form, such reimbursement and indemnification orders displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress. All such orders are thus pre-empted.

The basic reasons *McCarty* gave for believing that Congress intended to exempt military retirement pay from state community property laws apply *a fortiori* to disability pay. See 453 U. S., at 232–235 (describing the federal interests in attracting and retaining military personnel). And those reasons apply with equal force to a veteran's postdivorce waiver to receive disability benefits to which he or she has become entitled.

We recognize, as we recognized in *Mansell*, the hardship that congressional pre-emption can sometimes work on divorcing spouses. See 490 U. S., at 594. But we note that a family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or, as the petitioner himself recognizes, take account of reductions in value when it calculates or recalculates the need for spousal support. See *Rose* v. *Rose*, 481 U. S. 619, 630–634, and n. 6 (1987); 10 U. S. C. § 1408(e)(6).

We need not and do not decide these matters, for here the state courts made clear that the original divorce decree divided the whole of John's military retirement pay, and their decisions rested entirely upon the need to restore Sandra's lost portion. Consequently, the determination of the Supreme Court of Arizona must be reversed. See *Mansell*, *supra*, at 594.

III

The judgment of the Supreme Court of Arizona is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

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

I join all of the opinion of the Court except its brief discussion of "purposes and objectives" pre-emption. *Ante*, at 222. As I have previously explained, "[t]hat framework is an illegitimate basis for finding the pre-emption of state law." *Hillman* v. *Maretta*, 569 U. S. 483, 499 (2013) (THOMAS, J., concurring in judgment); see also *Wyeth* v. *Levine*, 555 U. S. 555, 583 (2009) (same). In any event, that framework is not necessary to support the Court's judgment in this case.

Syllabus

MIDLAND FUNDING, LLC *v.* JOHNSON

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

No. 16–348. Argued January 17, 2017—Decided May 15, 2017

Petitioner Midland Funding filed a proof of claim in respondent Johnson's Chapter 13 bankruptcy case, asserting that Johnson owed Midland credit-card debt and noting that the last time any charge appeared on Johnson's account was more than 10 years ago. The relevant statute of limitations under Alabama law is six years. Johnson objected to the claim, and the Bankruptcy Court disallowed it. Johnson then sued Midland, claiming that its filing a proof of claim on an obviously time-barred debt was "false," "deceptive," "misleading," "unconscionable," and "unfair" within the meaning of the Fair Debt Collection Practices Act, 15 U. S. C. §§ 1692e, 1692f. The District Court held that the Act did not apply and dismissed the suit. The Eleventh Circuit reversed.

Held: The filing of a proof of claim that is obviously time barred is not a false, deceptive, misleading, unfair, or unconscionable debt collection practice within the meaning of the Fair Debt Collection Practices Act. Pp. 228–235.

(a) Midland's proof of claim was not "false, deceptive, or misleading." The Bankruptcy Code defines the term "claim" as a "right to payment," 11 U. S. C. § 101(5)(A), and state law usually determines whether a person has such a right, see *Travelers Casualty & Surety Co. of America* v. *Pacific Gas & Elec. Co.*, 549 U. S. 443, 450–451. The relevant Alabama law provides that a creditor has the right to payment of a debt even after the limitations period has expired.

Johnson argues that the word "claim" means "enforceable claim." But the word "enforceable" does not appear in the Code's definition, and Johnson's interpretation is difficult to square with Congress' intent "to adopt the broadest available definition of 'claim,'" *Johnson* v. *Home State Bank*, 501 U. S. 78, 83. Other Code provisions are still more difficult to square with Johnson's interpretation. For example, § 502(b)(1) says that if a "claim" is "unenforceable" it will be disallowed, not that it is not a "claim." Other provisions make clear that the running of a limitations period constitutes an affirmative defense that a debtor is to assert after the creditor makes a "claim." §§ 502, 558. The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense, and there is nothing misleading or deceptive in the filing of a proof of claim that follows the Code's similar system.

Syllabus

Indeed, to determine whether a statement is misleading normally "requires consideration of the legal sophistication of its audience," *Bates* v. *State Bar of Ariz.*, 433 U. S. 350, 383, n. 37, which in a Chapter 13 bankruptcy includes a trustee who is likely to understand that a proof of claim is a statement by the creditor that he or she has a right to payment that is subject to disallowance, including disallowance based on untimeliness. Pp. 228–230.

(b) Several circumstances, taken together, lead to the conclusion that Midland's proof of claim was not "unfair" or "unconscionable" within the terms of the Fair Debt Collection Practices Act.

Johnson points out that several lower courts have found or indicated that, in the context of an ordinary civil action to collect a debt, a debt collector's assertion of a claim known to be time barred is "unfair." But those courts rested their conclusions upon their concern that a consumer might unwittingly repay a time-barred debt. Such considerations have significantly diminished force in a Chapter 13 bankruptcy, where the consumer initiates the proceeding, see §§ 301, 303(a); where a knowledgeable trustee is available, see § 1302(a); where procedural rules more directly guide the evaluation of claims, see Fed. Rule Bkrtcy. Proc. 3001(c)(3)(A); and where the claims resolution process is "generally a more streamlined and less unnerving prospect for a debtor than facing a collection lawsuit," *In re Gatewood*, 533 B. R. 905, 909.

Also unpersuasive is Johnson's argument that there is no legitimate reason for allowing a practice like this one that risks harm to the debtor. The bankruptcy system treats untimeliness as an affirmative defense and normally gives the trustee the burden of investigating claims to see if one is stale. And, at least on occasion, the assertion of even a stale claim can benefit the debtor.

More importantly, a change in the simple affirmative-defense approach, carving out an exception, would require defining the exception's boundaries. Does it apply only where a claim's staleness appears on the face of the proof of claim? Does it apply to other affirmative defenses or only to the running of the limitations period? Neither the Fair Debt Collection Practices Act nor the Bankruptcy Code indicates that Congress intended an ordinary civil court applying the Act to determine answers to such bankruptcy-related questions. The Act and the Code have different purposes and structural features. The Act seeks to help consumers by preventing consumer bankruptcies in the first place, while the Code creates and maintains the "delicate balance of a debtor's protections and obligations," *Kokoszka* v. *Belford*, 417 U. S. 642, 651. Applying the Act in this context would upset that "delicate balance."

Contrary to the argument of the United States, the promulgation of Bankruptcy Rule 9011 did not resolve this issue. Pp. 230–235.

823 F. 3d 1334, reversed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG and KAGAN, JJ., joined, *post*, p. 236. GORSUCH, J., took no part in the consideration or decision of the case.

Kannon K. Shanmugam argued the cause for petitioner. With him on the brief were *Allison Jones Rushing*, *Masha G. Hansford*, *Jason B. Tompkins*, and *Chase T. Espy.*

Daniel L. Geyser argued the cause for respondent. With him on the brief were *Peter K. Stris*, *Brendan S. Maher*, *Douglas D. Geyser*, *Earl P. Underwood, Jr.*, *Radha A. Pathak*, and *Matthew A. Seligman.*

Sarah E. Harrington argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Acting Solicitor General Gershengorn*, *Deputy Solicitor General Stewart*, *Ramona D. Elliott*, *P. Matthew Sutko*, and *Sumi Sakata.**

JUSTICE BREYER delivered the opinion of the Court.

The Fair Debt Collection Practices Act, 91 Stat. 874, 15 U. S. C. § 1692 *et seq.*, prohibits a debt collector from asserting any "false, deceptive, or misleading representation," or using any "unfair or unconscionable means" to collect, or at-

*Briefs of *amici curiae* urging reversal were filed for ACA International by *Brian Melendez*; for the Chamber of Commerce of the United States of America by *Helgi C. Walker* and *Kate Comerford Todd*; for DBA International, Inc., by *Donald S. Maurice, Jr.*, *Christian K. Parker*, and *Alan C. Hochheiser*; for NARCA–The National Creditors Bar Association et al. by *Manuel H. Newburger* and *Stephen W. Sather*; and for Resurgent Capital Services, L. P., by *Craig Goldblatt*, *Danielle Spinelli*, and *Isley M. Gostin.*

Briefs of *amici curiae* urging affirmance were filed for the National Association of Chapter Thirteen Trustees by *Henry E. Hildebrand III*; for the National Association of Consumer Bankruptcy Attorneys et al. by *Whitman L. Holt*, *Kenneth N. Klee*, *Daniel J. Bussel*, *Robert J. Pfister*, and *Tara Twomey*; for Public Citizen, Inc., et al. by *Julie A. Murray*, *Scott L. Nelson*, and *Allison M. Zieve*; and for G. Eric Brunstad, Jr., by *Mr. Brunstad, pro se.*

tempt to collect, a debt, §§ 1692e, 1692f. In this case, a debt collector filed a written statement in a Chapter 13 bankruptcy proceeding claiming that the debtor owed the debt collector money. The statement made clear, however, that the 6-year statute of limitations governing collection of the claimed debt had long since run. The question before us is whether the debt collector's filing of that statement falls within the scope of the aforementioned provisions of the Fair Debt Collection Practices Act. We conclude that it does not.

I

In March 2014, Aleida Johnson, the respondent, filed for personal bankruptcy under Chapter 13 of the Bankruptcy Code (or Code), 11 U. S. C. § 1301 *et seq.*, in the Federal District Court for the Southern District of Alabama. Two months later, Midland Funding, LLC, the petitioner, filed a "proof of claim," a written statement asserting that Johnson owed Midland a credit-card debt of $1,879.71. The statement added that the last time any charge appeared on Johnson's account was in May 2003, more than 10 years before Johnson filed for bankruptcy. The relevant statute of limitations is six years. See Ala. Code § 6–2–34 (2014). Johnson, represented by counsel, objected to the claim; Midland did not respond to the objection; and the Bankruptcy Court disallowed the claim.

Subsequently, Johnson brought this lawsuit against Midland seeking actual damages, statutory damages, attorney's fees, and costs for a violation of the Fair Debt Collection Practices Act. See 15 U. S. C. § 1692k. The District Court decided that the Act did not apply and therefore dismissed the action. The Court of Appeals for the Eleventh Circuit disagreed and reversed the District Court. 823 F. 3d 1334 (2016). Midland filed a petition for certiorari, noting a division of opinion among the Courts of Appeals on the question whether the conduct at issue here is "false," "deceptive," "misleading," "unconscionable," or "unfair" within the mean-

ing of the Act. Compare *ibid.* (finding the Fair Debt Collection Practices Act applicable) with *In re Dubois*, 834 F. 3d 522 (CA4 2016) (finding the Act inapplicable); *Owens* v. *LVNV Funding, LLC*, 832 F. 3d 726 (CA7 2016) (same); and *Nelson* v. *Midland Credit Management, Inc.*, 828 F. 3d 749 (CA8 2016) (same). We granted the petition. We now reverse the Court of Appeals.

II

Like the majority of Courts of Appeals that have considered the matter, we conclude that Midland's filing of a proof of claim that on its face indicates that the limitations period has run does not fall within the scope of any of the five relevant words of the Fair Debt Collection Practices Act. We believe it reasonably clear that Midland's proof of claim was not "false, deceptive, or misleading." Midland's proof of claim falls within the Bankruptcy Code's definition of the term "claim." A "claim" is a "right to payment." 11 U. S. C. § 101(5)(A). State law usually determines whether a person has such a right. See *Travelers Casualty & Surety Co. of America* v. *Pacific Gas & Elec. Co.*, 549 U. S. 443, 450–451 (2007). The relevant state law is the law of Alabama. And Alabama's law, like the law of many States, provides that a creditor has the right to payment of a debt even after the limitations period has expired. See *Ex parte HealthSouth Corp.*, 974 So. 2d 288, 296 (Ala. 2007) (passage of time extinguishes remedy but the right remains); see also, *e. g.*, *Sallaz* v. *Rice*, 161 Idaho 223, 228–229, 384 P. 3d 987, 992–993 (2016) (similar); *Notte* v. *Merchants Mut. Ins. Co.*, 185 N. J. 490, 499–500, 888 A. 2d 464, 469 (2006) (similar); *Potterton* v. *Ryland Group, Inc.*, 289 Md. 371, 375–376, 424 A. 2d 761, 764 (1981) (similar); *Summers* v. *Connolly*, 159 Ohio St. 396, 400–402, 112 N. E. 2d 391, 394 (1953) (similar); *DeVries* v. *Secretary of State*, 329 Mich. 68, 75, 44 N. W. 2d 872, 876 (1950) (similar); *Fleming* v. *Yeazel*, 379 Ill. 343, 344–346, 40 N. E. 2d 507, 508 (1942) (similar); *Fidelity & Cas. Co.*

of N. Y. v. *Lackland*, 175 Va. 178, 185–187, 8 S. E. 2d 306, 309 (1940) (similar); *Insurance Co.* v. *Dunscomb*, 108 Tenn. 724, 728–731, 69 S. W. 345, 346 (1902) (similar); but see, *e. g.*, Miss. Code Ann. § 15–1–3(1) (2012) (expiration of the limitations period extinguishes the remedy and the right); Wis. Stat. § 893.05 (2011–2012) (same).

Johnson argues that the Code's word "claim" means "enforceable claim." She notes that this Court once referred to a bankruptcy "claim" as "an enforceable obligation." *Pennsylvania Dept. of Public Welfare* v. *Davenport*, 495 U. S. 552, 559 (1990). And, she concludes, Midland's "proof of claim" was false (or deceptive or misleading) because its "claim" was not enforceable. Brief for Respondent 22; Brief for United States as *Amicus Curiae* 18–20 (making a similar argument).

But we do not find this argument convincing. The word "enforceable" does not appear in the Code's definition of "claim." See 11 U. S. C. § 101(5). The Court in *Davenport* likely used the word "enforceable" descriptively, for that case involved an enforceable debt. 495 U. S., at 559. And it is difficult to square Johnson's interpretation with our later statement that "Congress intended . . . to adopt the broadest available definition of 'claim.'" *Johnson* v. *Home State Bank*, 501 U. S. 78, 83 (1991).

It is still more difficult to square Johnson's interpretation with other provisions of the Bankruptcy Code. Section 502(b)(1) of the Code, for example, says that, if a "claim" is "unenforceable," it will be disallowed. It does not say that an "unenforceable" claim is not a "claim." Similarly, § 101(5)(A) says that a "claim" is a "right to payment," "whether or not such right is . . . fixed, *contingent*, . . . [or] *disputed*." (Emphasis added.) If a contingency does not arise, or if a claimant loses a dispute, then the claim is unenforceable. Yet this section makes clear that the unenforceable claim is nonetheless a "right to payment," hence a "claim," as the Code uses those terms.

Johnson looks for support to other provisions that govern bankruptcy proceedings, including § 502(a) of the Bankruptcy Code, which states that a claim will be allowed in the absence of an objection, and Rule 3001(f) of the Federal Rules of Bankruptcy Procedure, which states that a properly filed "proof of claim . . . shall constitute prima facie evidence of the validity and amount of the claim." But these provisions do not discuss the scope of the term "claim." Rather, they restate the Bankruptcy Code's system for determining whether a claim will be allowed. Other provisions make clear that the running of a limitations period constitutes an affirmative defense, a defense that the debtor is to assert after a creditor makes a "claim." §§ 502, 558. The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense. See, *e. g.*, Fed. Rule Civ. Proc. 8(c)(1); 13 Encyclopaedia of Pleading and Practice 200 (W. McKinney ed. 1898). And we see nothing misleading or deceptive in the filing of a proof of claim that, in effect, follows the Code's similar system.

Indeed, to determine whether a statement is misleading normally "requires consideration of the legal sophistication of its audience." *Bates* v. *State Bar of Ariz.*, 433 U. S. 350, 383, n. 37 (1977). The audience in Chapter 13 bankruptcy cases includes a trustee, 11 U. S. C. § 1302(a), who must examine proofs of claim and, where appropriate, pose an objection, §§ 704(a)(5), 1302(b)(1) (including any timeliness objection, §§ 502(b)(1), 558). And that trustee is likely to understand that, as the Code says, a proof of claim is a statement by the creditor that he or she has a right to payment subject to disallowance (including disallowance based upon, and following, the trustee's objection for untimeliness). §§ 101(5)(A), 502(b), 704(a)(5), 1302(b)(1). (We do not address the appropriate standard in ordinary civil litigation.)

III

Whether Midland's assertion of an obviously time-barred claim is "unfair" or "unconscionable" (within the terms of the

Fair Debt Collection Practices Act) presents a closer question. First, Johnson points out that several lower courts have found or indicated that, in the context of an ordinary civil action to collect a debt, a debt collector's assertion of a claim known to be time barred is "unfair." See, *e. g.*, *Phillips* v. *Asset Acceptance, LLC*, 736 F. 3d 1076, 1079 (CA7 2013) (holding as much); *Kimber* v. *Federal Financial Corp.*, 668 F. Supp. 1480, 1487 (MD Ala. 1987) (same); *Huertas* v. *Galaxy Asset Management*, 641 F. 3d 28, 32–33 (CA3 2011) (indicating as much); *Castro* v. *Collecto, Inc.*, 634 F. 3d 779, 783 (CA5 2011) (same); *Freyermuth* v. *Credit Bureau Servs., Inc.*, 248 F. 3d 767, 771 (CA8 2001) (same).

We are not convinced, however, by this precedent. It considers a debt collector's assertion *in a civil suit* of a claim known to be stale. We assume, for argument's sake, that the precedent is correct in that context (a matter this Court itself has not decided and does not now decide). But the context of a civil suit differs significantly from the present context, that of a Chapter 13 bankruptcy proceeding. The lower courts rested their conclusions upon their concern that a consumer might unwittingly repay a time-barred debt. Thus the Seventh Circuit pointed out that "'few unsophisticated consumers would be aware that a statute of limitations could be used to defend against lawsuits based on stale debts.'" *Phillips*, *supra*, at 1079 (quoting *Kimber*, *supra*, at 1487). The "'passage of time,'" the Circuit wrote, "'dulls the consumer's memory of the circumstances and validity of the debt'" and the consumer may no longer have "'personal records.'" 736 F. 3d, at 1079 (quoting *Kimber*, *supra*, at 1487). Moreover, a consumer might pay a stale debt simply to avoid the cost and embarrassment of suit. 736 F. 3d, at 1079.

These considerations have significantly diminished force in the context of a Chapter 13 bankruptcy. The consumer initiates such a proceeding, see 11 U. S. C. §§ 301, 303(a), and consequently the consumer is not likely to pay a stale claim just to avoid going to court. A knowledgeable trustee is avail-

able. See § 1302(a). Procedural bankruptcy rules more directly guide the evaluation of claims. See Fed. Rule Bkrtcy. Proc. 3001(c)(3)(A); Advisory Committee's Notes on Rule 3001–2011 Amdt., 11 U. S. C. App., p. 678. And, as the Eighth Circuit Bankruptcy Appellate Panel put it, the claims resolution process is "generally a more streamlined and less unnerving prospect for a debtor than facing a collection lawsuit." *In re Gatewood*, 533 B. R. 905, 909 (2015); see also, *e. g.*, 11 U. S. C. § 502 (outlining generally the claims resolution process). These features of a Chapter 13 bankruptcy proceeding make it considerably more likely that an effort to collect upon a stale claim in bankruptcy will be met with resistance, objection, and disallowance.

Second, Johnson argues that the practice at least risks harm to the debtor and that there is not "a single legitimate reason" for allowing this kind of behavior. Brief for Respondent 32. Would it not be obviously "unfair," she asks, for a debt collector to adopt a practice of buying up stale claims cheaply and asserting them in bankruptcy knowing they are stale and hoping for careless trustees? The United States, supporting Johnson, adds its view that the Federal Rules of Bankruptcy Procedure make the practice open to sanction, and argues that sanctionable conduct is unfair conduct. Brief for United States as *Amicus Curiae* 20. See Fed. Rule Bkrtcy. Proc. 9011(b)(2) (sanction possible if party violates the Rule that by "presenting to the [bankruptcy] court" any "paper," a "party is certifying that to the best of" his or her "knowledge, . . . the claims . . . therein are warranted by existing law").

We are ultimately not persuaded by these arguments. The bankruptcy system, as we have already noted, treats untimeliness as an affirmative defense. The trustee normally bears the burden of investigating claims and pointing out that a claim is stale. See *supra*, at 230. Moreover, protections available in a Chapter 13 bankruptcy proceeding minimize the risk to the debtor. See *supra*, at 231 and this page.

And, at least on occasion, the assertion of even a stale claim can benefit a debtor. Its filing and disallowance "discharge[s]" the debt. 11 U. S. C. § 1328(a). And that discharge means that the debt (even if unenforceable) will not remain on a credit report potentially affecting an individual's ability to borrow money, buy a home, and perhaps secure employment. See 15 U. S. C. § 1681c(a)(4) (debt may remain on a credit report for seven years); cf. Ala. Code § 6–2–34 (6-year statute of limitations); Md. Cts. & Jud. Proc. Code Ann. § 5–101 (2013) (3-year statute of limitations); cf. 16 CFR pt. 600, App. § 607, ¶6 (1991) (a credit report may include discharged debt only if "the debt [is reported] as having a zero balance due to reflect the fact that the consumer is no longer liable for the discharged debt"); FTC, 40 Years of Experience With the Fair Credit Reporting Act: An FTC Staff Report With Summary of Interpretations 66 (2011) (similar).

More importantly, a change in the simple affirmative-defense approach, carving out an exception, itself would require defining the boundaries of the exception. Does it apply only where (as Johnson alleged in the complaint) a claim's staleness appears "on [the] face" of the proof of claim? Does it apply to other affirmative defenses or only to the running of a limitations period?

At the same time, we do not find in either the Fair Debt Collection Practices Act or the Bankruptcy Code good reason to believe that Congress intended an ordinary civil court applying the Act to determine answers to these bankruptcy-related questions. The Act and the Code have different purposes and structural features. The Act seeks to help consumers, not necessarily by closing what Johnson and the United States characterize as a loophole in the Bankruptcy Code, but by preventing consumer bankruptcies in the first place. See, *e. g.*, 15 U. S. C. § 1692(a) (recognizing the "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices [which] contribute to the number of personal bankruptcies"); see also § 1692(b) ("Existing laws

and procedures . . . are inadequate to protect consumers"); § 1692(e) (statute seeks to "eliminate abusive debt collection practices"). The Bankruptcy Code, by way of contrast, creates and maintains what we have called the "delicate balance of a debtor's protections and obligations." *Kokoszka* v. *Belford*, 417 U. S. 642, 651 (1974).

To find the Fair Debt Collection Practices Act applicable here would upset that "delicate balance." From a substantive perspective it would authorize a new significant bankruptcy-related remedy in the absence of language in the Code providing for it. Administratively, it would permit postbankruptcy litigation in an ordinary civil court concerning a creditor's state of mind—a matter often hard to determine. See 15 U. S. C. § 1692k(c) (safe harbor for any debt collector who "shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error"). Procedurally, it would require creditors (who assert a claim) to investigate the merits of an affirmative defense (typically the debtor's job to assert and prove) lest the creditor later be found to have known the claim was untimely. The upshot could well be added complexity, changes in settlement incentives, and a shift from the debtor to the creditor the obligation to investigate the staleness of a claim.

Unlike the United States, we do not believe that the Advisory Committee on Rules of Bankruptcy Procedure settled the issue when it promulgated Bankruptcy Rule 9011. The Committee, in considering amendments to the Federal Rules of Bankruptcy Procedure in 2009, specifically rejected a proposal that would have required a creditor to certify that there is no valid statute of limitations defense. See Agenda Book for Meeting 86–87 (Mar. 26–27, 2009). It did so in part because the working group did not want to impose an affirmative obligation on a creditor to make a prefiling investigation of a potential time-bar defense. *Ibid.* In rejecting

that proposal, the Committee did note that Rule 9011 imposes a general "obligation on a claimant to undertake an inquiry reasonable under the circumstances to determine . . . that a claim is warranted by existing law and that factual contentions have evidentiary support," and to certify as much on the proof of claim. *Id.*, at 87. The Committee also acknowledged, however, that this requirement would "not addres[s] the statute of limitation issue," but would only ensure "the accuracy of the information provided." *Ibid.*

We recognize that one Bankruptcy Court has held that filing a time-barred claim without a prefiling investigation of a potential time-bar defense merits sanctions under Rule 9011. *In re Sekema*, 523 B. R. 651, 654 (Bkrtcy. Ct. ND Ind. 2015). But others have held to the contrary. See, *e. g.*, *In re Freeman*, 540 B. R. 129, 143–144 (Bkrtcy. Ct. ED Pa. 2015); *In re Jenkins*, 538 B. R. 129, 134–136 (Bkrtcy. Ct. ND Ala. 2015); *In re Keeler*, 440 B. R. 354, 366–369 (Bkrtcy. Ct. ED Pa. 2009); see also *In re Andrews*, 394 B. R. 384, 387–388 (Bkrtcy. Ct. EDNC 2008) (recognizing that "[m]any courts have . . . found that sanctions [under Rule 9011] were not warranted for filing stale claims").

These circumstances, taken together, convince us that we cannot find the practice at issue here "unfair" or "unconscionable" within the terms of the Fair Debt Collection Practices Act.

IV

For these reasons, we conclude that filing (in a Chapter 13 bankruptcy proceeding) a proof of claim that is obviously time barred is not a false, deceptive, misleading, unfair, or unconscionable debt collection practice within the meaning of the Fair Debt Collection Practices Act. The judgment of the Eleventh Circuit is reversed.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG and JUSTICE KAGAN join, dissenting.

The Fair Debt Collection Practices Act (FDCPA or Act) prohibits professional debt collectors from using "false, deceptive, or misleading representation[s] or means in connection with the collection of any debt" and from "us[ing] unfair or unconscionable means to collect" a debt. 15 U. S. C. §§ 1692e, 1692f. The Court today wrongfully holds that a debt collector that knowingly attempts to collect a time-barred debt in bankruptcy proceedings has violated neither of these prohibitions.

Professional debt collectors have built a business out of buying stale debt, filing claims in bankruptcy proceedings to collect it, and hoping that no one notices that the debt is too old to be enforced by the courts. This practice is both "unfair" and "unconscionable." I respectfully dissent from the Court's conclusion to the contrary.[1]

I

Americans owe trillions of dollars in consumer debt to creditors—credit card companies, schools, and car dealers, among others. See Fed. Reserve Bank of N. Y., Quarterly Report on Household Debt and Credit 3 (2017). Most people will repay their debts, but some cannot do so. The debts they do not pay are increasingly likely to end up in the hands of professional debt collectors—companies whose business it is to collect debts that are owed to other companies. See Consumer Financial Protection Bur., Fair Debt Collection Practices Act: Annual Report 2016, p. 8 (CFPB Report). Debt collection is a lucrative and growing industry. Last year, the Nation's 6,000 debt collection agencies earned over $13 billion in revenue. *Ibid.*

[1] Because I believe the practice at issue here is "unfair" and "unconscionable," and thus violates 15 U. S. C. § 1692f, I do not address the Court's conclusion that the practice is not "false, deceptive, or misleading" in violation of § 1692e.

Although many debt collectors are hired by creditors to work on a third-party basis, more and more collectors also operate as "debt buyers"—purchasing debts from creditors outright and attempting to collect what they can, with the profits going to their own accounts.[2] See FTC, The Structure and Practices of the Debt Buying Industry 11–12 (2013) (FTC Report); CFPB Report 10. Debt buyers now hold hundreds of billions of dollars in consumer debt; indeed, a study conducted by the Federal Trade Commission (FTC) in 2009 found that nine of the leading debt buyers had purchased over $140 billion in debt just in the previous three years. FTC Report, at i–ii, T–3 (Table 3).

Because creditors themselves have given up trying to collect the debts they sell to debt buyers, they sell those debts for pennies on the dollar. *Id.*, at 23. The older the debt, the greater the discount: While debt buyers pay close to eight cents per dollar for debts under 3 years old, they pay as little as two cents per dollar for debts greater than 6 years old, and "effectively nothing" for debts greater than 15 years old. *Id.*, at 23–24. These prices reflect the basic fact that older debts are harder to collect. As time passes, consumers move or forget that they owe the debts; creditors have more trouble documenting the debts and proving their validity; and debts begin to fall within state statutes of limitations—time limits that "operate to bar a plaintiff's suit" once passed. *CTS Corp.* v. *Waldburger*, 573 U. S. 1, 7 (2014). Because a creditor (or a debt collector) cannot enforce a time-barred debt in court, the debt is inherently worth very little indeed.

But statutes of limitations have not deterred debt buyers. For years, they have filed suit in state courts—often in small-claims courts, where formal rules of evidence do not

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[2] A case pending before this Court, *Henson* v. *Santander Consumer USA Inc.*, No. 16–349, asks whether a certain kind of debt buyer is a "debt collector" under the FDCPA. Midland does not dispute that it is a debt collector under the Act.

apply—to collect even debts too old to be enforced by those courts.[3] See Holland, The One Hundred Billion Dollar Problem in Small-Claims Court, 6 J. Bus. & Tech. L. 259, 261 (2011). Importantly, the debt buyers' only hope in these cases is that consumers will fail either to invoke the statute of limitations or to respond at all: In most States the statute of limitations is an affirmative defense, meaning that a consumer must appear in court and raise it in order to dismiss the suit. See *ante*, at 230 (majority opinion). But consumers do fail to defend themselves in court—in fact, according to the FTC, over 90% fail to appear at all. FTC Report 45. The result is that debt buyers have won "billions of dollars in default judgments" simply by filing suit and betting that consumers will lack the resources to respond. Holland, *supra*, at 263.

The FDCPA's prohibitions on "misleading" and "unfair" conduct have largely beaten back this particular practice. Every court to have considered the question has held that a debt collector that knowingly files suit in court to collect a time-barred debt violates the FDCPA. See *Phillips* v. *Asset Acceptance, LLC*, 736 F. 3d 1076, 1079 (CA7 2013); *Kimber* v. *Federal Financial Corp.*, 668 F. Supp. 1480, 1487 (MD Ala. 1987); see also *ante*, at 230–231 (majority opinion) (citing other cases). In 2015, petitioner and its parent company entered into a consent decree with the Government prohibiting them from filing suit to collect time-barred debts and ordering them to pay $34 million in restitution. See Consent Order in *In re Encore Capital Group, Inc.*, No. 2015–CFPB–0022 (Sept. 9, 2015), pp. 38, 46. And the leading trade association has now adopted a resolution barring the practice. See Brief for DBA International, Inc., as *Amicus Curiae* 2–3.

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[3] Petitioner's parent company alone filed 245,000 lawsuits in 2009. See Silver-Greenberg, Boom in Debt Buying Fuels Another Boom—in Lawsuits, Wall Street Journal, Nov. 29, 2010, pp. A1, A16. Petitioner itself filed 110 lawsuits on just one date in a single state court. *Id.*, at A1.

Stymied in state courts, the debt buyers have now turned to a new forum: bankruptcy courts. The same debt buyers that for years filed thousands of lawsuits in state courts across the country have begun to do the same thing in bankruptcy courts—specifically, in cases governed by Chapter 13 of the Bankruptcy Code, which allows consumers earning regular incomes to restructure their debts and repay as many as they can over a period of several years. See 8 Collier on Bankruptcy ¶1300.01 (A. Resnick & H. Sommer eds., 16th ed. 2016). As in ordinary civil cases, a debtor in a Chapter 13 bankruptcy proceeding is entitled to have dismissed any claim filed against his estate that is barred by a statute of limitations. See 11 U. S. C. § 558. As in ordinary civil cases, the statute of limitations is an affirmative defense, one that must be raised by either the debtor or the trustee of his estate before it is honored. §§ 502, 558. And so—just as in ordinary civil cases—debt collectors may file claims in bankruptcy proceedings for stale debts and hope that no one notices that they are too old to be enforced.

And that is exactly what the debt buyers have done. As a wide variety of courts and commentators have observed, debt buyers have "deluge[d]" the bankruptcy courts with claims "on debts deemed unenforceable under state statutes of limitations." *Crawford* v. *LVNV Funding, LLC*, 758 F. 3d 1254, 1256 (CA11 2014); see also *In re Jenkins*, 456 B. R. 236, 239, n. 2 (Bkrtcy. Ct. EDNC 2011) (noting a "plague of stale claims"); Brief for National Association of Consumer Bankruptcy Attorneys et al. as *Amici Curiae* 9 (noting study describing "hundreds of thousands of proofs of claim asserting hundreds of millions of dollars of consumer indebtedness, all in a single year"). This practice has become so widespread that the Government sued one debt buyer last year "to address [its] systemic abuse of the bankruptcy process"—including a "business model" of "knowingly and strategically" filing thousands of claims for time-barred debt. Complaint in *In re Freeman-Clay* v. *Resurgent Capital Servs., L. P.*,

No. 14–41871 (Bkrtcy. Ct. WD Mo.), ¶¶1, 35 (*Resurgent* Complaint). This practice, the Government explained, "manipulates the bankruptcy process by systematically shifting the burden" to trustees and debtors to object even to "frivolous claims"—especially given that filing an objection is costly, time consuming, and easy to overlook. *Id.*, at ¶¶35, 43–44.

II

The FDCPA prohibits professional debt collectors from engaging in "unfair" and "unconscionable" practices. 15 U. S. C. § 1692f.[4] Filing a claim in bankruptcy court for debt that a collector knows to be time barred—like filing a lawsuit in a court to collect such a debt—is just such a practice.

A

Begin where the debt collectors themselves began: with their practice of filing suit in ordinary civil courts to collect debts that they know are time barred. Every court to have considered this practice holds that it violates the FDCPA. There is no sound reason to depart from this conclusion.

Statutes of limitations "are not simply technicalities." *Board of Regents of Univ. of State of N. Y.* v. *Tomanio*, 446 U. S. 478, 487 (1980). They reflect strong public-policy determinations that "it is unjust to fail to put [an] adversary on notice to defend within a specified period of time." *United States* v. *Kubrick*, 444 U. S. 111, 117 (1979). And they "promote justice by preventing surprises through the

[4] This Court has not had occasion to construe the terms "unfair" and "unconscionable" in § 1692f. The FDCPA's legislative history suggests that Congress intended these terms as a backstop that would enable "courts, where appropriate, to proscribe other improper conduct . . . not specifically addressed" by the statute. S. Rep. No. 95–382, p. 4 (1977). Courts have construed these terms, consistent with other federal and state statutes that employ them, to borrow from equitable and common-law traditions. See, *e. g.*, *LeBlanc* v. *Unifund CCR Partners*, 601 F. 3d 1185, 1200–1201 (CA11 2010) (*per curiam*); *Beler* v. *Blatt, Hasenmiller, Leibsker & Moore, LLC*, 480 F. 3d 470, 473–474 (CA7 2007).

revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U. S. 342, 348–349 (1944). Such concerns carry particular weight in the context of small-dollar consumer debt collection. As one thoughtful opinion explains:

> "Because few unsophisticated consumers would be aware that a statute of limitations could be used to defend against lawsuits based on stale debts, such consumers would unwittingly acquiesce to such lawsuits. And, even if the consumer realizes that she can use time as a defense, she will more than likely still give in rather than fight the lawsuit because she must still expend energy and resources and subject herself to the embarrassment of going into court to present the defense . . . ." *Kimber*, 668 F. Supp., at 1487.

Debt buyers' efforts to pursue stale debt in ordinary civil litigation may also entrap debtors into forfeiting their time defenses altogether. When a debt collector sues or threatens to sue to collect a debt, many consumers respond by offering a small partial payment to forestall suit. In many States, a consumer who makes an offer like this has—unbeknownst to him—forever given up his ability to claim the debt is unenforceable. That is because in most States a consumer's partial payment on a time-barred debt—or his promise to resume payments on such a debt—will restart the statute of limitations. FTC Report 47; see, *e. g., Young* v. *Sorenson*, 47 Cal. App. 3d 911, 914, 121 Cal. Rptr. 236, 237 (1975) ("'The theory on which this is based is that the payment is an acknowledgement on the existence of the indebtedness which raises an implied promise to continue the obligation and to pay the balance'"). Debt collectors' efforts to entrap consumers in this way have no place in honest business practice.

B

The same dynamics are present in bankruptcy proceedings. A proof of claim filed in bankruptcy court represents the debt collector's belief that it is entitled to payment, even though the debt should not be enforced as a matter of public policy. The debtor's claim will be allowed, and will be incorporated in a debtor's payment plan, unless the debtor or his trustee objects. But such objections require ordinary and unsophisticated people (and their overworked trustees) to be on guard not only against mistaken claims but also against claims that debt collectors know will fail under law if an objection is raised. Debt collectors do not file these claims in good faith; they file them hoping and expecting that the bankruptcy system will fail. Such a practice is "unfair" and "unconscionable" in violation of the FDCPA.

The Court disagrees. But it does so on narrow grounds. To begin with, the Court does not hold that the Bankruptcy Code altogether displaces the FDCPA, leaving it with no role to play in bankruptcy proceedings. Such a conclusion would be wrong. Although the Code and the FDCPA "have different purposes and structural features," *ante,* at 233, the Court has held that Congress, in passing the FDCPA's predecessor, did so on the understanding that "the provisions and the purposes" of the two statutes were intended to "coexist." *Kokoszka* v. *Belford*, 417 U. S. 642, 650 (1974). Although petitioner suggests that the FDCPA is best read "to have no application to [a] debt collector's conduct" in a bankruptcy proceeding, Brief for Petitioner 41, the majority declines its invitation to adopt such a sweeping rule.[5]

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[5] The majority does lean heavily on its fear that, were we to conclude that the FDCPA bars the practice at issue, we would be licensing "post-bankruptcy litigation in an ordinary civil court" concerning matters best left to bankruptcy courts. *Ante,* at 234. But to do so would not, as the majority suggests, "upset [the] 'delicate balance' " struck by the Code. *Ibid.* (quoting *Kokoszka* v. *Belford*, 417 U. S., at 651). For one, nothing requires a debtor to engage in satellite litigation in order to sue a debt

Nor does the majority take a position on whether a debt collector violates the FDCPA by filing suit in an ordinary court to collect a debt it knows is time barred. *Ante*, at 231. Instead, the majority concludes, even assuming that such a practice would violate the FDCPA, a debt collector does not violate the Act by doing the same thing in bankruptcy proceedings. Bankruptcy, the majority argues, is different. True enough. But none of the distinctions that the majority identifies bears the weight placed on it.

First, the majority contends, structural features of the bankruptcy process reduce the risk that a stale debt will go unnoticed and thus be allowed. *Ante*, at 231–232. But there is virtually no evidence that the majority's theory holds true in practice. The majority relies heavily on the presence of a bankruptcy trustee, appointed to act on the debtor's behalf and empowered to (among other things) object to claims that he believes lack merit. See 11 U. S. C. §§ 704(a)(5), 1302(b). In the majority's view, the trustee's gatekeeping role makes it "considerably more likely that an effort to collect upon a stale claim in bankruptcy will be met with resistance, objection, and disallowance." *Ante*, at 232. The problem with the majority's *ipse dixit* is that everyone with actual experience in the matter insists that it is false. The Government, which oversees bankruptcy trustees, tells

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collector under the FDCPA; a debtor can easily file an adversary proceeding asserting an FDCPA claim with the bankruptcy court itself, and in many cases will be better served by doing so. See, *e. g.*, *Simon* v. *FIA Card Servs., N. A.*, 732 F. 3d 259, 263 (CA3 2013). Nor is there any risk that finding the FDCPA applicable here will authorize bankruptcy courts (or, for that matter, civil courts) to engage in novel and unfettered inquiries into "a creditor's state of mind." *Ante*, at 234. Both Fed. Rule Civ. Proc. 11 and its bankruptcy counterpart, Fed. Rule Bkrtcy. Proc. 9011, authorize a court to impose sanctions on parties who willfully file meritless claims (a category that includes the debt buyers here, see *In re Sekema*, 523 B. R. 651, 654–655 (Bkrtcy. Ct. ND Ind. 2015)). So there is nothing new about the inquiry that courts would be required to undertake; it is no different than analyses they conduct every day.

us that trustees "cannot realistically be expected to identify every time-barred . . . claim filed in every bankruptcy." Brief for United States as *Amicus Curiae* 25–26; see also *Resurgent* Complaint ¶43 ("Filing objections to all of [one collector]'s unenforceable claims would clog the docket of this Court and other courts with objections to frivolous claims"). The trustees themselves (appearing here as *amici curiae*) agree, describing the practice as "wasteful" and "exploit-[ative]." Brief for National Association of Chapter Thirteen Trustees as *Amicus Curiae* 12. And courts across the country recognize that Chapter 13 trustees are struggling under a "deluge" of stale debt. *Crawford*, 758 F. 3d, at 1256.

Second, the other features of the bankruptcy process that the majority believes will serve as a backstop against frivolous claims are even less likely to do so in practice. The majority implies that a person who files for bankruptcy is more sophisticated than the average consumer debtor because the initiation of bankruptcy is a choice made by a debtor. *Ante*, at 231–232. But a person who has filed for bankruptcy will rarely be in such a superior position; he has, after all, just declared that he is unable to meet his financial obligations and in need of the assistance of the courts. It is odd to speculate that such a person is better situated to monitor court filings and lodge objections than an ordinary consumer. The majority also suggests that the rules of bankruptcy help "guide the evaluation of claims." *Ante*, at 232. But the rules of bankruptcy in fact facilitate the *allowance* of claims: Claims are automatically allowed and made part of a plan unless an objection is made. See 11 U. S. C. § 502(a). A debtor is arguably more vulnerable in bankruptcy—not less—to the oversights that the debt buyers know will occur.

Finally, the majority suggests, in some cases a consumer will actually *benefit* if a claim for an untimely debt is filed. *Ante*, at 233. If such a claim is filed but disallowed, the majority explains, the debt will eventually be discharged, and the creditor will be barred from collecting it. See

§ 1328(a). Here, too, practice refutes the majority's rosy portrait of these proceedings. A debtor whose trustee does not spot and object to a stale debt will find no comfort in the knowledge that *other* consumers with more attentive trustees may have their debts disallowed and discharged. Moreover, given the high rate at which debtors are unable to fully pay off their debts in Chapter 13 proceedings, see Porter, The Pretend Solution: An Empirical Study of Bankruptcy Outcomes, 90 Texas L. Rev. 103, 111–112 (2011), most debtors who fail to object to a stale claim will end up worse off than had they never entered bankruptcy at all: They will make payments on the stale debts, thereby resuscitating them, see *supra*, at 241, and may thus walk out of bankruptcy court owing more to their creditors than they did when they entered it. There is no benefit to anyone in such a proceeding—except the debt collectors.

* * *

It does not take a sophisticated attorney to understand why the practice I have described in this opinion is unfair. It takes only the common sense to conclude that one should not be able to profit on the inadvertent inattention of others. It is said that the law should not be a trap for the unwary. Today's decision sets just such a trap.

I take comfort only in the knowledge that the Court's decision today need not be the last word on the matter. If Congress wants to amend the FDCPA to make explicit what in my view is already implicit in the law, it need only say so.

I respectfully dissent.

Syllabus

KINDRED NURSING CENTERS L. P., DBA WINCHESTER CENTRE FOR HEALTH AND REHABILITATION, NKA FOUNTAIN CIRCLE HEALTH AND REHABILITATION, ET AL. *v.* CLARK ET AL.

CERTIORARI TO THE SUPREME COURT OF KENTUCKY

No. 16–32. Argued February 22, 2017—Decided May 15, 2017

Respondents Beverly Wellner and Janis Clark—the wife and daughter, respectively, of Joe Wellner and Olive Clark—each held a power of attorney affording her broad authority to manage her family member's affairs. When Joe and Olive moved into a nursing home operated by petitioner Kindred Nursing Centers L. P., Beverly and Janis used their powers of attorney to complete all necessary paperwork. As part of that process, each signed an arbitration agreement on her relative's behalf providing that any claims arising from the relative's stay at the facility would be resolved through binding arbitration. After Joe and Olive died, their estates (represented by Beverly and Janis) filed suits alleging that Kindred's substandard care had caused their deaths. Kindred moved to dismiss the cases, arguing that the arbitration agreements prohibited bringing the disputes to court. The trial court denied Kindred's motions, and the Kentucky Court of Appeals agreed that the suits could go forward.

The Kentucky Supreme Court consolidated the cases and affirmed. The court initially found that the language of the Wellner power of attorney did not permit Beverly to enter into an arbitration agreement on Joe's behalf, but that the Clark document gave Janis the capacity to do so on behalf of Olive. Nonetheless, the court held, both arbitration agreements were invalid because neither power of attorney *specifically* entitled the representative to enter into an arbitration agreement. Because the Kentucky Constitution declares the rights of access to the courts and trial by jury to be "sacred" and "inviolate," the court determined, an agent could deprive her principal of such rights only if expressly provided in the power of attorney.

Held: The Kentucky Supreme Court's clear-statement rule violates the Federal Arbitration Act by singling out arbitration agreements for disfavored treatment. Pp. 251–257.

(a) The FAA, which makes arbitration agreements "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity

for the revocation of any contract," 9 U. S. C. §2, establishes an equal-treatment principle: A court may invalidate an arbitration agreement based on "generally applicable contract defenses," but not on legal rules that "apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue," *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333, 339. The Act thus preempts any state rule that discriminates on its face against arbitration or that covertly accomplishes the same objective by disfavoring contracts that have the defining features of arbitration agreements.

The Kentucky Supreme Court's clear-statement rule fails to put arbitration agreements on an equal plane with other contracts. By requiring an explicit statement before an agent can relinquish her principal's right to go to court and receive a jury trial, the court did exactly what this Court has barred: adopt a legal rule hinging on the primary characteristic of an arbitration agreement. Pp. 251–254.

(b) In support of the decision below, respondents argue that the clear-statement rule affects only contract formation, and that the FAA does not apply to contract formation questions. But the Act's text says otherwise. The FAA cares not only about the "enforce[ment]" of arbitration agreements, but also about their initial "valid[ity]"—that is, about what it takes to enter into them. 9 U. S. C. §2. Precedent confirms the point. In *Concepcion*, the Court noted the impermissibility of applying a contract defense like duress "in a fashion that disfavors arbitration." 563 U. S., at 341. That discussion would have made no sense if the FAA had nothing to say about contract formation, because duress involves "unfair dealing at the contract formation stage." *Morgan Stanley Capital Group Inc.* v. *Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U. S. 527, 547. Finally, respondents' view would make it trivially easy for States to undermine the Act. Pp. 254–255.

(c) Because the Kentucky Supreme Court invalidated the Clark-Kindred arbitration agreement based exclusively on the clear-statement rule, the court must now enforce that agreement. But because it is unclear whether the court's interpretation of the Wellner document was wholly independent of its rule, the court should determine on remand whether it adheres, in the absence of the rule, to its prior reading of that power of attorney. Pp. 255–257.

478 S. W. 3d 306, reversed in part, vacated in part, and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, ALITO, and SOTOMAYOR, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 257. GORSUCH, J., took no part in the consideration or decision of the case.

Andrew J. Pincus argued the cause for petitioners. With him on the briefs were *Archis A. Parasharami* and *Daniel E. Jones.*

Robert E. Salyer argued the cause for respondents. With him on the briefs were *James T. Gilbert* and *Stephen Trzcinski.**

JUSTICE KAGAN delivered the opinion of the Court.

The Federal Arbitration Act (FAA or Act) requires courts to place arbitration agreements "on equal footing with all other contracts." *DIRECTV, Inc.* v. *Imburgia*, 577 U. S. 47, 54 (2015) (quoting *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U. S. 440, 443 (2006)); see 9 U. S. C. §2. In the decision below, the Kentucky Supreme Court declined to give effect to two arbitration agreements executed by individuals holding "powers of attorney"—that is, authorizations to act on behalf of others. According to the court, a general grant of power (even if seemingly comprehensive) does not permit a legal representative to enter into an arbitration agreement for someone else; to form such a contract, the representative must possess specific authority to "waive his principal's fundamental constitutional rights to access the courts [and] to trial by jury." *Extendicare Homes, Inc.* v. *Whisman*, 478 S. W. 3d 306, 327 (2015). Because that rule singles out arbitration agreements for disfavored treatment, we hold that it violates the FAA.

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*Briefs of *amici curiae* urging reversal were filed for the American Health Care Association et al. by *James F. Segroves, Kelly A. Carroll, Elizabeth A. Johnson,* and *Mark E. Reagan*; for the Chamber of Commerce of the United States of America by *Thomas R. McCarthy, Kate C. Todd,* and *Warren Postman*; and for Genesis Healthcare, Inc., et al. by *Donald L. Miller II* and *Kristin M. Lomond.*

Briefs of *amici curiae* urging affirmance were filed for AARP et al. by *William Alvarado Rivera*; for the American Association for Justice et al. by *Robert S. Peck, Julie Braman Kane, Kevin C. Burke,* and *Jamie K. Neal*; for Public Citizen, Inc., by *Scott L. Nelson* and *Allison M. Zieve*; and for Imre S. Szalai by *Mr. Szalai, pro se.*

I

Petitioner Kindred Nursing Centers L. P. operates nursing homes and rehabilitation centers. Respondents Beverly Wellner and Janis Clark are the wife and daughter, respectively, of Joe Wellner and Olive Clark, two now-deceased residents of a Kindred nursing home called the Winchester Centre.

At all times relevant to this case, Beverly and Janis each held a power of attorney, designating her as an "attorney-in-fact" (the one for Joe, the other for Olive) and affording her broad authority to manage her family member's affairs. In the Wellner power of attorney, Joe gave Beverly the authority, "in my name, place and stead," to (among other things) "institute legal proceedings" and make "contracts of every nature in relation to both real and personal property." App. 10–11. In the Clark power of attorney, Olive provided Janis with "full power . . . to transact, handle, and dispose of all matters affecting me and/or my estate in any possible way," including the power to "draw, make, and sign in my name any and all . . . contracts, deeds, or agreements." *Id.*, at 7.

Joe and Olive moved into the Winchester Centre in 2008, with Beverly and Janis using their powers of attorney to complete all necessary paperwork. As part of that process, Beverly and Janis each signed an arbitration agreement with Kindred on behalf of her relative. The two contracts, worded identically, provided that "[a]ny and all claims or controversies arising out of or in any way relating to . . . the Resident's stay at the Facility" would be resolved through "binding arbitration" rather than a lawsuit. *Id.*, at 14, 21.

When Joe and Olive died the next year, their estates (represented again by Beverly and Janis) brought separate suits against Kindred in Kentucky state court. The complaints alleged that Kindred had delivered substandard care to Joe and Olive, causing their deaths. Kindred moved to dismiss the cases, arguing that the arbitration agreements Beverly and Janis had signed prohibited bringing their disputes to

court. But the trial court denied Kindred's motions, and the Kentucky Court of Appeals agreed that the estates' suits could go forward. See App. to Pet. for Cert. 125a–126a, 137a–138a.

The Kentucky Supreme Court, after consolidating the cases, affirmed those decisions by a divided vote. See 478 S. W. 3d, at 313. The court began with the language of the two powers of attorney. The Wellner document, the court stated, did not permit Beverly to enter into an arbitration agreement on Joe's behalf. In the court's view, neither the provision authorizing her to bring legal proceedings nor the one enabling her to make property-related contracts reached quite that distance. See *id.*, at 325–326; *supra*, at 249. By contrast, the court thought, the Clark power of attorney extended that far and beyond. Under that document, after all, Janis had the capacity to "dispose of all matters" affecting Olive. See *supra*, at 249. "Given this extremely broad, universal delegation of authority," the court acknowledged, "it would be impossible to say that entering into [an] arbitration agreement was not covered." 478 S. W. 3d, at 327.

And yet, the court went on, both arbitration agreements—Janis's no less than Beverly's—were invalid. That was because a power of attorney could not entitle a representative to enter into an arbitration agreement without *specifically* saying so. The Kentucky Constitution, the court explained, protects the rights of access to the courts and trial by jury; indeed, the jury guarantee is the sole right the Constitution declares "sacred" and "inviolate." *Id.*, at 328–329. Accordingly, the court held, an agent could deprive her principal of an "adjudication by judge or jury" only if the power of attorney "expressly so provide[d]." *Id.*, at 329. And that clear-statement rule—so said the court—complied with the FAA's demands. True enough that the Act precludes "singl[ing] out arbitration agreements." *Ibid.* (internal quotation marks omitted). But that was no problem, the court asserted, because its rule would apply not just to those agree-

ments, but also to some other contracts implicating "fundamental constitutional rights." *Id.*, at 328. In the future, for example, the court would bar the holder of a "nonspecific" power of attorney from entering into a contract "bind[ing] the principal to personal servitude." *Ibid.*

Justice Abramson dissented, in an opinion joined by two of her colleagues. In their view, the Kentucky Supreme Court's new clear-statement rule was "clearly not . . . applicable to 'any contract' but [instead] single[d] out arbitration agreements for disfavored treatment." *Id.*, at 344–345. Accordingly, the dissent concluded, the rule "r[a]n afoul of the FAA." *Id.*, at 353.

We granted certiorari. 580 U. S. 951 (2016).

II

A

The FAA makes arbitration agreements "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. §2. That statutory provision establishes an equal-treatment principle: A court may invalidate an arbitration agreement based on "generally applicable contract defenses" like fraud or unconscionability, but not on legal rules that "apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333, 339 (2011). The FAA thus preempts any state rule discriminating on its face against arbitration—for example, a "law prohibit[ing] outright the arbitration of a particular type of claim." *Id.*, at 341. And not only that: The Act also displaces any rule that covertly accomplishes the same objective by disfavoring contracts that (oh so coincidentally) have the defining features of arbitration agreements. In *Concepcion*, for example, we described a hypothetical state law declaring unenforceable any contract that "disallow[ed] an ultimate disposition [of a dispute] by a jury." *Id.*, at 342. Such a law might avoid

referring to arbitration by name; but still, we explained, it would "rely on the uniqueness of an agreement to arbitrate as [its] basis"—and thereby violate the FAA. *Id.*, at 341 (quoting *Perry* v. *Thomas*, 482 U. S. 483, 493, n. 9 (1987)).

The Kentucky Supreme Court's clear-statement rule, in just that way, fails to put arbitration agreements on an equal plane with other contracts. By the court's own account, that rule (like the one *Concepcion* posited) serves to safeguard a person's "right to access the courts and to trial by jury." 478 S. W. 3d, at 327; see *supra*, at 250. In ringing terms, the court affirmed the jury right's unsurpassed standing in the State Constitution: The framers, the court explained, recognized "that right and that right alone as a divine God-given right" when they made it "the *only* thing" that must be "'held sacred'" and "'inviolate.'" 478 S. W. 3d, at 328–329 (quoting Ky. Const. § 7). So it was that the court required an explicit statement before an attorney-in-fact, even if possessing broad delegated powers, could relinquish that right on another's behalf. See 478 S. W. 3d, at 331 ("We say only that an agent's authority to waive his principal's constitutional right to access the courts and to trial by jury must be clearly expressed by the principal"). And so it was that the court did exactly what *Concepcion* barred: adopt a legal rule hinging on the primary characteristic of an arbitration agreement—namely, a waiver of the right to go to court and receive a jury trial. See 563 U. S., at 341–342; see also 478 S. W. 3d, at 353 (Abramson, J., dissenting) (noting that the jury-trial right at the core of "the majority's new rule" is "the one right that just happens to be correlative to the right to arbitrate" (emphasis deleted)). Such a rule is too tailor-made to arbitration agreements—subjecting them, by virtue of their defining trait, to uncommon barriers—to survive the FAA's edict against singling out those contracts for disfavored treatment.[1]

[1] Making matters worse, the Kentucky Supreme Court's clear-statement rule appears not to apply to other kinds of agreements relinquishing the

And the state court's sometime-attempt to cast the rule in broader terms cannot salvage its decision. The clear-statement requirement, the court suggested, could also apply when an agent endeavored to waive other "fundamental constitutional rights" held by a principal. *Id.*, at 331; see *supra*, at 250–251. But what other rights, really? No Kentucky court, so far as we know, has ever before demanded that a power of attorney explicitly confer authority to enter into contracts implicating constitutional guarantees. Nor did the opinion below indicate that such a grant would be needed for the many routine contracts—executed day in and day out by legal representatives—meeting that description. For example, the Kentucky Constitution protects the "inherent and inalienable" rights to "acquir[e] and protect[ ] property" and to "freely communicat[e] thoughts and opinions." Ky. Const. § 1. But the state court nowhere cautioned that an attorney-in-fact would now need a specific authorization to, say, sell her principal's furniture or commit her principal to a non-disclosure agreement. (And were we in the business of giving legal advice, we would tell the agent not to worry.) Rather, the court hypothesized a slim set of both patently objectionable and utterly fanciful contracts that would be subject to its rule: No longer could a representative lacking explicit authorization waive her "principal's right to worship freely" or "consent to an arranged marriage" or "bind [her] principal to personal servitude." 478 S. W. 3d, at 328; see *supra*, at 250–251. Placing

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right to go to court or obtain a jury trial. Nothing in the decision below (or elsewhere in Kentucky law) suggests that explicit authorization is needed before an attorney-in-fact can sign a settlement agreement or consent to a bench trial on her principal's behalf. See 478 S. W. 3d, at 325 (discussing the Wellner power of attorney's provision for "managing a claim in litigation" without insisting that such commitments would require a clearer grant). Mark that as yet another indication that the court's demand for specificity in powers of attorney arises from the suspect status of arbitration rather than the sacred status of jury trials.

arbitration agreements within that class reveals the kind of "hostility to arbitration" that led Congress to enact the FAA. *Concepcion*, 563 U. S., at 339. And doing so only makes clear the arbitration-specific character of the rule, much as if it were made applicable to arbitration agreements and black swans.[2]

B

The respondents, Janis and Beverly, primarily advance a different argument—based on the distinction between contract formation and contract enforcement—to support the decision below. Kentucky's clear-statement rule, they begin, affects only contract formation, because it bars agents without explicit authority from entering into arbitration agreements. And in their view, the FAA has "no application" to "contract formation issues." Supp. Brief for Respondents 1. The Act, to be sure, requires a State to enforce all arbitration agreements (save on generally applicable grounds) once they have come into being. But, the respondents claim, States have free rein to decide—irrespective of the FAA's equal-footing principle—whether such contracts are validly created in the first instance. See *id.*, at 3 ("The FAA's statutory framework applies only *after* a court has determined that a valid arbitration agreement was formed").

Both the FAA's text and our case law interpreting it say otherwise. The Act's key provision, once again, states that an arbitration agreement must ordinarily be treated as "valid, irrevocable, and enforceable." 9 U. S. C. §2; see *supra*, at 251. By its terms, then, the Act cares not only about the "enforce[ment]" of arbitration agreements, but also about their initial "valid[ity]"—that is, about what it takes to enter into them. Or said otherwise: A rule selectively finding

[2] We do not suggest that a state court is precluded from announcing a new, generally applicable rule of law in an arbitration case. We simply reiterate here what we have said many times before—that the rule must in fact apply generally, rather than single out arbitration.

arbitration contracts invalid because improperly formed fares no better under the Act than a rule selectively refusing to enforce those agreements once properly made. Precedent confirms that point. In *Concepcion*, we noted the impermissibility of applying a contract defense like duress "in a fashion that disfavors arbitration." 563 U. S., at 341. But the doctrine of duress, as we have elsewhere explained, involves "unfair dealing at the contract formation stage." *Morgan Stanley Capital Group Inc.* v. *Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U. S. 527, 547 (2008). Our discussion of duress would have made no sense if the FAA, as the respondents contend, had nothing to say about contract formation.

And still more: Adopting the respondents' view would make it trivially easy for States to undermine the Act—indeed, to wholly defeat it. As the respondents have acknowledged, their reasoning would allow States to pronounce *any* attorney-in-fact incapable of signing an arbitration agreement—even if a power of attorney specifically authorized her to do so. See Tr. of Oral Arg. 27. (After all, such a rule would speak to only the contract's formation.) And why stop there? If the respondents were right, States could just as easily declare *everyone* incompetent to sign arbitration agreements. (That rule too would address only formation.) The FAA would then mean nothing at all—its provisions rendered helpless to prevent even the most blatant discrimination against arbitration.

III

As we did just last Term, we once again "reach a conclusion that . . . falls well within the confines of (and goes no further than) present well-established law." *DIRECTV*, 577 U. S., at 58. The Kentucky Supreme Court specially impeded the ability of attorneys-in-fact to enter into arbitration agreements. The court thus flouted the FAA's command to

place those agreements on an equal footing with all other contracts.

Our decision requires reversing the Kentucky Supreme Court's judgment in favor of the Clark estate. As noted earlier, the state court held that the Clark power of attorney was sufficiently broad to cover executing an arbitration agreement. See *supra*, at 250. The court invalidated the agreement with Kindred only because the power of attorney did not specifically authorize Janis to enter into it on Olive's behalf. In other words, the decision below was based exclusively on the clear-statement rule that we have held violates the FAA. So the court must now enforce the Clark-Kindred arbitration agreement.

By contrast, our decision might not require such a result in the Wellner case. The Kentucky Supreme Court began its opinion by stating that the Wellner power of attorney was insufficiently broad to give Beverly the authority to execute an arbitration agreement for Joe. See *ibid.* If that interpretation of the document is wholly independent of the court's clear-statement rule, then nothing we have said disturbs it. But if that rule at all influenced the construction of the Wellner power of attorney, then the court must evaluate the document's meaning anew. The court's opinion leaves us uncertain as to whether such an impermissible taint occurred. We therefore vacate the judgment below and return the case to the state court for further consideration. See *Marmet Health Care Center, Inc.* v. *Brown*, 565 U. S. 530, 534 (2012) (*per curiam*) (vacating and remanding another arbitration decision because we could not tell "to what degree [an] alternative holding was influenced by" the state court's erroneous, arbitration-specific rule). On remand, the court should determine whether it adheres, in the absence of its clear-statement rule, to its prior reading of the Wellner power of attorney.

For these reasons, we reverse in part and vacate in part the judgment of the Kentucky Supreme Court, and we remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

JUSTICE THOMAS, dissenting.

I continue to adhere to the view that the Federal Arbitration Act (FAA), 9 U. S. C. § 1 *et seq.*, does not apply to proceedings in state courts. See *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265, 285–297 (1995) (THOMAS, J., dissenting); see also *DIRECTV, Inc.* v. *Imburgia*, 577 U. S. 47, 59 (2015) (same); *Preston* v. *Ferrer*, 552 U. S. 346, 363 (2008) (same); *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U. S. 440, 449 (2006) (same); *Green Tree Financial Corp.* v. *Bazzle*, 539 U. S. 444, 460 (2003) (same); *Doctor's Associates, Inc.* v. *Casarotto*, 517 U. S. 681, 689 (1996) (same). In state-court proceedings, therefore, the FAA does not displace a rule that requires express authorization from a principal before an agent may waive the principal's right to a jury trial. Accordingly, I would affirm the judgment of the Kentucky Supreme Court.

Syllabus

TC HEARTLAND LLC *v.* KRAFT FOODS GROUP BRANDS LLC

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

No. 16–341. Argued March 27, 2017—Decided May 22, 2017

The patent venue statute, 28 U. S. C. § 1400(b), provides that "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." In *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U. S. 222, 226, this Court concluded that for purposes of § 1400(b) a domestic corporation "resides" only in its State of incorporation, rejecting the argument that § 1400(b) incorporates the broader definition of corporate "residence" contained in the general venue statute, 28 U. S. C. § 1391(c). Congress has not amended § 1400(b) since *Fourco*, but it has twice amended § 1391, which now provides that, "[e]xcept as otherwise provided by law" and "[f]or all venue purposes," a corporation "shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question." §§ 1391(a), (c).

Respondent filed a patent infringement suit in the District Court for the District of Delaware against petitioner, a competitor that is organized under Indiana law and headquartered in Indiana but ships the allegedly infringing products into Delaware. Petitioner moved to transfer venue to a District Court in Indiana, claiming that venue was improper in Delaware. Citing *Fourco*, petitioner argued that it did not "resid[e]" in Delaware and had no "regular and established place of business" in Delaware under § 1400(b). The District Court rejected these arguments. The Federal Circuit denied a petition for a writ of mandamus, concluding that § 1391(c) supplies the definition of "resides" in § 1400(b). The Federal Circuit reasoned that because petitioner resided in Delaware under § 1391(c), it also resided there under § 1400(b).

Held: As applied to domestic corporations, "reside[nce]" in § 1400(b) refers only to the State of incorporation. The amendments to § 1391 did not modify the meaning of § 1400(b) as interpreted by *Fourco*. Pp. 263–270.

(a) The venue provision of the Judiciary Act of 1789 covered patent cases as well as other civil suits. *Stonite Products Co.* v. *Melvin Lloyd Co.*, 315 U. S. 561, 563. In 1897, Congress enacted a patent specific venue statute. This new statute (§ 1400(b)'s predecessor) permitted

suit in the district of which the defendant was an "inhabitant" or in which the defendant both maintained a "regular and established place of business" and committed an act of infringement. 29 Stat. 695. A corporation at that time was understood to "inhabit" *only* the State of incorporation. This Court addressed the scope of § 1400(b)'s predecessor in *Stonite*, concluding that it constituted "the exclusive provision controlling venue in patent infringement proceedings" and thus was not supplemented or modified by the general venue provisions. 315 U. S., at 563.

In 1948, Congress recodified the patent venue statute as § 1400(b). That provision, which remains unaltered today, uses "resides" instead of "inhabit[s]." At the same time, Congress also enacted the general venue statute, § 1391, which defined "residence" for corporate defendants. In *Fourco*, this Court reaffirmed *Stonite*'s holding, observing that Congress enacted § 1400(b) as a standalone venue statute and that nothing in the 1948 recodification evidenced an intent to alter that status, even the fact that § 1391(c) by "its terms" embraced "all actions," 353 U. S., at 228. The Court also concluded that "resides" in the recodified version bore the same meaning as "inhabit[s]" in the pre-1948 version. See *id.*, at 226.

This landscape remained effectively unchanged until 1988, when Congress amended the general venue statute, § 1391(c). The revised provision stated that it applied "[f]or purposes of venue under this chapter." In *VE Holding Corp.* v. *Johnson Gas Appliance Co.*, 917 F. 2d 1574, 1578, the Federal Circuit held that, in light of this amendment, § 1391(c) established the definition for all other venue statutes under the same "chapter," including § 1400(b). In 2011, Congress adopted the current version of § 1391, which provides that its general definition applies "[f]or all venue purposes." The Federal Circuit reaffirmed *VE Holding* in the case below. Pp. 263–267.

(b) In *Fourco*, this Court definitively and unambiguously held that the word "reside[nce]" in § 1400(b), as applied to domestic corporations, refers only to the State of incorporation. Because Congress has not amended § 1400(b) since *Fourco*, and neither party asks the Court to reconsider that decision, the only question here is whether Congress changed § 1400(b)'s meaning when it amended § 1391. When Congress intends to effect a change of that kind, it ordinarily provides a relatively clear indication of its intent in the amended provision's text. No such indication appears in the current version of § 1391.

Respondent points out that the current § 1391(c) provides a default rule that, on its face, applies without exception "[f]or all venue purposes." But the version at issue in *Fourco* similarly provided a default rule that applied "'for venue purposes,'" 353 U. S., at 223, and those

phrasings are not materially different in this context. The addition of the word "all" to the already comprehensive provision does not suggest that Congress intended the Court to reconsider its decision in *Fourco*. Any argument based on this language is even weaker now than it was when the Court rejected it in *Fourco*. *Fourco* held that § 1400(b) retained a meaning distinct from the default definition contained in § 1391(c), even though the latter, by its terms, included no exceptions. The current version of § 1391 includes a saving clause, which expressly states that the provision does not apply when "otherwise provided by law," thus making explicit the qualification that the *Fourco* Court found implicit in the statute. Finally, there is no indication that Congress in 2011 ratified the Federal Circuit's decision in *VE Holding*. Pp. 267–270.

821 F. 3d 1338, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.

James W. Dabney argued the cause for petitioner. With him on the briefs were *John F. Duffy*, *Richard M. Koehl*, and *Emma L. Baratta*.

William M. Jay argued the cause for respondent. With him on the brief were *Brian T. Burgess*, *John D. Luken*, and *Michael P. Abate*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Texas et al. by *Ken Paxton*, Attorney General of Texas, *Scott A. Keller*, Solicitor General, *Jeffrey C. Mateer*, First Assistant Attorney General, and *J. Campbell Barker*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Mark Brnovich* of Arizona, *Cynthia H. Coffman* of Colorado, *George Jepsen* of Connecticut, *Doug Chin* of Hawaii, *Lisa Madigan* of Illinois, *Tom Miller* of Iowa, *Janet T. Mills* of Maine, *Brian E. Frosh* of Maryland, *Bill Schuette* of Michigan, *Douglas J. Peterson* of Nebraska, *Josh Stein* of North Carolina, *Michael DeWine* of Ohio, *Alan Wilson* of South Carolina, *Thomas J. Donovan, Jr.*, of Vermont, *Mark R. Herring* of Virginia, and *Brad D. Schimel* of Wisconsin; for ACT | The App Association by *Brian Scarpelli*; for the American Bar Association by *Linda A. Klein*, *Philip C. Swain*, and *Marco J. Quina*; for BSA | The Software Alliance by *Andrew J. Pincus*, *Paul W. Hughes*, and *Matthew A. Waring*; for the Electronic Frontier Foundation et al. by *Charles Duan* and *Vera Ranieri*; for Engine Advocacy by *Phillip R. Malone*; for General Electric Co. by *Robert A. Long, Jr.*, *Richard*

JUSTICE THOMAS delivered the opinion of the Court.

The question presented in this case is where proper venue lies for a patent infringement lawsuit brought against a domestic corporation. The patent venue statute, 28 U. S. C. § 1400(b), provides that "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." In *Fourco Glass Co.* v. *Transmirra Products*

L. Rainey, and *Paul R. Garcia*; for the Generic Pharmaceutical Association by *Bert W. Rein*, *James H. Wallace, Jr.*, and *Brian H. Pandya*; for Intel Corp. et al. by *Donald B. Verrilli, Jr.*, *Chad Golder*, *Matthew Hult*, and *Krishnendu Gupta*; for the National Association of Realtors by *Joel B. Ard*; for the Orange County Intellectual Property Law Association by *William J. Brown, Jr.*, and *Matthew K. Wegner*; for the Software & Information Industry Association by *Matthew D. McGill* and *Alexander N. Harris*; for Unified Patents Inc. by *Scott A. McKeown*, *Jeffrey I. Frey*, and *Jonathan Stroud*; for the Washington Legal Foundation by *Richard A. Samp*; and for 48 Internet Companies, Retailers, and Associations by *Peter J. Brann* and *Stacy O. Stitham*.

Briefs of *amici curiae* urging affirmance were filed for the American Intellectual Property Law Association by *Meredith Martin Addy* and *Mark L. Whitaker*; for the Biotechnology Innovation Organization et al. by *Jonathan S. Massey* and *Marc A. Goldman*; for Ericsson Inc. et al. by *Thomas C. Goldstein* and *Steven J. Pollinger*; for Genentech Inc. by *Nicholas Groombridge* and *Eric Alan Stone*; for the Pharmaceutical Research and Manufacturers of America (PhRMA) by *Carter G. Phillips*, *Ryan C. Morris*, *Joshua J. Fougere*, *James C. Stansel*, and *David E. Korn*; for Professors of Patent Law et al. by *Rachel C. Hughey*; for TDE Petroleum Data Solutions, Inc., by *Malcolm E. Whittaker*; for Papool S. Chaudhari by *Mr. Chaudhari*, *pro se*; for ZZ Law Professors by *Ted M. Sichelman*, *pro se*; et al. and for 33 Practicing-Entity Patent Owners by *Thomas M. Dunlap*, *Cortland C. Putbrese*, *David Ludwig*, and *Thomas M. Croft*.

Briefs of *amici curiae* were filed for the American Bankers Association et el. by *John D. Vandenberg* and *Klaus H. Hamm*; for Eighteen Individuals and Organizations Representing Inventors and Patent Owners by *Brian D. Ledahl*; for the Intellectual Property Law Association of Chicago by *Robert H. Resis*, *Charles W. Shifley*, and *Donald W. Rupert*; for Whirlpool Corp. by *Kirk W. Goodwin* and *Nathan J. Davis*; and for 61 Professors of Law and Economics by *Mark A. Lemley*, *pro se*.

Corp., 353 U. S. 222, 226 (1957), this Court concluded that for purposes of § 1400(b) a domestic corporation "resides" only in its State of incorporation.

In reaching that conclusion, the Court rejected the argument that § 1400(b) incorporates the broader definition of corporate "residence" contained in the general venue statute, 28 U. S. C. § 1391(c). 353 U. S., at 228. Congress has not amended § 1400(b) since this Court construed it in *Fourco*, but it has amended § 1391 twice. Section 1391 now provides that, "[e]xcept as otherwise provided by law" and "[f]or all venue purposes," a corporation "shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question." §§ 1391(a), (c). The issue in this case is whether that definition supplants the definition announced in *Fourco* and allows a plaintiff to bring a patent infringement lawsuit against a corporation in any district in which the corporation is subject to personal jurisdiction. We conclude that the amendments to § 1391 did not modify the meaning of § 1400(b) as interpreted by *Fourco.* We therefore hold that a domestic corporation "resides" only in its State of incorporation for purposes of the patent venue statute.

I

Petitioner, which is organized under Indiana law and headquartered in Indiana, manufactures flavored drink mixes.[1]

[1] The complaint alleged that petitioner is a corporation, and petitioner admitted this allegation in its answer. See App. 11a, 60a. Similarly, the petition for certiorari sought review on the question of "corporate" residence. See Pet. for Cert. i. In their briefs before this Court, however, the parties suggest that petitioner is, in fact, an unincorporated entity. See Brief for Respondent 9, n. 4 (the complaint's allegation was "apparently inaccurat[e]"); Reply Brief 4. Because this case comes to us at the pleading stage and has been litigated on the understanding that petitioner is a corporation, we confine our analysis to the proper venue for corporations. We leave further consideration of the issue of petitioner's legal status to the courts below on remand.

Respondent, which is organized under Delaware law and has its principal place of business in Illinois, is a competitor in the same market. As relevant here, respondent sued petitioner in the District Court for the District of Delaware, alleging that petitioner's products infringed one of respondent's patents. Although petitioner is not registered to conduct business in Delaware and has no meaningful local presence there, it does ship the allegedly infringing products into the State.

Petitioner moved to dismiss the case or transfer venue to the District Court for the Southern District of Indiana, arguing that venue was improper in Delaware. See 28 U. S. C. § 1406. Citing *Fourco*'s holding that a corporation resides only in its State of incorporation for patent infringement suits, petitioner argued that it did not "resid[e]" in Delaware under the first clause of § 1400(b). It further argued that it had no "regular and established place of business" in Delaware under the second clause of § 1400(b). Relying on Circuit precedent, the District Court rejected these arguments, 2015 WL 5613160 (D Del., Sept. 24, 2015), and the Federal Circuit denied a petition for a writ of mandamus, *In re TC Heartland LLC*, 821 F. 3d 1338 (2016). The Federal Circuit concluded that subsequent statutory amendments had effectively amended § 1400(b) as construed in *Fourco*, with the result that § 1391(c) now supplies the definition of "resides" in § 1400(b). 821 F. 3d, at 1341–1343. Under this logic, because the District of Delaware could exercise personal jurisdiction over petitioner, petitioner resided in Delaware under § 1391(c) and, therefore, under § 1400(b). We granted certiorari, 580 U. S. 1039 (2016), and now reverse.

II

A

The history of the relevant statutes provides important context for the issue in this case. The Judiciary Act of 1789 permitted a plaintiff to file suit in a federal district court if

the defendant was "an inhabitant" of that district or could be "found" for service of process in that district. Act of Sept. 24, 1789, § 11, 1 Stat. 79. The Act covered patent cases as well as other civil suits. *Stonite Products Co.* v. *Melvin Lloyd Co.*, 315 U. S. 561, 563 (1942). In 1887, Congress amended the statute to permit suit only in the district of which the defendant was an inhabitant or, in diversity cases, of which either the plaintiff or defendant was an inhabitant. See Act of Mar. 3, 1887, § 1, 24 Stat. 552; see also *Stonite*, *supra*, at 563–564.

This Court's decision in *In re Hohorst*, 150 U. S. 653, 661–662 (1893), arguably suggested that the 1887 Act did not apply to patent cases. As a result, while some courts continued to apply the Act to patent cases, others refused to do so and instead permitted plaintiffs to bring suit (in line with the pre-1887 regime) anywhere a defendant could be found for service of process. See *Stonite*, *supra*, at 564–565. In 1897, Congress resolved the confusion by enacting a patent specific venue statute. See Act of Mar. 3, 1897, ch. 395, 29 Stat. 695. In so doing, it "placed patent infringement cases in a class by themselves, outside the scope of general venue legislation." *Brunette Machine Works, Ltd.* v. *Kockum Industries, Inc.*, 406 U. S. 706, 713 (1972). This new statute (§ 1400(b)'s predecessor) permitted suit in the district of which the defendant was an "inhabitant," or a district in which the defendant both maintained a "regular and established place of business" and committed an act of infringement. 29 Stat. 695. At the time, a corporation was understood to "inhabit" *only* the State in which it was incorporated. *Shaw* v. *Quincy Mining Co.*, 145 U. S. 444, 449–450 (1892).

The Court addressed the scope of § 1400(b)'s predecessor in *Stonite*. In that case, the two defendants inhabited different districts within a single State. The plaintiff sought to sue them both in the same district, invoking a then-governing general venue statute that, if applicable, permit-

ted it to do so. 315 U. S., at 562–563. This Court rejected the plaintiff's venue choice on the ground that the patent venue statute constituted "the exclusive provision controlling venue in patent infringement proceedings" and thus was not supplemented or modified by the general venue provisions. *Id.*, at 563. In the Court's view, the patent venue statute "was adopted to define the exact jurisdiction of the federal courts in actions to enforce patent rights," a purpose that would be undermined by interpreting it "to dovetail with the general provisions relating to the venue of civil suits." *Id.*, at 565–566. The Court thus held that the patent venue statute "alone should control venue in patent infringement proceedings." *Id.*, at 566.

In 1948, Congress recodified the patent venue statute as § 1400(b). See Act of June 25, 1948, 62 Stat. 936. The recodified provision, which remains unaltered today, states that "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U. S. C. § 1400(b) (1952 ed.). This version differs from the previous one in that it uses "resides" instead of "inhabit[s]." At the same time, Congress also enacted the general venue statute, § 1391, which defined "residence" for corporate defendants. That provision stated that "[a] corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes." § 1391(c) (1952 ed.).

Following the 1948 legislation, courts reached differing conclusions regarding whether § 1400(b)'s use of the word "resides" incorporated § 1391(c)'s definition of "residence." See *Fourco*, 353 U. S., at 224, n. 3 (listing cases). In *Fourco*, this Court reviewed a decision of the Second Circuit holding that § 1391(c) defined residence for purposes of § 1400(b),

"just as that definition is properly . . . incorporated into other sections of the venue chapter." *Transmirra Prods. Corp.* v. *Fourco Glass Co.*, 233 F. 2d 885, 886 (1956). This Court squarely rejected that interpretation, reaffirming *Stonite*'s holding that § 1400(b) "is the sole and exclusive provision controlling venue in patent infringement actions, and . . . is not to be supplemented by . . . § 1391(c)." 353 U. S., at 229. The Court observed that Congress enacted § 1400(b) as a standalone venue statute and that nothing in the 1948 recodification evidenced an intent to alter that status. The fact that § 1391(c) by "its terms" embraced "all actions" was not enough to overcome the fundamental point that Congress designed § 1400(b) to be "complete, independent and alone controlling in its sphere." *Id.*, at 228.

The Court also concluded that "resides" in the recodified version of § 1400(b) bore the same meaning as "inhabit[s]" in the pre-1948 version. See *id.*, at 226 ("[T]he [w]ords 'inhabitant' and 'resident,' as respects venue, are synonymous" (internal quotation marks omitted)). The substitution of "resides" for "inhabit[s]" thus did not suggest any alteration in the venue rules for corporations in patent cases. Accordingly, § 1400(b) continued to apply to domestic corporations in the same way it always had: They were subject to venue only in their States of incorporation. See *ibid.* (The use of "resides" "negat[es] any intention to make corporations suable, in patent infringement cases, where they are merely 'doing business,' because those synonymous words ['inhabitant' and 'resident'] mean *domicile* and, in respect of corporations, mean the state of incorporation only").

B

This landscape remained effectively unchanged until 1988, when Congress amended the general venue statute, § 1391(c), to provide that "[f]or purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside

in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." Judicial Improvements and Access to Justice Act, § 1013(a), 102 Stat. 4669. The Federal Circuit in *VE Holding Corp.* v. *Johnson Gas Appliance Co.*, 917 F. 2d 1574 (1990), announced its view of the effect of this amendment on the meaning of the patent venue statute. The court reasoned that the phrase "[f]or purposes of venue under this chapter" was "exact and classic language of incorporation," *id.*, at 1579, and that § 1391(c) accordingly established the definition for all other venue statutes under the same "chapter." *Id.*, at 1580. Because § 1400(b) fell within the relevant chapter, the Federal Circuit concluded that § 1391(c), "on its face," "clearly applies to § 1400(b), and thus redefines the meaning of the term 'resides' in that section." *Id.*, at 1578.

Following *VE Holding*, no new developments occurred until Congress adopted the current version of § 1391 in 2011 (again leaving § 1400(b) unaltered). See Federal Courts Jurisdiction and Venue Clarification Act of 2011, § 202, 125 Stat. 763. Section 1391(a) now provides that, "[e]xcept as otherwise provided by law," "this section shall govern the venue of all civil actions brought in district courts of the United States." And § 1391(c)(2), in turn, provides that, "[f]or all venue purposes," certain entities, "whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question." In its decision below, the Federal Circuit reaffirmed *VE Holding*, reasoning that the 2011 amendments provided no basis to reconsider its prior decision.

III

We reverse the Federal Circuit. In *Fourco*, this Court definitively and unambiguously held that the word "reside[nce]" in § 1400(b) has a particular meaning as applied to

domestic[2] corporations: It refers only to the State of incorporation. Congress has not amended § 1400(b) since *Fourco*, and neither party asks us to reconsider our holding in that case. Accordingly, the only question we must answer is whether Congress changed the meaning of § 1400(b) when it amended § 1391. When Congress intends to effect a change of that kind, it ordinarily provides a relatively clear indication of its intent in the text of the amended provision. See *United States* v. *Madigan*, 300 U. S. 500, 506 (1937) ("[T]he modification by implication of the settled construction of an earlier and different section is not favored"); A. Scalia & B. Garner, Reading Law 331 (2012) ("A clear, authoritative judicial holding on the meaning of a particular provision should not be cast in doubt and subjected to challenge whenever a related though not utterly inconsistent provision is adopted in the same statute or even in an affiliated statute").

The current version of § 1391 does not contain any indication that Congress intended to alter the meaning of § 1400(b) as interpreted in *Fourco*. Although the current version of § 1391(c) provides a default rule that applies "[f]or all venue purposes," the version at issue in *Fourco* similarly provided a default rule that applied "for venue purposes." 353 U. S., at 223 (internal quotation marks omitted). In this context, we do not see any material difference between the two phrasings. See *Pure Oil Co.* v. *Suarez*, 384 U. S. 202, 204–205 (1966) (construing "'for venue purposes'" to cover "all venue statutes"). Respondent argues that "'all venue purposes' means 'all venue purposes'—not 'all venue purposes *except* for patent venue.'" Brief for Respondent 21. The plaintiffs in *Fourco* advanced the same argument. See 353 U. S., at 228 ("The main thrust of respondents' argument is

[2] The parties dispute the implications of petitioner's argument for foreign corporations. We do not here address that question, nor do we express any opinion on this Court's holding in *Brunette Machine Works, Ltd.* v. *Kockum Industries, Inc.*, 406 U. S. 706 (1972) (determining proper venue for foreign corporation under then-existing statutory regime).

that § 1391(c) is clear and unambiguous and that its terms include all actions—including patent infringement actions"). This Court was not persuaded then, and the addition of the word "all" to the already comprehensive provision does not suggest that Congress intended for us to reconsider that conclusion.

This particular argument is even weaker under the current version of § 1391 than it was under the provision in place at the time of *Fourco*, because the current provision includes a saving clause expressly stating that it does not apply when "otherwise provided by law." On its face, the version of § 1391(c) at issue in *Fourco* included no exceptions, yet this Court still held that "resides" in § 1400(b) retained its original meaning contrary to § 1391(c)'s default definition. *Fourco*'s holding rests on even firmer footing now that § 1391's saving clause expressly contemplates that certain venue statutes may retain definitions of "resides" that conflict with its default definition. In short, the saving clause makes explicit the qualification that this Court previously found implicit in the statute. See *Pure Oil*, *supra*, at 205 (interpreting earlier version of § 1391 to apply "to all venue statutes using residence as a criterion, at least in the absence of contrary restrictive indications in any such statute"). Respondent suggests that the saving clause in § 1391(a) does not apply to the definitional provisions in § 1391(c), Brief for Respondent 31–32, but that interpretation is belied by the text of § 1391(a), which makes clear that the saving clause applies to the entire "section." See § 1391(a)(1) ("Except as otherwise provided by law— . . . this *section* shall govern the venue of all civil actions" (emphasis added)).

Finally, there is no indication that Congress in 2011 ratified the Federal Circuit's decision in *VE Holding*. If anything, the 2011 amendments undermine that decision's rationale. As petitioner points out, *VE Holding* relied heavily—indeed, almost exclusively—on Congress' decision in 1988 to replace "for venue purposes" with "[f]or purposes

of venue *under this chapter*" (emphasis added) in § 1391(c). Congress deleted "under this chapter" in 2011 and worded the current version of § 1391(c) almost identically to the original version of the statute. Compare § 1391(c) (2012 ed.) ("[f]or all venue purposes") with § 1391(c) (1952 ed.) ("for venue purposes"). In short, nothing in the text suggests congressional approval of *VE Holding*.

* * *

As applied to domestic corporations, "reside[nce]" in § 1400(b) refers only to the State of incorporation. Accordingly, we reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

Syllabus

WATER SPLASH, INC. *v.* MENON

CERTIORARI TO THE COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

No. 16–254. Argued March 22, 2017—Decided May 22, 2017

Petitioner Water Splash sued respondent Menon, a former employee, in a Texas state court, alleging that she had begun working for a competitor while still employed by Water Splash. Because Menon resided in Canada, Water Splash obtained permission to effect service by mail. After Menon declined to answer or otherwise enter an appearance, the trial court issued a default judgment for Water Splash. That court subsequently denied Menon's motion to set aside the judgment on the ground that she had not been properly served. On appeal, Menon argued that service by mail does not comport with the requirements of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague Service Convention), which seeks to simplify, standardize, and generally improve the process of serving documents abroad, specifying certain approved methods of service and preempting "inconsistent methods of service" wherever it applies, *Volkswagenwerk Aktiengesellschaft* v. *Schlunk*, 486 U. S. 694, 699. The Texas Court of Appeals agreed with Menon, holding that the Convention prohibited service of process by mail. Article 10, the provision at issue, consists of Articles 10(b) and 10(c), which plainly address permissible methods of "service," and Article 10(a), which provides that the Convention will not interfere with "the freedom to send judicial documents, by postal channels, directly to persons abroad," but does not expressly refer to "service."

Held: The Hague Service Convention does not prohibit service of process by mail. Pp. 276–284.

(a) This Court begins its analysis by looking to the treaty's text and the context in which its words are used. See *Schlunk*, 486 U. S., at 699. The key word in Article 10(a)—"send"—is a broad term, and there is no apparent reason why it would exclude the transmission of documents for the purpose of service. The structure of the Convention strongly counsels against such an exclusion. The Convention's preamble and Article 1 limit the scope of the Convention to service of documents abroad, and its full title includes the phrase "Service Abroad." This Court has also held that the scope of the Convention is limited to service of documents. *Id.*, at 701. It would thus be quite strange if Article 10(a)—apparently alone among the Convention's provisions—concerned some-

thing other than service of documents. Indeed, such a reading would render Article 10(a) superfluous. Article 10's function is to ensure that, generally, the Convention "shall not interfere" with the activities described in 10(a), 10(b), and 10(c). But since Article 1 already "eliminates [the] possibility" that the Convention would apply to any communications that "do not culminate in service," *id.*, at 701, in order for Article 10(a) to do any work, it *must* pertain to sending documents for the purposes of service. Menon's attempt to avoid this superfluity problem by suggesting that Article 10(a) applies not to *service of process* but only to the service of "post-answer judicial documents" lacks any plausible textual footing in Article 10. If the drafters wished to limit Article 10(a) to a particular subset of documents, they could have said so—as they did, *e. g.*, in Article 15, which refers to "a writ of summons or an equivalent document." Instead, Article 10(a) uses the term "judicial documents"—the same term featured in 10(b) and 10(c). And the ordinary meaning of the word "send" is broad enough to cover the transmission of *any* judicial documents. Accordingly, the text and structure of the Convention indicate that Article 10(a) encompasses service by mail. Pp. 276–278.

(b) The main counterargument—that Article 10(a)'s phrase "send judicial documents" should mean something different than the phrase "effect service of judicial documents" in Article 10(b) and Article 10(c)—is unpersuasive. First, it must contend with the compelling structural considerations strongly suggesting that Article 10(a) pertains to service of documents. Second, reading the word "send" as a broad concept that includes, but is not limited to, service is probably *more* plausible than interpreting the word to exclude service, and it does not create the same superfluity problem. Third, the French version of the Convention, which is "equally authentic" to the English version, *Schlunk*, *supra*, at 699, uses the word "adresser," which has consistently been understood to mean service or notice. At best, Menon's argument creates an ambiguity as to Article 10(a)'s meaning. The Court thus turns to additional tools of treaty interpretation, which comfortably resolve any lingering ambiguity in Water Splash's favor. Pp. 279–280.

(c) Three extratextual sources are especially helpful in ascertaining Article 10(a)'s meaning. First, the Convention's drafting history strongly suggests that the drafters understood that service by postal channels was permissible. Second, in the half century since the Convention was adopted, the Executive Branch has consistently maintained that the Hague Service Convention allows service by mail. Finally, other signatories to the Convention have consistently adopted Water Splash's view. Pp. 280–283.

(d) The fact that Article 10(a) encompasses service by mail does not mean that it affirmatively authorizes such service. Rather, service by mail is permissible if the receiving state has not objected to service by mail and if such service is authorized under otherwise-applicable law. Because the Court of Appeals concluded that the Convention prohibited service by mail, it did not consider whether Texas law authorizes the methods of service used by Water Splash. That and any other remaining issues are left to be considered on remand to the extent they are properly preserved. P. 284.

472 S. W. 3d 28, vacated and remanded.

ALITO, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.

Jeremy Gaston argued the cause for petitioner. With him on the briefs was *Andrew K. Meade.*

Elaine J. Goldenberg argued the cause for the United States as *amicus curiae* urging reversal. On the brief were *Acting Solicitor General Francisco*, *Acting Assistant Attorney General Branda*, *Deputy Solicitor General Kneedler*, *Douglas N. Letter*, and *Sharon Swingle.*

Timothy A. Hootman argued the cause and filed a brief for respondent.

JUSTICE ALITO delivered the opinion of the Court.

This case concerns the scope of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965 (Hague Service Convention), 20 U. S. T. 361, T. I. A. S. No. 6638. The purpose of that multilateral treaty is to simplify, standardize, and generally improve the process of serving documents abroad. Preamble, *ibid.*; see *Volkswagenwerk Aktiengesellschaft* v. *Schlunk*, 486 U. S. 694, 698 (1988). To that end, the Hague Service Convention specifies certain approved methods of service and "pre-empts inconsistent methods of service" wherever it applies. *Id.*, at 699. Today we address a question that has divided the lower courts: whether the Convention prohibits service by mail. We hold that it does not.

I

A

Petitioner Water Splash is a corporation that produces aquatic playground systems. Respondent Menon is a former employee of Water Splash. In 2013, Water Splash sued Menon in state court in Texas, alleging that she had begun working for a competitor while still employed by Water Splash. 472 S. W. 3d 28, 30 (Tex. App. 2015). Water Splash asserted several causes of action, including unfair competition, conversion, and tortious interference with business relations. Because Menon resided in Canada, Water Splash sought and obtained permission to effect service by mail. *Ibid.* After Menon declined to answer or otherwise enter an appearance, the trial court issued a default judgment in favor of Water Splash. Menon moved to set aside the judgment on the ground that she had not been properly served, but the trial court denied the motion. *Ibid.*

Menon appealed, arguing that service by mail does not "comport with the requirements of the Hague Service Convention." *Ibid.* The Texas Court of Appeals majority sided with Menon and held that the Convention prohibits service of process by mail. *Id.*, at 32. Justice Christopher dissented. *Id.*, at 34. The Court of Appeals declined to review the matter en banc, App. 95–96, and the Texas Supreme Court denied discretionary review, *id.*, at 97–98.

The disagreement between the panel majority and Justice Christopher tracks a broader conflict among courts as to whether the Convention permits service through postal channels. Compare, *e. g.*, *Bankston* v. *Toyota Motor Corp.*, 889 F. 2d 172, 173–174 (CA8 1989) (holding that the Convention prohibits service by mail), and *Nuovo Pignone, SpA* v. S*torman Asia M/V,* 310 F. 3d 374, 385 (CA5 2002) (same), with, *e. g.*, *Brockmeyer* v. *May*, 383 F. 3d 798, 802 (CA9 2004) (holding that the Convention allows service by mail), and *Ackermann* v. *Levine*, 788 F. 2d 830, 838–840 (CA2 1986)

(same). We granted certiorari to resolve that conflict. 580 U. S. 1017 (2016).

B

The "primary innovation" of the Hague Service Convention—set out in Articles 2–7—is that it "requires each state to establish a central authority to receive requests for service of documents from other countries." *Schlunk*, *supra*, at 698. When a central authority receives an appropriate request, it must serve the documents or arrange for their service, Art. 5, and then provide a certificate of service, Art. 6.

Submitting a request to a central authority is not, however, the only method of service approved by the Convention. For example, Article 8 permits service through diplomatic and consular agents; Article 11 provides that any two states can agree to methods of service not otherwise specified in the Convention; and Article 19 clarifies that the Convention does not preempt any internal laws of its signatories that permit service from abroad via methods not otherwise allowed by the Convention.

At issue in this case is Article 10 of the Convention, the English text of which reads as follows:

> "Provided the State of destination does not object, the present Convention shall not interfere with—
>
> "(a) the freedom to send judicial documents, by postal channels, directly to persons abroad,
>
> "(b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
>
> "(c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination." 20 U. S. T., at 363.

Articles 10(b) and 10(c), by their plain terms, address additional methods of service that are permitted by the Convention (unless the receiving state objects). By contrast, Article 10(a) does not expressly refer to "service." The question in this case is whether, despite this textual difference, the Article 10(a) phrase "send judicial documents" encompasses sending documents *for the purposes of service.*

II

A

In interpreting treaties, "we begin with the text of the treaty and the context in which the written words are used." *Schlunk*, 486 U. S., at 699 (internal quotation marks omitted). For present purposes, the key word in Article 10(a) is "send." This is a broad term,[1] and there is no apparent reason why it would exclude the transmission of documents for a particular purpose (namely, service). Moreover, the structure of the Hague Service Convention strongly counsels against such a reading.

The key structural point is that the scope of the Convention is limited to service of documents. Several elements of the Convention indicate as much. First, the preamble states that the Convention is intended "to ensure that judicial and extrajudicial documents *to be served abroad* shall be brought to the notice of the addressee in sufficient time." (Emphasis added.) And Article 1 defines the Convention's scope by stating that the Convention "shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document *for service abroad.*" (Emphasis added.) Even the Convention's full title reflects that the Convention concerns "Service Abroad."

We have also held as much. *Schlunk*, 486 U. S., at 701 (stating that the Convention "applies only to documents

[1] See Black's Law Dictionary 1568 (10th ed. 2014) (defining "send," in part, as "[t]o cause to be moved or conveyed from a present location to another place; esp., to deposit (a writing or notice) in the mail").

transmitted for service abroad"). As we explained, a preliminary draft of Article 1 was criticized "because it suggested that the Convention could apply to transmissions abroad that do not culminate in service." *Ibid.* The final version of Article 1, however, "eliminates this possibility." *Ibid.* The wording of Article 1 makes clear that the Convention "applies only when there is both transmission of a document from the requesting state to the receiving state, and service upon the person for whom it is intended." *Ibid.*

In short, the text of the Convention reveals, and we have explicitly held, that the scope of the Convention is limited to service of documents. In light of that, it would be quite strange if Article 10(a)—apparently alone among the Convention's provisions—concerned something other than service of documents.

Indeed, under that reading, Article 10(a) would be superfluous. The function of Article 10 is to ensure that, absent objection from the receiving state, the Convention "shall not interfere" with the activities described in 10(a), 10(b), and 10(c). But Article 1 already "eliminates [the] possibility" that the Convention would apply to any communications that "do not culminate in service," *id.*, at 701, so it is hard to imagine how the Convention could interfere with any nonservice communications. Accordingly, in order for Article 10(a) to do any work, it *must* pertain to sending documents for the purposes of service.

Menon attempts to avoid this superfluity problem by suggesting that Article 10(a) does refer to serving documents—but only *some* documents. Specifically, she makes a distinction between two categories of service. According to Menon, Article 10(a) does not apply to *service of process* (which we have defined as "a formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action," *id.*, at 700). But Article 10(a) does apply, Menon suggests, to the service of "post-answer judicial documents" (that is, any additional documents which may

have to be served later in the litigation). Brief for Respondent 30–31. The problem with this argument is that it lacks any plausible textual footing in Article 10.[2]

If the drafters wished to limit Article 10(a) to a particular subset of documents, they presumably would have said so—as they did, for example, in Article 15, which refers to "a writ of summons or an equivalent document." Instead, Article 10(a) uses the term "judicial documents"—the same term that is featured in 10(b) and 10(c). Accordingly, the notion that Article 10(a) governs a different set of documents than 10(b) or 10(c) is hard to fathom. And it certainly derives no support from the use of the word "send," whose ordinary meaning is broad enough to cover the transmission of *any* judicial documents (including litigation-initiating documents). Nothing about the word "send" suggests that Article 10(a) is *narrower* than 10(b) and 10(c), let alone that Article 10(a) is somehow limited to "post-answer" documents.

Ultimately, Menon wishes to read the phrase "send judicial documents" as "serve a subset of judicial documents." That is an entirely atextual reading, and Menon offers no sustained argument in support of it. Therefore, the only way to escape the conclusion that Article 10(a) includes service of process is to assert that it does not cover service of documents at all—and, as shown above, that reading is structurally implausible and renders Article 10(a) superfluous.

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[2] The argument also assumes that the scope of the Convention is not limited to service of process (otherwise, Article 10(a) would be superfluous even under Menon's reading). *Schlunk* can be read to suggest that this assumption is wrong. 486 U. S., at 700–701; see 1 B. Ristau, International Judicial Assistance § 4–1–4(2), p. 112 (1990 rev. ed.) (Ristau) (stating that the English term "service" in the Convention "means the formal delivery of a legal document to the addressee in such a manner as to legally charge him with notice of the institution of a legal proceeding"). For the purposes of this discussion, we will assume, *arguendo*, that Menon's assumption is correct.

B

The text and structure of the Hague Service Convention, then, strongly suggest that Article 10(a) pertains to service of documents. The only significant counterargument is that, unlike many other provisions in the Convention, Article 10(a) does not include the word "service" or any of its variants. The Article 10(a) phrase "send judicial documents," the argument goes, should mean something different than the phrase "effect service of judicial documents" in the other two subparts of Article 10.

This argument does not win the day for several reasons. First, it must contend with the compelling structural considerations discussed above. See *Air France* v. *Saks*, 470 U. S. 392, 397 (1985) (treaty interpretation must take account of the "context in which the written words are used"); cf. *University of Tex. Southwestern Medical Center* v. *Nassar*, 570 U. S. 338, 353 (2013) ("Just as Congress' choice of words is presumed to be deliberate, so too are its structural choices").

Second, the argument fails on its own terms. Assume for a second that the word "send" must mean something other than "serve." That would not imply that Article 10(a) must *exclude* service. Instead, "send[ing]" could be a broader concept that includes service but is not limited to it. That reading of the word "send" is probably *more* plausible than interpreting it to exclude service, and it does not create the same superfluity problem.[3]

Third, it must be remembered that the French version of the Convention is "equally authentic" to the English version.

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[3] Another plausible explanation for the distinct terminology of Article 10(a) is that it is the only provision in the Convention that specifically contemplates direct service, without the use of an intermediary. See Brief for United States as *Amicus Curiae* 13 ("[I]n contrast to Article 10(a), all other methods of service identified in the Convention require the affirmative engagement of an intermediary to effect 'service' "). The use of the word "send" may simply have been intended to reflect that distinction.

Schlunk, 486 U. S., at 699. Menon does not seriously engage with the Convention's French text. But the word "adresser"—the French counterpart to the word "send" in Article 10(a)—"has been consistently interpreted as meaning service or notice." Hague Conference on Private Int'l Law, Practical Handbook on the Operation of the Service Convention ¶279, p. 91 (4th ed. 2016).

In short, the most that could possibly be said for this argument is that it creates an ambiguity as to Article 10(a)'s meaning. And when a treaty provision is ambiguous, the Court "may look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties." *Schlunk*, *supra*, at 700 (internal quotation marks omitted). As discussed below, these traditional tools of treaty interpretation comfortably resolve any lingering ambiguity in Water Splash's favor.

III

Three extratextual sources are especially helpful in ascertaining Article 10(a)'s meaning: the Convention's drafting history, the views of the Executive, and the views of other signatories.

Drafting history has often been used in treaty interpretation. See *Medellín* v. *Texas*, 552 U. S. 491, 507 (2008); *Saks*, *supra*, at 400; see also *Schlunk*, *supra*, at 700 (analyzing the negotiating history of the Hague Service Convention). Here, the Convention's drafting history strongly suggests that Article 10(a) allows service through postal channels.

Philip W. Amram was the member of the United States delegation who was most closely involved in the drafting of the Convention. See S. Exec. Rep. No. 6, 90th Cong., 1st Sess., 5 (App.) (1967) (S. Exec. Rep.) (statement of State Department Deputy Legal Adviser Richard D. Kearney). A few months before the Convention was signed, he published an article describing and summarizing it. In that article, he stated that "Article 10 permits direct service by mail . . . unless [the receiving] state objects to such service." The

Proposed International Convention on the Service of Documents Abroad, 51 A. B. A. J. 650, 653 (1965).[4]

Along similar lines, the Rapporteur's report on a draft version of Article 10—which did not materially differ from the final version—stated that the "provision of paragraph 1 also permits service . . . by telegram" and that the drafters "did not accept the proposal that postal channels be limited to registered mail." 1 Ristau § 4–3–5(a), at 149. In other words, it was clearly understood that service by postal channels was permissible, and the only question was whether it should be limited to registered mail.

The Court also gives "great weight" to "the Executive Branch's interpretation of a treaty." *Abbott* v. *Abbott*, 560 U. S. 1, 15 (2010) (internal quotation marks omitted). In the half century since the Convention was adopted, the Executive has consistently maintained that the Hague Service Convention allows service by mail.

When President Johnson transmitted the Convention to the Senate for its advice and consent, he included a report by Secretary of State Dean Rusk. That report stated that "Article 10 permits direct service by mail . . . unless [the receiving] state objects to such service." Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters: Message From the President of the United States, S. Exec. Doc. C, 90th Cong., 1st Sess., 5 (1967).

In 1989, the Eighth Circuit issued *Bankston*, the first Federal Court of Appeals decision holding that the Hague Service Convention prohibits service by mail. 889 F. 2d, at 174. The State Department expressed its disagreement with *Bankston* in a letter addressed to the Administrative Office of the U. S. Courts and the National Center for State Courts. See Notice of Other Documents (1), United States Depart-

[4] Two years later, Amram testified to the same effect before the Senate Foreign Relations Committee. S. Exec. Rep., at 13 (stating that service by central authority "is not obligatory" and that other available techniques included "direct service by mail").

ment of State Opinion Regarding the *Bankston* Case and Service by Mail to Japan Under the Hague Service Convention, 30 I. L. M. 260, 260–261 (1991) (excerpts of Mar. 14, 1990, letter). The letter stated that "*Bankston* is incorrect to the extent that it suggests that the Hague Convention does not permit as a method of service of process the sending of a copy of a summons and complaint by registered mail to a defendant in a foreign country." *Id.*, at 261. The State Department takes the same position on its website.[5]

Finally, this Court has given "considerable weight" to the views of other parties to a treaty. *Abbott*, *supra*, at 16 (internal quotation marks omitted); see *Lozano* v. *Montoya Alvarez*, 572 U. S. 1, 12 (2014) (noting the importance of "read[ing] the treaty in a manner consistent with the *shared* expectations of the contracting parties" (internal quotation marks omitted)). And other signatories to the Convention have consistently adopted Water Splash's view.

Multiple foreign courts have held that the Hague Service Convention allows for service by mail.[6] In addition, several of the Convention's signatories have either objected, or declined to object, to service by mail under Article 10, thereby

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[5] Dept. of State, Legal Considerations: International Judicial Assistance: Service of Process (stating that "[s]ervice by registered . . . mail . . . is an option in many countries in the world," but that it "should . . . not be used in the countries party to the Hague Service Convention that objected to the method described in Article 10(a) (postal channels)"), online at https://travel.state.gov/content/travel/en/legal-considerations/judicial/service-of-process.html (all Internet materials as last visited May 19, 2017).

[6] See, *e. g.*, *Wang* v. *Lin*, [2016] 132 O. R. 3d 48, 61 (Can. Ont. Sup. Ct. J.); *Crystal Decisions (U. K.), Ltd.* v. *Vedatech Corp.*, EWHC (Ch) 1872 (2004), 2004 WL 1959749, ¶21 (High Court, Eng.); *R.* v. *Re Recognition of an Italian Judgt.*, 2000 WL 33541696, ¶4 (D. F. Thes. 2000); Case C–412/97, *ED Srl* v. *Italo Fenocchio*, 1999 E. C. R. I–3845, 3877–3878, ¶6 [2000] 3 C. M. L. R. 855; see also *Brockmeyer* v. *May*, 383 F. 3d 798, 802 (CA9 2004) (noting that foreign courts are "essentially unanimous" in the view "that the meaning of 'send' in Article 10(a) includes 'serve' ").

acknowledging that Article 10 encompasses service by mail.[7] Finally, several Special Commissions—comprising numerous contracting states—have expressly stated that the Convention does not prohibit service by mail.[8] By contrast, Menon identifies no evidence that any signatory has ever rejected Water Splash's view.

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[7] Canada, for example, has stated that it "does not object to service by postal channels." By contrast, the Czech Republic has adopted Czechoslovakia's position that "judicial documents may not be served . . . through postal channels." Dutch Govt. Treaty Database: Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters: Parties With Reservations, Declarations and Objections (entries for Canada and the Czech Republic), online at https://treatydatabase.overheid.nl/en/Verdrag/Details/004235_b; see also, *e. g.*, *ibid.* (entries for Latvia, Australia, and Slovenia). In addition, some states have objected to *all* of the channels of transmission listed in Article 10, referring to them collectively with the term "service." See, *e. g.*, *ibid.* (entries for Bulgaria, Hungary, Kuwait, and Turkey).

[8] Hague Conference on Private International Law, Conclusions and Recommendations Adopted by the Special Commission on the Practical Operation of the Hague Apostille, Evidence and Service Conventions ¶55, p. 11 (Oct. 28–Nov. 4, 2003) ("reaffirm[ing]" the Special Commission's "clear understanding that the term 'send' in Article 10(a) is to be understood as meaning 'service' through postal channels"), online at https://assets.hcch.net/upload/wop/lse_concl_e.pdf; Hague Conference on Private International Law, Report on the Work of the Special Commission of April 1989 on the Operation of the Hague Conventions of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters ¶16, p. 5 (Apr. 1989) (criticizing "certain courts in the United States" which "had concluded that service of process abroad by mail was not permitted under the Convention"), online at https://assets.hcch.net/upload/scrpt89e_20.pdf; Report on the Work of the Special Commission on the Operation of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 21–25 1977, 17 I. L. M. 312, 326 (1978) (observing that "most of the States made no objection to *the service* of judicial documents coming from abroad directly by mail in their territory" (emphasis added)).

* * *

In short, the traditional tools of treaty interpretation unmistakably demonstrate that Article 10(a) encompasses service by mail. To be clear, this does not mean that the Convention affirmatively *authorizes* service by mail. Article 10(a) simply provides that, as long as the receiving state does not object, the Convention does not "interfere with . . . the freedom" to serve documents through postal channels. In other words, in cases governed by the Hague Service Convention, service by mail is permissible if two conditions are met: first, the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise-applicable law. See *Brockmeyer*, 383 F. 3d, at 803–804.

Because the Court of Appeals concluded that the Convention prohibited service by mail outright, it had no occasion to consider whether Texas law authorizes the methods of service used by Water Splash. We leave that question, and any other remaining issues, to be considered on remand to the extent they are properly preserved.

For these reasons, we vacate the judgment of the Court of Appeals, and we remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

Syllabus

COOPER, GOVERNOR OF NORTH CAROLINA, ET AL. *v.* HARRIS ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

No. 15–1262. Argued December 5, 2016—Decided May 22, 2017

The Equal Protection Clause of the Fourteenth Amendment prevents a State, in the absence of "sufficient justification," from "separating its citizens into different voting districts on the basis of race." *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U. S. 178, 187. When a voter sues state officials for drawing such race-based lines, this Court's decisions call for a two-step analysis. First, the plaintiff must prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller* v. *Johnson*, 515 U. S. 900, 916. Second, if racial considerations did predominate, the State must prove that its race-based sorting of voters serves a "compelling interest" and is "narrowly tailored" to that end, *Bethune-Hill*, 580 U. S., at 193. This Court has long assumed that one compelling interest is compliance with the Voting Rights Act of 1965 (VRA). When a State invokes the VRA to justify race-based districting, it must show (to meet the "narrow tailoring" requirement) that it had "good reasons" for concluding that the statute required its action. *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254, 278. A district court's factual findings made in the course of this two-step inquiry are reviewed only for clear error. See Fed. Rule Civ. Proc. 52(a)(6); *Easley* v. *Cromartie*, 532 U. S. 234, 242 (*Cromartie II*).

This case concerns North Carolina's redrawing of two congressional districts, District 1 and District 12, after the 2010 census. Prior to that redistricting, neither district had a majority black voting-age population (BVAP), but both consistently elected the candidates preferred by most African-American voters. The new map significantly altered both District 1 and District 12. The State needed to add almost 100,000 people to District 1 to comply with the one-person-one-vote principle, and it chose to take most of those people from heavily black areas of Durham—increasing the district's BVAP from 48.6% to 52.7%. The State also reconfigured District 12, increasing its BVAP from 43.8% to 50.7%. Registered voters in those districts (here called "the plaintiffs") filed suit against North Carolina officials (collectively, "the State" or "North Carolina"), complaining of impermissible racial gerrymanders.

Syllabus

A three-judge District Court held both districts unconstitutional. It found that racial considerations predominated in the drawing of District 1's lines and rejected the State's claim that this action was justified by the VRA. As for District 12, the court again found that race predominated, and it explained that the State made no attempt to justify its attention to race in designing that district.

Held:

1. North Carolina's victory in a similar state-court lawsuit does not dictate the disposition of this case or alter the applicable standard of review. Before this case was filed, a state trial court rejected a claim by several civil rights groups that Districts 1 and 12 were unlawful racial gerrymanders. The North Carolina Supreme Court affirmed that decision under the state-court equivalent of clear error review. The State claims that the plaintiffs are members of the same organizations that brought the earlier case, and thus precluded from raising the same questions anew. But the State never satisfied the District Court that the alleged affiliation really existed. And because the District Court's factual finding was reasonable, it defeats North Carolina's attempt to argue for claim or issue preclusion here.

The State's back-up argument about the proper standard of review also falls short. The rule that a trial court's factual findings are reviewed only for clear error contains no exception for findings that diverge from those made in another court. See Fed. Rule Civ. Proc. 52(a)(6). Although the state court's decision is certainly relevant, the premise of clear error review is that there are often "two permissible views of the evidence." *Anderson* v. *Bessemer City*, 470 U. S. 564, 574. Even assuming that the state court's findings capture one such view, the only question here is whether the District Court's assessment represents another. Pp. 296–299.

2. The District Court did not err in concluding that race furnished the predominant rationale for District 1's redesign and that the State's interest in complying with the VRA could not justify that consideration of race. Pp. 299–306.

(a) The record shows that the State purposefully established a racial target for the district and that the target "had a direct and significant impact" on the district's configuration, *Alabama*, 575 U. S., at 274, subordinating other districting criteria. Faced with this body of evidence, the District Court did not clearly err in finding that race predominated in drawing District 1; indeed, it could hardly have concluded anything but. Pp. 299–301.

(b) North Carolina's use of race as the predominant factor in designing District 1 does not withstand strict scrutiny. The State argues

that it had good reasons to believe that it had to draw a majority-minority district to avoid liability for vote dilution under § 2 of the VRA. *Thornburg* v. *Gingles*, 478 U. S. 30, identifies three threshold conditions for proving such a vote-dilution claim: (1) A "minority group" must be "sufficiently large and geographically compact to constitute a majority" in some reasonably configured legislative district, *id.*, at 50; (2) the minority group must be "politically cohesive," *id.*, at 51; and (3) a district's white majority must "vote[ ] sufficiently as a bloc" to usually "defeat the minority's preferred candidate," *ibid.* If a State has good reason to think that all three of these conditions are met, then so too it has good reason to believe that § 2 requires drawing a majority-minority district. But if not, then not.

Here, electoral history provided no evidence that a § 2 plaintiff could demonstrate the third *Gingles* prerequisite. For nearly 20 years before the new plan's adoption, African-Americans made up less than a majority of District 1's voters, but their preferred candidates scored consistent victories. District 1 thus functioned as a "crossover" district, in which members of the majority help a "large enough" minority to elect its candidate of choice. *Bartlett* v. *Strickland*, 556 U. S. 1, 13 (plurality opinion). So experience gave the State no reason to think that the VRA required it to ramp up District 1's BVAP.

The State counters that because it needed to substantially increase District 1's population, the question facing the state mapmakers was not whether the *then-existing* District 1 violated § 2, but whether the *future* District 1 would do so if drawn without regard to race. But that reasoning, taken alone, cannot justify the State's race-based redesign of the district. Most important, the State points to no meaningful legislative inquiry into the key issue it identifies: whether a new, enlarged District 1, created without a focus on race, could lead to § 2 liability. To have a strong basis to conclude that § 2 demands race-based measures to augment a district's BVAP, the State must evaluate whether a plaintiff could establish the *Gingles* preconditions in a new district created without those measures. Nothing in the legislative record here fits that description. And that is no accident: The redistricters believed that this Court's decision in *Strickland* mandated a 50%-plus BVAP in District 1. They apparently reasoned that if, as *Strickland* held, § 2 does not *require* crossover districts (for groups insufficiently large under *Gingles*), then § 2 also cannot be *satisfied by* crossover districts (for groups meeting *Gingles*' size condition). But, as this Court's § 2 jurisprudence makes clear, unless *each* of the three *Gingles* prerequisites is established, "there neither has been a wrong nor can be a remedy." *Growe* v. *Emison*, 507 U. S. 25, 41. North Carolina's belief that it was compelled to redraw District 1 (a successful crossover district) as a

majority-minority district thus rested on a pure error of law. Accordingly, the Court upholds the District Court's conclusion that the State's use of race as the predominant factor in designing District 1 does not withstand strict scrutiny. Pp. 301–306.

3. The District Court also did not clearly err by finding that race predominated in the redrawing of District 12. Pp. 307–323.

(a) The district's legality turns solely on which of two possible reasons predominantly explains its reconfiguration. The plaintiffs contended at trial that North Carolina intentionally increased District 12's BVAP in the name of ensuring preclearance under § 5 of the VRA. According to the State, by contrast, the mapmakers moved voters in and out of the district as part of a "strictly" political gerrymander, without regard to race. After hearing evidence supporting both parties' accounts, the District Court accepted the plaintiffs'.

Getting to the bottom of a dispute like this one poses special challenges for a trial court, which must make "'a sensitive inquiry'" into all "'circumstantial and direct evidence of intent'" to assess whether the plaintiffs have proved that race, not politics, drove a district's lines. *Hunt* v. *Cromartie*, 526 U. S. 541, 546 (*Cromartie I*). This Court's job is different—and generally easier. It affirms a trial court's factual finding as to racial predominance so long as the finding is "plausible"; it reverses only when "left with the definite and firm conviction that a mistake has been committed." *Anderson*, 470 U. S., at 573–574. In assessing a finding's plausibility, moreover, the Court gives singular deference to a trial court's judgments about the credibility of witnesses. See Fed. Rule Civ. Proc. 52(a)(6). Applying those principles here, the evidence at trial—including live witness testimony subject to credibility determinations—adequately supports the District Court's conclusion that race, not politics, accounted for District 12's reconfiguration. And contrary to the State's view, the court had no call to dismiss this challenge just because the plaintiffs did not proffer an alternative design for District 12. Pp. 307–310.

(b) By slimming the district and adding a couple of knobs to its snakelike body, North Carolina added 35,000 African-Americans and subtracted 50,000 whites, turning District 12 into a majority-minority district. State Senator Robert Rucho and State Representative David Lewis—the chairs of the two committees responsible for preparing the revamped plan—publicly stated that racial considerations lay behind District 12's augmented BVAP. Specifically, Rucho and Lewis explained that because part of Guilford County, a jurisdiction covered by § 5 of the VRA, lay in the district, they had increased the district's BVAP to ensure preclearance of the plan. Dr. Thomas Hofeller, their hired mapmaker, confirmed that intent. The State's preclearance sub-

mission to the Justice Department indicated a similar determination to concentrate black voters in District 12. And, in testimony that the District Court found credible, Congressman Mel Watt testified that Rucho disclosed a majority-minority target to him in 2011. Hofeller testified that he had drawn District 12's lines based on political data, and that he checked the racial data only *after* he drew a politics-based line between adjacent areas in Guilford County. But the District Court disbelieved Hofeller's asserted indifference to the new district's racial composition, pointing to his contrary deposition testimony and a significant contradiction in his trial testimony. Finally, an expert report lent circumstantial support to the plaintiffs' case, showing that, regardless of party, a black voter in the region was three to four times more likely than a white voter to cast a ballot within District 12's borders.

The District Court's assessment that all this evidence proved racial predominance clears the bar of clear error review. Maybe this Court would have evaluated the testimony differently had it presided over the trial; or then again, maybe it would not have. Either way, the Court is far from having a "definite and firm conviction" that the District Court made a mistake in concluding from the record before it that racial considerations predominated in District 12's design. Pp. 310–317.

(c) Finally, North Carolina argues that when race and politics are competing explanations of a district's lines, plaintiffs must introduce an alternative map that achieves a State's asserted political goals while improving racial balance. Such a map can serve as key evidence in a race-versus-politics dispute, but it is hardly the *only* means to disprove a State's contention that politics drove a district's lines. In this case, the plaintiffs' introduction of mostly direct and some circumstantial evidence gave the District Court a sufficient basis, sans any map, to resolve the race-or-politics question. Although a plaintiff will sometimes need an alternative map, as a practical matter, to make his case, such a map is merely an evidentiary tool to show that an equal protection violation has occurred; neither its presence nor its absence can itself resolve a racial gerrymandering claim.

North Carolina claims that a passage of this Court's opinion in *Cromartie II* makes an alternative map essential in cases like this one, but the reasoning of *Cromartie II* belies that reading. The Court's opinion nowhere attempts to explicate or justify the categorical rule that the State claims to find there, and the entire thrust of the opinion runs counter to an inflexible counter-map requirement. Rightly understood, the passage on which the State relies had a different and narrower point: Given the weak evidence of a racial gerrymander offered in *Cromartie II*, only maps that would *actually* show what the plaintiffs' had not could carry the day. This case, in contrast, turned not on the possi-

bility of creating more optimally constructed districts, but on direct evidence of the General Assembly's intent in creating the actual District 12—including many hours of trial testimony subject to credibility determinations. That evidence, the District Court plausibly found, itself satisfied the plaintiffs' burden of debunking North Carolina's politics defense. Pp. 317–322.

159 F. Supp. 3d 600, affirmed.

KAGAN, J., delivered the opinion of the Court, in which THOMAS, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. THOMAS, J., filed a concurring opinion, *post*, p. 327. ALITO, J., filed an opinion concurring in the judgment in part and dissenting in part, in which ROBERTS, C. J., and KENNEDY, J., joined, *post*, p. 327. GORSUCH, J., took no part in the consideration or decision of the case.

Paul D. Clement argued the cause for appellants. With him on the briefs were *Erin E. Murphy*, *Thomas A. Farr*, *Michael D. McKnight*, and *Alexander McC. Peters*.

Marc E. Elias argued the cause for appellees. With him on the brief were *John M. Devaney*, *Bruce V. Spiva*, *Kevin J. Hamilton*, *Abha Khanna*, *Edwin M. Speas, Jr.*, and *Caroline P. Mackie*.

Nicole A. Saharsky argued the cause for the United States as *amicus curiae* urging affirmance. On the brief were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant Attorney General Gupta*, *Irving L. Gornstein*, *Ilana H. Eisenstein*, and *Tovah R. Calderon*.*

**John J. Park, Jr.*, *Kimberly S. Hermann*, and *Roger Clegg* filed a brief for the Southeastern Legal Foundation et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Brennan Center for Justice at NYU School of Law by *Debo P. Adegbile*, *Michael D. Gottesman*, *Ari J. Savitzky*, *Wendy R. Weiser*, *Michael C. Li*, and *Thomas P. Wolf*; for the Campaign Legal Center et al. by *Paul M. Smith*, *Jessica Ring Amunson*, *Mark P. Gaber*, *J. Gerald Hebert*, *Aderson B. Francois*, *Lloyd Leonard*, and *Deborah N. Archer*; for the Constitutional Accountability Center by *Elizabeth B. Wydra*, *Brianne J. Gorod*, and *David H. Gans*; and for the Lawyers' Committee for Civil Rights Under Law by *Bradley S. Phillips*, *John F. Muller*, *Kristen Clarke*, *Jon M. Greenbaum*, and *Ezra D. Rosenberg*.

JUSTICE KAGAN delivered the opinion of the Court.

The Constitution entrusts States with the job of designing congressional districts. But it also imposes an important constraint: A State may not use race as the predominant factor in drawing district lines unless it has a compelling reason. In this case, a three-judge District Court ruled that North Carolina officials violated that bar when they created two districts whose voting-age populations were majority black. Applying a deferential standard of review to the factual findings underlying that decision, we affirm.

I

A

The Equal Protection Clause of the Fourteenth Amendment limits racial gerrymanders in legislative districting plans. It prevents a State, in the absence of "sufficient justification," from "separating its citizens into different voting districts on the basis of race." *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U. S. 178, 187 (2017) (internal quotation marks and alteration omitted). When a voter sues state officials for drawing such race-based lines, our decisions call for a two-step analysis.

First, the plaintiff must prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller* v. *Johnson*, 515 U. S. 900, 916 (1995). That entails demonstrating that the legislature "subordinated" other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to "racial considerations." *Ibid.* The plaintiff may make the required showing through "direct evidence" of legislative intent, "circumstantial evidence of a district's shape and demographics," or a mix of both. *Ibid.*[1]

[1] A plaintiff succeeds at this stage even if the evidence reveals that a legislature elevated race to the predominant criterion in order to advance other goals, including political ones. See *Bush* v. *Vera*, 517 U. S. 952, 968–

Second, if racial considerations predominated over others, the design of the district must withstand strict scrutiny. See *Bethune-Hill*, 580 U. S., at 193. The burden thus shifts to the State to prove that its race-based sorting of voters serves a "compelling interest" and is "narrowly tailored" to that end. *Ibid.* This Court has long assumed that one compelling interest is complying with operative provisions of the Voting Rights Act of 1965 (VRA or Act), 79 Stat. 437, as amended, 52 U. S. C. § 10301 *et seq.* See, *e. g.*, *Shaw* v. *Hunt*, 517 U. S. 899, 915 (1996) (*Shaw II*).

Two provisions of the VRA—§ 2 and § 5—are involved in this case. §§ 10301, 10304. Section 2 prohibits any "standard, practice, or procedure" that "results in a denial or abridgement of the right . . . to vote on account of race." § 10301(a). We have construed that ban to extend to "vote dilution"—brought about, most relevantly here, by the "dispersal of [a group's members] into districts in which they constitute an ineffective minority of voters." *Thornburg* v. *Gingles*, 478 U. S. 30, 46, n. 11 (1986). Section 5, at the time of the districting in dispute, worked through a different mechanism. Before this Court invalidated its coverage formula, see *Shelby County* v. *Holder*, 570 U. S. 529 (2013), that section required certain jurisdictions (including various North Carolina counties) to pre-clear voting changes with the Department of Justice, so as to forestall "retrogression" in the ability of racial minorities to elect their preferred candidates, *Beer* v. *United States*, 425 U. S. 130, 141 (1976).

When a State invokes the VRA to justify race-based districting, it must show (to meet the "narrow tailoring" requirement) that it had "a strong basis in evidence" for concluding that the statute required its action. *Alabama*

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970 (1996) (plurality opinion) (holding that race predominated when a legislature deliberately "spread[ ] the Black population" among several districts in an effort to "protect[ ] Democratic incumbents"); *Miller* v. *Johnson*, 515 U. S. 900, 914 (1995) (stating that the "use of race as a proxy" for "political interest[s]" is "prohibit[ed]").

Legislative Black Caucus v. *Alabama*, 575 U. S. 254, 278 (2015). Or said otherwise, the State must establish that it had "good reasons" to think that it would transgress the Act if it did *not* draw race-based district lines. *Ibid.* That "strong basis" (or "good reasons") standard gives States "breathing room" to adopt reasonable compliance measures that may prove, in perfect hindsight, not to have been needed. *Bethune-Hill*, 580 U. S., at 195–196.

A district court's assessment of a districting plan, in accordance with the two-step inquiry just described, warrants significant deference on appeal to this Court.[2] We of course retain full power to correct a court's errors of law, at either stage of the analysis. But the court's findings of fact—most notably, as to whether racial considerations predominated in drawing district lines—are subject to review only for clear error. See Fed. Rule Civ. Proc. 52(a)(6); *Easley* v. *Cromartie*, 532 U. S. 234, 242 (2001) (*Cromartie II*); *id.*, at 259 (THOMAS, J., dissenting). Under that standard, we may not reverse just because we "would have decided the [matter] differently." *Anderson* v. *Bessemer City*, 470 U. S. 564, 573 (1985). A finding that is "plausible" in light of the full record—even if another is equally or more so—must govern. *Id.*, at 574.

B

This case concerns North Carolina's most recent redrawing of two congressional districts, both of which have long included substantial populations of black voters. In its current incarnation, District 1 is anchored in the northeastern part of the State, with appendages stretching both south and west (the latter into Durham). District 12 begins in the south-central part of the State (where it takes in a large part of Charlotte) and then travels northeast, zig-zagging much

[2] Challenges to the constitutionality of congressional districts are heard by three-judge district courts, with a right of direct appeal to this Court. See 28 U. S. C. §§ 2284(a), 1253.

of the way to the State's northern border. (Maps showing the districts are included in an appendix to this opinion.) Both have quite the history before this Court.

We first encountered the two districts, in their 1992 versions, in *Shaw* v. *Reno*, 509 U. S. 630 (1993). There, we held that voters stated an equal protection claim by alleging that Districts 1 and 12 were unwarranted racial gerrymanders. See *id.*, at 642, 649. After a remand to the District Court, the case arrived back at our door. See *Shaw II*, 517 U. S. 899. That time, we dismissed the challenge to District 1 for lack of standing, but struck down District 12. The design of that "serpentine" district, we held, was nothing if not race-centric, and could not be justified as a reasonable attempt to comply with the VRA. *Id.*, at 906; see *id.*, at 911–918.

The next year, the State responded with a new districting plan, including a new District 12—and residents of that district brought another lawsuit alleging an impermissible racial gerrymander. A District Court sustained the claim twice, but both times this Court reversed. See *Hunt* v. *Cromartie*, 526 U. S. 541 (1999) (*Cromartie I*); *Cromartie II*, 532 U. S. 234. Racial considerations, we held, did not predominate in designing the revised District 12. Rather, that district was the result of a *political* gerrymander—an effort to engineer, mostly "without regard to race," a safe Democratic seat. *Id.*, at 245.

The State redrew its congressional districts again in 2001, to account for population changes revealed in the prior year's census. Under the 2001 map, which went unchallenged in court, neither District 1 nor District 12 had a black voting-age population (called a "BVAP") that was a majority of the whole: The former had a BVAP of around 48%, the latter a BVAP of around 43%. See App. 312, 503. Nonetheless, in five successive general elections conducted in those reconfigured districts, all the candidates preferred by most African-American voters won their contests—and by some handy margins. In District 1, black voters' candidates of

choice garnered as much as 70% of the total vote, and never less than 59%. See 5 Record 636, 638, 641, 645, 647 (Pls. Exh. 112). And in District 12, those candidates won with 72% of the vote at the high end and 64% at the low. See *id.*, at 637, 640, 643, 646, 650.

Another census, in 2010, necessitated yet another congressional map—(finally) the one at issue in this case. State Senator Robert Rucho and State Representative David Lewis, both Republicans, chaired the two committees jointly responsible for preparing the revamped plan. They hired Dr. Thomas Hofeller, a veteran political mapmaker, to assist them in redrawing district lines. Several hearings, drafts, and revisions later, both chambers of the State's General Assembly adopted the scheme the three men proposed.

The new map (among other things) significantly altered both District 1 and District 12. The 2010 census had revealed District 1 to be substantially underpopulated: To comply with the Constitution's one-person-one-vote principle, the State needed to place almost 100,000 new people within the district's boundaries. See App. 2690; *Evenwel* v. *Abbott*, 578 U. S. 54, 59 (2016) (explaining that "[s]tates must draw congressional districts with populations as close to perfect equality as possible"). Rucho, Lewis, and Hofeller chose to take most of those people from heavily black areas of Durham, requiring a finger-like extension of the district's western line. See Appendix, *infra*. With that addition, District 1's BVAP rose from 48.6% to 52.7%. See App. 312–313. District 12, for its part, had no need for significant total-population changes: It was overpopulated by fewer than 3,000 people out of over 730,000. See *id.*, at 1150. Still, Rucho, Lewis, and Hofeller decided to reconfigure the district, further narrowing its already snakelike body while adding areas at either end—most relevantly here, in Guilford County. See Appendix, *infra*; App. 1164. Those changes appreciably shifted the racial composition of District 12: As the district gained some 35,000 African-Americans of voting

age and lost some 50,000 whites of that age, its BVAP increased from 43.8% to 50.7%. See 2 Record 349 (Fourth Affidavit of Dan Frey, Exh. 5); *id.*, at 416 (Exh. 11).

Registered voters in the two districts (David Harris and Christine Bowser, here called "the plaintiffs") brought this suit against North Carolina officials (collectively, "the State" or "North Carolina"), complaining of impermissible racial gerrymanders. After a bench trial, a three-judge District Court held both districts unconstitutional. All the judges agreed that racial considerations predominated in the design of District 1. See *Harris* v. *McCrory*, 159 F. Supp. 3d 600, 611 (MDNC 2016). And in then applying strict scrutiny, all rejected the State's argument that it had a "strong basis" for thinking that the VRA compelled such a race-based drawing of District 1's lines. *Id.*, at 623. As for District 12, a majority of the panel held that "race predominated" over all other factors, including partisanship. *Id.*, at 622. And the court explained that the State had failed to put forward any reason, compelling or otherwise, for its attention to race in designing that district. See *ibid.* Judge Osteen dissented from the conclusion that race, rather than politics, drove District 12's lines—yet still characterized the majority's view as "[e]minently reasonable." *Id.*, at 640.

The State filed a notice of appeal, and we noted probable jurisdiction. *McCrory* v. *Harris*, 579 U. S. 927 (2016).

II

We address at the outset North Carolina's contention that a victory it won in a very similar state-court lawsuit should dictate (or at least influence) our disposition of this case. As the State explains, the North Carolina NAACP and several other civil rights groups challenged Districts 1 and 12 in state court immediately after their enactment, charging that they were unlawful racial gerrymanders. See Brief for Appellants 19–20. By the time the plaintiffs before us filed this action, the state trial court, in *Dickson* v. *Rucho*, had re-

jected those claims—finding that in District 1 the VRA justified the General Assembly's use of race and that in District 12 race was not a factor at all. See App. 1969. The North Carolina Supreme Court then affirmed that decision by a 4–3 vote, applying the state-court equivalent of clear error review. See *Dickson* v. *Rucho*, 368 N. C. 481, 500, 781 S. E. 2d 404, 419 (2015), modified on denial of reh'g, 368 N. C. 673, 789 S. E. 2d 436 (2016), cert. pending, No. 16–24. In this Court, North Carolina makes two related arguments based on the *Dickson* litigation: first, that the state trial court's judgment should have barred this case altogether, under familiar principles of claim and issue preclusion; and second, that the state court's conclusions should cause us to conduct a "searching review" of the decision below, rather than deferring (as usual) to its factual findings. Reply Brief 6.

The State's preclusion theory rests on an assertion about how the plaintiffs in the two cases are affiliated. As the State acknowledges, one person's lawsuit generally does not bar another's, no matter how similar they are in substance. See *Taylor* v. *Sturgell*, 553 U. S. 880, 892–893 (2008) (noting the "deep-rooted historic tradition that everyone should have his own day in court"). But when plaintiffs in two cases have a special relationship, a judgment against one can indeed bind both. See *id.*, at 893–895 (describing six categories of qualifying relationships). The State contends that Harris and Bowser, the plaintiffs here, are members of organizations that were plaintiffs in *Dickson*. And according to North Carolina, that connection prevents the pair from raising anew the questions that the state court previously resolved against those groups. See Brief for Appellants 20–21.

But North Carolina never satisfied the District Court that the alleged affiliation really existed. When the State argued that its preclusion theory entitled it to summary judgment, Harris and Bowser responded that they were not members of any of the organizations that had brought the

Dickson suit. See 3 Record 1577–1582 (Defs. Motion for Summary Judgment); 4 Record 101–106 (Pls. Opposition to Motion for Summary Judgment). The parties' dueling contentions turned on intricate issues about those groups' membership policies (*e. g.*, could Harris's payment of dues to the national NAACP, or Bowser's financial contribution to the Mecklenburg County NAACP, have made either a member of the state branch?). Because of those unresolved "factual disputes," the District Court denied North Carolina's motion for summary judgment. 4 Record 238 (July 29, 2014 Order). And nothing in the subsequent trial supported the State's assertion about Harris's and Bowser's organizational ties: Indeed, the State chose not to present any further evidence relating to the membership issue. Based on the resulting record, the District Court summarily rejected the State's claim that Harris and Bowser were something other than independent plaintiffs. See 159 F. Supp. 3d, at 609.

That conclusion defeats North Carolina's attempt to argue for claim or issue preclusion here. We have no basis for assessing the factual assertions underlying the State's argument any differently than the District Court did. Nothing in the State's evidence clearly rebuts Harris's and Bowser's testimony that they never joined any of the *Dickson* groups. We need not decide whether the alleged memberships would have supported preclusion if they had been proved. It is enough that the District Court reasonably thought they had not.

The State's back-up argument about our standard of review also falls short. The rule that we review a trial court's factual findings for clear error contains no exception for findings that diverge from those made in another court. See Fed. Rule Civ. Proc. 52(a)(6) ("Findings of fact . . . must not be set aside unless clearly erroneous"); see also *Hernandez* v. *New York*, 500 U. S. 352, 369 (1991) (plurality opinion) (applying the same standard to a state court's findings). Whatever findings are under review receive the benefit of

deference, without regard to whether a court in a separate suit has seen the matter differently. So here, we must ask not which court considering Districts 1 and 12 had the better view of the facts, but simply whether the court below's view is clearly wrong. That does not mean the state court's decision is wholly irrelevant: It is common sense that, all else equal, a finding is more likely to be plainly wrong if some judges disagree with it. Cf. *Glossip* v. *Gross*, 576 U. S. 863, 882 (2015) (noting that we are even less likely to disturb a factual determination when "multiple trial courts have reached the same finding"). But the very premise of clear error review is that there are often "two permissible"—because two "plausible"—"views of the evidence." *Anderson*, 470 U. S., at 574; see *supra*, at 293. Even assuming the state court's findings capture one such view, the District Court's assessment may yet represent another. And the permissibility of the District Court's account is the only question before us.

III

With that out of the way, we turn to the merits of this case, beginning (appropriately enough) with District 1. As noted above, the court below found that race furnished the predominant rationale for that district's redesign. See *supra*, at 296. And it held that the State's interest in complying with the VRA could not justify that consideration of race. See *ibid.* We uphold both conclusions.

A

Uncontested evidence in the record shows that the State's mapmakers, in considering District 1, purposefully established a racial target: African-Americans should make up no less than a majority of the voting-age population. See 159 F. Supp. 3d, at 611–614. Senator Rucho and Representative Lewis were not coy in expressing that goal. They repeatedly told their colleagues that District 1 had to be majority-minority, so as to comply with the VRA. During a Senate

debate, for example, Rucho explained that District 1 "must include a sufficient number of African-Americans" to make it "a majority black district." App. 689–690. Similarly, Lewis informed the House and Senate redistricting committees that the district must have "a majority black voting age population." *Id.*, at 610. And that objective was communicated in no uncertain terms to the legislators' consultant. Dr. Hofeller testified multiple times at trial that Rucho and Lewis instructed him "to draw [District 1] with a [BVAP] in excess of 50 percent." 159 F. Supp. 3d, at 613; see, *e. g.*, *ibid.* ("Once again, my instructions [were] that the district had to be drawn at above 50 percent").

Hofeller followed those directions to the letter, such that the 50%-plus racial target "had a direct and significant impact" on District 1's configuration. *Alabama*, 575 U. S., at 274. In particular, Hofeller moved the district's borders to encompass the heavily black parts of Durham (and only those parts), thus taking in tens of thousands of additional African-American voters. That change and similar ones, made (in his words) to ensure that the district's racial composition would "add[ ] up correctly," deviated from the districting practices he otherwise would have followed. App. 2802. Hofeller candidly admitted that point: For example, he testified, he sometimes could not respect county or precinct lines as he wished because "the more important thing" was to create a majority-minority district. *Id.*, at 2807; see *id.*, at 2809. The result is a district with stark racial borders: Within the same counties, the portions that fall inside District 1 have black populations two to three times larger than the portions placed in neighboring districts. See Brief for United States as *Amicus Curiae* 19; cf. *Alabama*, 575 U. S., at 273–274 (relying on similar evidence to find racial predominance).

Faced with this body of evidence—showing an announced racial target that subordinated other districting criteria and produced boundaries amplifying divisions between blacks

and whites—the District Court did not clearly err in finding that race predominated in drawing District 1. Indeed, as all three judges recognized, the court could hardly have concluded anything but. See 159 F. Supp. 3d, at 611 (calling District 1 a "textbook example" of race-based districting).[3]

B

The more substantial question is whether District 1 can survive the strict scrutiny applied to racial gerrymanders. As noted earlier, we have long assumed that complying with the VRA is a compelling interest. See *supra*, at 292. And we have held that race-based districting is narrowly tailored to that objective if a State had "good reasons" for thinking that the Act demanded such steps. See *supra*, at 293. North Carolina argues that District 1 passes muster under that standard: The General Assembly (so says the State) had "good reasons to believe it needed to draw [District 1] as a majority-minority district to avoid Section 2 liability" for vote dilution. Brief for Appellants 52. We now turn to that defense.

This Court identified, in *Thornburg* v. *Gingles*, three threshold conditions for proving vote dilution under § 2 of the VRA. See 478 U. S., at 50–51. First, a "minority

[3] The State's argument to the contrary rests on a legal proposition that was foreclosed almost as soon as it was raised in this Court. According to the State, racial considerations cannot predominate in drawing district lines unless there is an "actual conflict" between those lines and "traditional districting principles." Brief for Appellants 45. But we rejected that view earlier this Term, holding that when (as here) race furnished "the overriding reason for choosing one map over others," a further showing of "inconsistency between the enacted plan and traditional redistricting criteria" is unnecessary to a finding of racial predominance. *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U. S. 178, 190 (2017). And in any event, the evidence recounted in the text indicates that District 1's boundaries *did* conflict with traditional districting principles—for example, by splitting numerous counties and precincts. See *supra*, at 300. So we would uphold the District Court's finding of racial predominance even under the (incorrect) legal standard the State proposes.

group" must be "sufficiently large and geographically compact to constitute a majority" in some reasonably configured legislative district. *Id.*, at 50. Second, the minority group must be "politically cohesive." *Id.*, at 51. And third, a district's white majority must "vote[ ] sufficiently as a bloc" to usually "defeat the minority's preferred candidate." *Ibid.* Those three showings, we have explained, are needed to establish that "the minority [group] has the potential to elect a representative of its own choice" in a possible district, but that racially polarized voting prevents it from doing so in the district as actually drawn because it is "submerg[ed] in a larger white voting population." *Growe* v. *Emison*, 507 U. S. 25, 40 (1993). If a State has good reason to think that all the "*Gingles* preconditions" are met, then so too it has good reason to believe that § 2 requires drawing a majority-minority district. See *Bush* v. *Vera*, 517 U. S. 952, 978 (1996) (plurality opinion). But if not, then not.

Here, electoral history provided no evidence that a § 2 plaintiff could demonstrate the third *Gingles* prerequisite—effective white bloc-voting.[4] For most of the twenty years prior to the new plan's adoption, African-Americans had made up less than a majority of District 1's voters; the district's BVAP usually hovered between 46% and 48%. See 159 F. Supp. 3d, at 606; App. 312. Yet throughout those two decades, as the District Court noted, District 1 was "an extraordinarily safe district for African-American preferred candidates." 159 F. Supp. 3d, at 626. In the *closest* election during that period, African-Americans' candidate of choice

[4] In the District Court, the parties also presented arguments relating to the first *Gingles* prerequisite, contesting whether the African-American community in the region was sufficiently large and compact to form a majority of a reasonably shaped district. The court chose not to decide that fact-intensive question. And aside from the State's unelaborated assertion that "[t]here is no question that the first factor was satisfied," Brief for Appellants 52, the parties have not briefed or argued the issue before us. We therefore have no occasion to address it.

received 59% of the total vote; in other years, the share of the vote garnered by those candidates rose to as much as 70%. See *supra*, at 294–295. Those victories (indeed, landslides) occurred because the district's white population did *not* "vote[ ] sufficiently as a bloc" to thwart black voters' preference, *Gingles*, 478 U. S., at 51; rather, a meaningful number of white voters joined a politically cohesive black community to elect that group's favored candidate. In the lingo of voting law, District 1 functioned, election year in and election year out, as a "crossover" district, in which members of the majority help a "large enough" minority to elect its candidate of choice. *Bartlett* v. *Strickland*, 556 U. S. 1, 13 (2009) (plurality opinion). When voters act in that way, "[i]t is difficult to see how the majority-bloc-voting requirement could be met"—and hence how § 2 liability could be established. *Id.*, at 16. So experience gave the State no reason to think that the VRA required it to ramp up District 1's BVAP.

The State counters that, in this context, past performance is no guarantee of future results. See Brief for Appellants 57–58; Reply Brief 19–20. Recall here that the State had to redraw its whole congressional map following the 2010 census. See *supra*, at 295. And in particular, the State had to add nearly 100,000 new people to District 1 to meet the one-person-one-vote standard. See *ibid.* That meant about 13% of the voters in the new district would never have voted there before. See App. 2690; Reply Brief 20. So, North Carolina contends, the question facing the state mapmakers was not whether the *then-existing* District 1 violated § 2. Rather, the question was whether the *future* District 1 would do so if drawn without regard to race. And that issue, the State claims, could not be resolved by "focusing myopically on past elections." *Id.*, at 19.

But that reasoning, taken alone, cannot justify North Carolina's race-based redesign of District 1. True enough, a legislature undertaking a redistricting must assess whether

the new districts it contemplates (not the old ones it sheds) conform to the VRA's requirements. And true too, an inescapable influx of additional voters into a district may suggest the possibility that its former track record of compliance can continue only if the legislature intentionally adjusts its racial composition. Still, North Carolina too far downplays the significance of a longtime pattern of white crossover voting in the area that would form the core of the redrawn District 1. See *Gingles*, 478 U. S., at 57 (noting that longtime voting patterns are highly probative of racial polarization). And even more important, North Carolina can point to no meaningful legislative inquiry into what it now rightly identifies as the key issue: whether a new, enlarged District 1, created without a focus on race but however else the State would choose, could lead to § 2 liability. The prospect of a significant population increase in a district only raises—it does not answer—the question whether § 2 requires deliberate measures to augment the district's BVAP. (Indeed, such population growth could cut in either direction, depending on who comes into the district.) To have a strong basis in evidence to conclude that § 2 demands such race-based steps, the State must carefully evaluate whether a plaintiff could establish the *Gingles* preconditions—including effective white bloc-voting—in a new district created without those measures. We see nothing in the legislative record that fits that description.[5]

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[5] North Carolina calls our attention to two expert reports on voting patterns throughout the State, but neither casts light on the relevant issue. The first (by Dr. Thomas Brunell) showed that some elections in many of the State's counties exhibited "statistically significant" racially polarized voting. App. 1001. The second (by Dr. Ray Block) found that in various elections across the State, white voters were "noticeably" less likely than black voters to support black candidates. *Id.*, at 959. From those far-flung data points—themselves based only on past elections—the experts opined (to no one's great surprise) that in North Carolina, as in most States, there are discernible, non-random relationships between race and

And that absence is no accident: Rucho and Lewis proceeded under a wholly different theory—arising not from *Gingles* but from *Bartlett* v. *Strickland*—of what §2 demanded in drawing District 1. *Strickland* involved a geographic area in which African-Americans could not form a majority of a reasonably compact district. See 556 U. S., at 8 (plurality opinion). The African-American community, however, was sizable enough to enable the formation of a crossover district, in which a substantial bloc of black voters, if receiving help from some white ones, could elect the candidates of their choice. See *supra*, at 304. A plurality of this Court, invoking the first *Gingles* precondition, held that §2 did not require creating that district: When a minority group is not sufficiently large to make up a majority in a reasonably shaped district, §2 simply does not apply. See 556 U. S., at 18–20. Over and over in the legislative record, Rucho and Lewis cited *Strickland* as mandating a 50%-plus BVAP in District 1. See App. 355–356, 363–364, 472–474, 609–610, 619, 1044. They apparently reasoned that if, as *Strickland* held, §2 does not *require* crossover districts (for groups insufficiently large under *Gingles*), then §2 also cannot be *satisfied by* crossover districts (for groups in fact meeting *Gingles*' size condition). In effect, they concluded, whenever a legislature *can* draw a majority-minority district, it *must* do so—even if a crossover district would also allow the minority group to elect its favored candidates. See 1 Tr. 21–22 (counsel's explanation that "the [S]tate interpreted" *Strickland* to say that, in order to protect African-Americans' electoral

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voting. But as the District Court found, see *Harris* v. *McCrory*, 159 F. Supp. 3d 600, 624 (MDNC 2016), that generalized conclusion fails to meaningfully (or indeed, at all) address the relevant local question: whether, in a new version of District 1 created without a focus on race, black voters would encounter "sufficient[ ]" white bloc-voting to "cancel [their] ability to elect representatives of their choice," *Gingles*, 478 U. S., at 56. And so the reports do not answer whether the legislature needed to boost District 1's BVAP to avoid potential §2 liability.

strength and thus avoid §2 liability, the BVAP in District 1 "need[ed] to be above 50 percent").

That idea, though, is at war with our §2 jurisprudence—*Strickland* included. Under the State's view, the third *Gingles* condition is no condition at all, because even in the absence of effective white bloc-voting, a §2 claim could succeed in a district (like the old District 1) with an under-50% BVAP. But this Court has made clear that unless *each* of the three *Gingles* prerequisites is established, "there neither has been a wrong nor can be a remedy." *Growe*, 507 U. S., at 41. And *Strickland*, far from supporting North Carolina's view, underscored the necessity of demonstrating effective white bloc-voting to prevail in a §2 vote-dilution suit. The plurality explained that "[i]n areas with substantial crossover voting," §2 plaintiffs would not "be able to establish the third *Gingles* precondition" and so "majority-minority districts would not be required." 556 U. S., at 24; see also *ibid.* (noting that States can "defend against alleged §2 violations by pointing to crossover voting patterns and to effective crossover districts"). Thus, North Carolina's belief that it was compelled to redraw District 1 (a successful crossover district) as a majority-minority district rested not on a "strong basis in evidence," but instead on a pure error of law. *Alabama*, 575 U. S., at 278.

In sum: Although States enjoy leeway to take race-based actions reasonably judged necessary under a proper interpretation of the VRA, that latitude cannot rescue District 1. We by no means "insist that a state legislature, when redistricting, determine *precisely* what percent minority population [§2 of the VRA] demands." *Ibid.* But neither will we approve a racial gerrymander whose necessity is supported by no evidence and whose *raison d'être* is a legal mistake. Accordingly, we uphold the District Court's conclusion that North Carolina's use of race as the predominant factor in designing District 1 does not withstand strict scrutiny.

IV

We now look west to District 12, making its fifth(!) appearance before this Court. This time, the district's legality turns, and turns solely, on which of two possible reasons predominantly explains its most recent reconfiguration. The plaintiffs contended at trial that the General Assembly chose voters for District 12, as for District 1, because of their race; more particularly, they urged that the Assembly intentionally increased District 12's BVAP in the name of ensuring preclearance under the VRA's § 5. But North Carolina declined to mount any defense (similar to the one we have just considered for District 1) that § 5's requirements in fact justified race-based changes to District 12—perhaps because § 5 could not reasonably be understood to have done so, see n. 10, *infra*. Instead, the State altogether denied that racial considerations accounted for (or, indeed, played the slightest role in) District 12's redesign. According to the State's version of events, Senator Rucho, Representative Lewis, and Dr. Hofeller moved voters in and out of the district as part of a "strictly" political gerrymander, without regard to race. 6 Record 1011. The mapmakers drew their lines, in other words, to "pack" District 12 with Democrats, not African-Americans. After hearing evidence supporting both parties' accounts, the District Court accepted the plaintiffs'.[6]

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[6] JUSTICE ALITO charges us with "ignor[ing]" the State's political-gerrymander defense, making our analysis "like Hamlet without the prince." *Post*, at 345–346 (opinion concurring in judgment in part and dissenting in part) (hereinafter dissent); see *post*, at 345, 359. But we simply take the State's account for what it is: one side of a thoroughly two-sided case (and, as we will discuss, the side the District Court rejected, primarily on factual grounds). By contrast, the dissent consistently treats the State's version of events (what it calls "the legislature's political strategy and the relationship between that strategy and [District 12's] racial composition," *post*, at 345) as if it were a simple "fact of the matter"—the premise of, rather than a contested claim in, this case. See *post*, at 338–340, 342, 345, 351, 352–354, 358–359. The dissent's narrative thus tracks, top-to-bottom and point-for-point, the testimony of Dr. Hofel-

Getting to the bottom of a dispute like this one poses special challenges for a trial court. In the more usual case alleging a racial gerrymander—where no one has raised a partisanship defense—the court can make real headway by exploring the challenged district's conformity to traditional districting principles, such as compactness and respect for county lines. In *Shaw II*, for example, this Court emphasized the "highly irregular" shape of then-District 12 in concluding that race predominated in its design. 517 U. S., at 905 (internal quotation marks omitted). But such evidence loses much of its value when the State asserts partisanship as a defense, because a bizarre shape—as of the new District 12—can arise from a "political motivation" as well as a racial one. *Cromartie I*, 526 U. S., at 547, n. 3. And crucially, political and racial reasons are capable of yielding similar oddities in a district's boundaries. That is because, of course, "racial identification is highly correlated with political affiliation." *Cromartie II*, 532 U. S., at 243. As a result of those redistricting realities, a trial court has a formidable task: It must make "a sensitive inquiry" into all "circumstantial and direct evidence of intent" to assess whether the plaintiffs have managed to disentangle race from politics and prove that the former drove a district's lines. *Cromartie I*, 526 U. S., at 546 (internal quotation marks omitted).[7]

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ler, the State's star witness at trial—so much so that the dissent could just have block-quoted that portion of the transcript and saved itself a fair bit of trouble. Compare *post*, at 338–346, with App. 2671–2755. Imagine (to update the dissent's theatrical reference) *Inherit the Wind* retold solely from the perspective of William Jennings Bryan, with nary a thought given to the competing viewpoint of Clarence Darrow.

[7] As earlier noted, that inquiry is satisfied when legislators have "place[d] a significant number of voters within or without" a district predominantly because of their race, regardless of their ultimate objective in taking that step. See *supra*, at 291, and n. 1. So, for example, if legislators use race as their predominant districting criterion with the end goal of advancing their partisan interests—perhaps thinking that a proposed dis-

Our job is different—and generally easier. As described earlier, we review a district court's finding as to racial predominance only for clear error, except when the court made a legal mistake. See *supra*, at 293. Under that standard of review, we affirm the court's finding so long as it is "plausible"; we reverse only when "left with the definite and firm conviction that a mistake has been committed." *Anderson*, 470 U. S., at 573–574 (internal quotation marks omitted); see *supra*, at 293. And in deciding which side of that line to come down on, we give singular deference to a trial court's judgments about the credibility of witnesses. See Fed. Rule Civ. Proc. 52(a)(6). That is proper, we have explained, because the various cues that "bear so heavily on the listener's understanding of and belief in what is said" are lost on an appellate court later sifting through a paper record. *Anderson*, 470 U. S., at 575.[8]

In light of those principles, we uphold the District Court's finding of racial predominance respecting District 12. The evidence offered at trial, including live witness testimony subject to credibility determinations, adequately supports

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trict is more "sellable" as a race-based VRA compliance measure than as a political gerrymander and will accomplish much the same thing—their action still triggers strict scrutiny. See *Vera*, 517 U. S., at 968–970 (plurality opinion). In other words, the sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics. See *Miller*, 515 U. S., at 914.

[8] Undeterred by these settled principles, the dissent undertakes to refind the facts of this case at every turn. See *post*, at 337–358. Indeed, the dissent repeatedly flips the appropriate standard of review—arguing, for example, that the District Court's is not "the only plausible interpretation" of one piece of contested evidence and that the State offered an "entirely natural" view of another. *Post*, at 350, 357; see also *post*, at 345, 352, 358–359. Underlying that approach to the District Court's factfinding is an elemental error: The dissent mistakes the rule that a legislature's good faith should be presumed "until a claimant makes a showing sufficient to support th[e] allegation" of "race-based decisionmaking," *Miller*, 515 U. S., at 915, for a kind of super-charged, pro-State presumption on appeal, trumping clear error review. See *post*, at 337–338, n. 7.

the conclusion that race, not politics, accounted for the district's reconfiguration. And no error of law infected that judgment: Contrary to North Carolina's view, the District Court had no call to dismiss this challenge just because the plaintiffs did not proffer an alternative design for District 12 as circumstantial evidence of the legislature's intent.

A

Begin with some facts and figures, showing how the redistricting of District 12 affected its racial composition. As explained above, District 12 (unlike District 1) was approximately the right size as it was: North Carolina did not—indeed, could not—much change its total population. See *supra*, at 295. But by further slimming the district and adding a couple of knobs to its snakelike body (including in Guilford County), the General Assembly incorporated tens of thousands of new voters and pushed out tens of thousands of old ones. And those changes followed racial lines: To be specific, the new District 12 had 35,000 more African-Americans of voting age and 50,000 fewer whites of that age. (The difference was made up of voters from other racial categories.) See *supra*, at 295–296. Those voter exchanges produced a sizable jump in the district's BVAP, from 43.8% to 50.7%. See *ibid.* The Assembly thus turned District 12 (as it did District 1, see *supra*, at 299–300) into a majority-minority district.

As the plaintiffs pointed out at trial, Rucho and Lewis had publicly stated that racial considerations lay behind District 12's augmented BVAP. In a release issued along with their draft districting plan, the two legislators ascribed that change to the need to achieve preclearance of the plan under §5 of the VRA. See App. 358. At that time, §5 covered Guilford County and thus prohibited any "retrogression in the [electoral] position of racial minorities" there. *Beer*, 425 U. S., at 141; see 31 Fed. Reg. 5081 (1966). And part of Guilford County lay within District 12, which meant that the Department of Justice would closely scrutinize that district's

new lines. In light of those facts, Rucho and Lewis wrote: "Because of the presence of Guilford County in the Twelfth District, we have drawn our proposed Twelfth District at a [BVAP] level that is above the percentage of [BVAP] found in the current Twelfth District." App. 358. According to the two legislators, that race-based "measure w[ould] ensure preclearance of the plan." *Ibid.* Thus, the District Court found, Rucho's and Lewis's own account "evince[d] intentionality" as to District 12's racial composition: *Because of* the VRA, they increased the number of African-Americans. 159 F. Supp. 3d, at 617.

Hofeller confirmed that intent in both deposition testimony and an expert report. Before the redistricting, Hofeller testified, some black residents of Guilford County fell within District 12 while others fell within neighboring District 13. The legislators, he continued, "decided to reunite the black community in Guilford County into the Twelfth." App. 558; see *id.*, at 530–531. Why? Hofeller responded, in language the District Court emphasized: "in order to be cautious and draw a plan that would pass muster under the Voting Rights Act." *Id.*, at 558; see 159 F. Supp. 3d, at 619. Likewise, Hofeller's expert report highlighted the role of the VRA in altering District 12's lines. "[M]indful that Guilford County was covered" by § 5, Hofeller explained, the legislature "determined that it was prudent to reunify [the county's] African-American community" into District 12. App. 1103. That change caused the district's compactness to decrease (in expert-speak, it "lowered the Reock Score"), but that was a sacrifice well worth making: It would "avoid the possibility of a [VRA] charge" that would "inhibit[ ] preclearance." *Ibid.*

The State's preclearance submission to the Justice Department indicated a similar determination to concentrate black voters in District 12. "One of the concerns of the Redistricting Chairs," North Carolina there noted, had to do with the Justice Department's years-old objection to "a failure by

the State to create a second majority minority district" (that is, in addition to District 1). *Id.*, at 478. The submission then went on to explain that after considering alternatives, the redistricters had designed a version of District 12 that would raise its BVAP to 50.7%. Thus, concluded the State, the new District 12 "increases[ ] the African-American community's ability to elect their candidate of choice." *Id.*, at 479. In the District Court's view, that passage once again indicated that making District 12 majority-minority was no "mere coincidence," but a deliberate attempt to avoid perceived obstacles to preclearance. 159 F. Supp. 3d, at 617.[9]

And still there was more: Perhaps the most dramatic testimony in the trial came when Congressman Mel Watt (who had represented District 12 for some 20 years) recounted a conversation he had with Rucho in 2011 about the district's future make-up. According to Watt, Rucho said that "his leadership had told him that he had to ramp the minority percentage in [District 12] up to over 50 percent to comply with the Voting Rights Law." App. 2369; see *id.*, at 2393. And further, that it would then be Rucho's "job to go and convince the African-American community" that such a racial target "made sense" under the Act. *Ibid.*; see *id.*, at 2369.[10] The District Court credited Watt's testimony about

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[9] The dissent's contrary reading of the preclearance submission—as reporting the redistricters' "deci[sion] *not* to construct District 12 as a majority-minority district," *post*, at 349—is difficult to fathom. The language the dissent cites explains only why Rucho and Lewis rejected one particular way of creating such a district; the submission then relates their alternative (and, of course, successful) approach to attaining an over-50% BVAP. See App. 478–479.

[10] Watt recalled that he laughed in response because the VRA required no such target. See *id.*, at 2369. And he told Rucho that "the African-American community will laugh at you" too. *Ibid.* Watt explained to Rucho: "I'm getting 65 percent of the vote in a 40 percent black district. If you ramp my [BVAP] to over 50 percent, I'll probably get 80 percent of the vote, and[ ] that's not what the Voting Rights Act was designed to do." *Ibid.*

the conversation, citing his courtroom demeanor and "consistent recollection" under "probing cross-examination." 159 F. Supp. 3d, at 617–618.[11] In the court's view, Watt's account was of a piece with all the other evidence—including the redistricters' on-the-nose attainment of a 50% BVAP—indicating that the General Assembly, in the name of VRA compliance, deliberately redrew District 12 as a majority-minority district. See *id.*, at 618.[12]

The State's contrary story—that politics alone drove decisionmaking—came into the trial mostly through Hofeller's testimony. Hofeller explained that Rucho and Lewis instructed him, first and foremost, to make the map as a whole "more favorable to Republican candidates." App. 2682. One agreed-on stratagem in that effort was to pack the historically Democratic District 12 with even more Democratic voters, thus leaving surrounding districts more reliably Republican. See *id.*, at 2682–2683, 2696–2697. To that end, Hofeller recounted, he drew District 12's new boundaries based on political data—specifically, the voting behavior of precincts in the 2008 Presidential election between Barack Obama and John McCain. See *id.*, at 2701–2702. Indeed, he claimed, he displayed only this data, and no racial data,

[11] The court acknowledged that, in the earlier state-court trial involving District 12, Rucho denied making the comments that Watt recalled. See 159 F. Supp. 3d, at 617–618. But the court explained that it could not "assess [the] credibility" of Rucho's contrary account because even though he was listed as a defense witness and present in the courtroom throughout the trial, the State chose not to put him on the witness stand. *Id.*, at 618.

[12] The dissent conjures a different way of explaining Watt's testimony. Perhaps, the dissent suggests, Rucho disclosed a majority-minority target to Watt, but Watt then *changed Rucho's mind*—and perhaps it was just a coincidence (or a mistake?) that Rucho still created a 50.7%-BVAP district. See *post*, at 351. But nothing in the record supports that hypothesis. See *ibid.* (relying exclusively on the State's preclearance submission to back up this story); *supra*, at 312, and n. 9 (correcting the dissent's misreading of that submission). And the State, lacking the dissent's creativity, did not think to present it at trial.

on his computer screen while mapping the district. See *id.*, at 2721. In part of his testimony, Hofeller further stated that the Obama-McCain election data explained (among other things) his incorporation of the black, but not the white, parts of Guilford County then located in District 13. See *id.*, at 2824. Only *after* he drew a politics-based line between those adjacent areas, Hofeller testified, did he "check[ ]" the racial data and "f[ind] out" that the resulting configuration of District 12 "did not have a [§ 5] issue." *Id.*, at 2822.

The District Court, however, disbelieved Hofeller's asserted indifference to the new district's racial composition. The court recalled Hofeller's contrary deposition testimony—his statement (repeated in only slightly different words in his expert report) that Rucho and Lewis "decided" to shift African-American voters into District 12 "in order to" ensure preclearance under § 5. See 159 F. Supp. 3d, at 619–620; App. 558. And the court explained that even at trial, Hofeller had given testimony that undermined his "blame it on politics" claim. Right after asserting that Rucho and Lewis had told him "[not] to use race" in designing District 12, Hofeller added a qualification: "except perhaps with regard to Guilford County." *Id.*, at 2791; see *id.*, at 2790. As the District Court understood, that is the kind of "exception" that goes pretty far toward swallowing the rule. District 12 saw a net increase of more than 25,000 black voters in Guilford County, relative to a net gain of fewer than 35,000 across the district: So the newly added parts of that county played a major role in pushing the district's BVAP over 50%. See *id.*, at 384, 500–502.[13] The Dis-

[13] The dissent charges that this comparison is misleading, but offers no good reason why that is so. See *post*, at 355. It is quite true, as the dissent notes, that another part of District 12 (in Mecklenburg County) experienced a net increase in black voters even larger than the one in Guilford County. See *post*, at 355–356. (The net increases in the two counties thus totaled more than 35,000; they were then partially offset by net decreases in other counties in District 12.) But that is irrelevant to

trict Court came away from Hofeller's self-contradictory testimony unpersuaded that this decisive influx of black voters was an accident. Whether the racial make-up of the county was displayed on his computer screen or just fixed in his head, the court thought, Hofeller's denial of race-based districting "r[ang] hollow." 159 F. Supp. 3d, at 620, n. 8.

Finally, an expert report by Dr. Stephen Ansolabehere lent circumstantial support to the plaintiffs' race-not-politics case. Ansolabehere looked at the six counties overlapping with District 12—essentially the region from which the mapmakers could have drawn the district's population. The question he asked was: Who from those counties actually ended up in District 12? The answer he found was: Only 16% of the region's white registered voters, but 64% of the black ones. See App. 321–322. Ansolabehere next controlled for party registration, but discovered that doing so made essentially no difference: For example, only 18% of the region's white Democrats wound up in District 12, whereas 65% of the black Democrats did. See *id.*, at 332. The upshot was that, regardless of party, a black voter was three to four times more likely than a white voter to cast his ballot within District 12's borders. See *ibid.* Those stark disparities led Ansolabehere to conclude that "race, and not party," was "the dominant factor" in District 12's design. *Id.*, at 337.[14] His report, as the District Court held, thus tended to

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the point made here: Without the numerous black voters added to District 12 in Guilford County—where the evidence most clearly indicates voters were chosen based on race—the district would have fallen well shy of majority-minority status.

[14] Hofeller did not dispute Ansolabehere's figures, but questioned his inference. Those striking patterns, the mapmaker claimed, were nothing more than the result of his own reliance on voting data from the 2008 Presidential election—because that information (*i. e.*, who voted for Obama and who for McCain) tracked race better than it did party registration. See App. 1101, 1111–1114; cf. *Cromartie II*, 532 U. S. 234, 245 (2001) (recognizing that "party registration and party preference do not always correspond"). As we have just recounted, however, the District Court had other reasons to disbelieve Hofeller's testimony that he used solely

confirm the plaintiffs' direct evidence of racial predominance. See 159 F. Supp. 3d, at 620–621.

The District Court's assessment that all this evidence proved racial predominance clears the bar of clear error review. The court emphasized that the districting plan's own architects had repeatedly described the influx of African-Americans into District 12 as a § 5 compliance measure, not a side-effect of political gerrymandering. And those contemporaneous descriptions comported with the court's credibility determinations about the trial testimony—that Watt told the truth when he recounted Rucho's resolve to hit a majority-BVAP target; and conversely that Hofeller skirted the truth (especially as to Guilford County) when he claimed to have followed only race-blind criteria in drawing district lines. We cannot disrespect such credibility judgments. See *Anderson*, 470 U. S., at 575 (A choice to believe "one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence," can "virtually never be clear error"). And more generally, we will not take it upon ourselves to weigh the trial evidence as if we were the first to hear it. See *id.*, at 573 (A "reviewing court oversteps" under Rule 52(a) "if it undertakes to duplicate the role of the lower court"). No doubt other interpretations of that evidence were permissible. Maybe we would have evaluated the testimony differ-

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that electoral data to draw District 12's lines. See *supra*, at 315 and this page. And Ansolabehere contended that even if Hofeller did so, that choice of data could itself suggest an intent to sort voters by race. Voting results from a "single [Presidential] election with a Black candidate," Ansolabehere explained, would be a "problematic and unusual" indicator of future party preference, because of the racial dynamics peculiar to such a match-up. App. 341; see *id.*, at 342–343. That data would, indeed, be much more useful as a reflection of an area's racial composition: "The Obama vote," Ansolabehere found, is "an extremely strong positive indicator of the location of Black registered voters" and, conversely, an "extremely strong negative indicator of the location of White registered voters." *Id.*, at 342; see *id.*, at 2546–2550.

ently had we presided over the trial; or then again, maybe we would not have. Either way—and it is only *this* which matters—we are far from having a "definite and firm conviction" that the District Court made a mistake in concluding from the record before it that racial considerations predominated in District 12's design.

B

The State mounts a final, legal rather than factual, attack on the District Court's finding of racial predominance. When race and politics are competing explanations of a district's lines, argues North Carolina, the party challenging the district must introduce a particular kind of circumstantial evidence: "an alternative [map] that achieves the legislature's political objectives while improving racial balance." Brief for Appellants 31 (emphasis deleted). That is true, the State says, irrespective of what other evidence is in the case—so even if the plaintiff offers powerful direct proof that the legislature adopted the map it did for racial reasons. See Tr. of Oral Arg. 8. Because the plaintiffs here (as all agree) did not present such a counter-map, North Carolina concludes that they cannot prevail. The dissent echoes that argument. See *post*, at 332–337.

We have no doubt that an alternative districting plan, of the kind North Carolina describes, can serve as key evidence in a race-versus-politics dispute. One, often highly persuasive way to disprove a State's contention that politics drove a district's lines is to show that the legislature had the capacity to accomplish all its partisan goals without moving so many members of a minority group into the district. If you were *really* sorting by political behavior instead of skin color (so the argument goes) you would have done—or, at least, could just as well have done—*this*. Such would-have, could-have, and (to round out the set) should-have arguments are a familiar means of undermining a claim that an action was based on a permissible, rather than a prohibited, ground.

See, *e. g.*, *Miller-El* v. *Dretke*, 545 U. S. 231, 249 (2005) ("If that were the [real] explanation for striking [juror] Warren[,] the prosecutors should have struck [juror] Jenkins" too).

But they are hardly the *only* means. Suppose that the plaintiff in a dispute like this one introduced scores of leaked e-mails from state officials instructing their mapmaker to pack as many black voters as possible into a district, or telling him to make sure its BVAP hit 75%. Based on such evidence, a court could find that racial rather than political factors predominated in a district's design, with or without an alternative map. And so too in cases lacking that kind of smoking gun, as long as the evidence offered satisfies the plaintiff's burden of proof. In *Bush* v. *Vera*, for example, this Court upheld a finding of racial predominance based on "substantial direct evidence of the legislature's racial motivations"—including credible testimony from political figures and statements made in a § 5 preclearance submission—plus circumstantial evidence that redistricters had access to racial, but not political, data at the "block-by-block level" needed to explain their "intricate" designs. See 517 U. S., at 960–963 (plurality opinion). Not a single Member of the Court thought that the absence of a counter-map made any difference. Similarly, it does not matter in this case, where the plaintiffs' introduction of mostly direct and some circumstantial evidence—documents issued in the redistricting process, testimony of government officials, expert analysis of demographic patterns—gave the District Court a sufficient basis, sans any map, to resolve the race-or-politics question.

A plaintiff's task, in other words, is simply to persuade the trial court—without any special evidentiary prerequisite—that race (not politics) was the "predominant consideration in deciding to place a significant number of voters within or without a particular district." *Alabama*, 575 U. S., at 260 (internal quotation marks omitted); cf. *Bethune-Hill*, 580 U. S., at 188, 190 (rejecting a similar effort to elevate one form of "persuasive circumstantial evidence" in a dispute re-

specting racial predominance to a "mandatory precondition" or "threshold requirement" of proof). That burden of proof, we have often held, is "demanding." *E. g.*, *Cromartie II*, 532 U. S., at 241. And because that is so, a plaintiff will sometimes need an alternative map, as a practical matter, to make his case. But in no area of our equal protection law have we forced plaintiffs to submit one particular form of proof to prevail. See *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 266–268 (1977) (offering a varied and non-exhaustive list of "subjects of proper inquiry in determining whether racially discriminatory intent existed"). Nor would it make sense to do so here. The Equal Protection Clause prohibits the unjustified drawing of district lines based on race. An alternative map is merely an evidentiary tool to show that such a substantive violation has occurred; neither its presence nor its absence can itself resolve a racial gerrymandering claim.[15]

[15] The dissent responds that an alternative-map requirement "should not be too hard" for plaintiffs (or at least "sophisticated" litigants "like those in the present case") to meet. *Post*, at 337. But if the plaintiffs have already proved by a preponderance of the evidence that race predominated in drawing district lines, then we have no warrant to demand that they jump through additional evidentiary hoops (whether the exercise would cost a hundred dollars or a million, a week's more time or a year's). Or at least that would be so if we followed the usual rules. Underlying the dissent's view that we should not—that we should instead create a special evidentiary burden—is its belief that "litigation of this sort" often seeks to "obtain in court what [a political party] could not achieve in the political arena," *post*, at 335, and so that little is lost by making suits like this one as hard as possible. But whatever the possible motivations for bringing such suits (and the dissent says it is *not* questioning "what occurred here," *ibid.*), they serve to prevent legislatures from taking unconstitutional districting action—which happens more often than the dissent must suppose. State lawmakers sometimes misunderstand the VRA's requirements (as may have occurred here with respect to § 5), leading them to employ race as a predominant districting criterion when they should not. See *supra*, at 311–314, and n. 10. Or they may resort to race-based districting for ultimately political reasons, leveraging the strong correlation between race and voting behavior to advance their partisan interests. See nn. 1, 7,

North Carolina insists, however, that we have already said to the contrary—more particularly, that our decision in *Cromartie II* imposed a non-negotiable "alternative-map requirement." Brief for Appellants 31. As the State observes, *Cromartie II* reversed as clearly erroneous a trial court's finding that race, rather than politics, predominated in the assignment of voters to an earlier incarnation of District 12. See 532 U. S., at 241; *supra*, at 294. And as the State emphasizes, a part of our opinion faulted the *Cromartie* plaintiffs for failing to offer a convincing account of how the legislature could have accomplished its political goals other than through the map it chose. See 532 U. S., at 257–258. We there stated:

> "In a case such as this one where majority-minority districts . . . are at issue and where racial identification correlates highly with political affiliation, the party attacking the legislatively drawn boundaries must show at the least that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles. That party must also show that those districting alternatives would have brought about significantly greater racial balance." *Id.*, at 258.

According to North Carolina, that passage alone settles this case, because it makes an alternative map "essential" to a finding that District 12 (a majority-minority district in which race and partisanship are correlated) was a racial gerrymander. Reply Brief 11. Once again, the dissent says the same. See *post*, at 333.

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supra. Or, finally—though we hope less commonly—they may simply seek to suppress the electoral power of minority voters. When plaintiffs meet their burden of showing that such conduct has occurred, there is no basis for subjecting them to additional—and unique—evidentiary hurdles, preventing them from receiving the remedy to which they are entitled.

But the reasoning of *Cromartie II* belies that reading. The Court's opinion nowhere attempts to explicate or justify the categorical rule that the State claims to find there. (Certainly the dissent's current defense of that rule, see *post*, at 334–337, was nowhere in evidence.) And given the strangeness of that rule—which would treat a mere form of evidence as the very substance of a constitutional claim, see *supra*, at 318–320—we cannot think that the Court adopted it without any explanation. Still more, the entire thrust of the *Cromartie II* opinion runs counter to an inflexible counter-map requirement. If the Court had adopted that rule, it would have had no need to weigh each piece of evidence in the case and determine whether, taken together, they were "adequate" to show "the predominance of race in the legislature's line-drawing process." 532 U. S., at 243–244. But that is exactly what *Cromartie II* did, over a span of 20 pages and in exhaustive detail. Item by item, the Court discussed and dismantled the supposed proof, both direct and circumstantial, of race-based redistricting. All that careful analysis would have been superfluous—that dogged effort wasted—if the Court viewed the absence or inadequacy of a single form of evidence as necessarily dooming a gerrymandering claim.

Rightly understood, the passage from *Cromartie II* had a different and narrower point, arising from and reflecting the evidence offered in that case. The direct evidence of a racial gerrymander, we thought, was extremely weak: We said of one piece that it "says little or nothing about whether race played a predominant role" in drawing district lines; we said of another that it "is less persuasive than the kinds of direct evidence we have found significant in other redistricting cases." *Id.*, at 253–254 (emphasis deleted). Nor did the report of the plaintiffs' expert impress us overmuch: In our view, it "offer[ed] little insight into the legislature's true motive." *Id.*, at 248. That left a set of arguments of the would-have-could-have variety. For example, the plaintiffs

offered several maps purporting to "show how the legislature might have swapped" some mostly black and mostly white precincts to obtain greater racial balance "without harming [the legislature's] political objective." *Id.*, at 255 (internal quotation marks omitted). But the Court determined that none of those proposed exchanges would have worked as advertised—essentially, that the plaintiffs' "you could have redistricted differently" arguments failed on their own terms. See *id.*, at 254–257. Hence emerged the demand quoted above, for maps that would *actually* show what the plaintiffs' had not. In a case like *Cromartie II*—that is, one in which the plaintiffs had meager direct evidence of a racial gerrymander and needed to rely on evidence of forgone alternatives—only maps of that kind could carry the day. *Id.*, at 258.

But this case is most unlike *Cromartie II*, even though it involves the same electoral district some twenty years on. This case turned not on the possibility of creating more optimally constructed districts, but on direct evidence of the General Assembly's intent in creating the actual District 12, including many hours of trial testimony subject to credibility determinations. That evidence, the District Court plausibly found, itself satisfied the plaintiffs' burden of debunking North Carolina's "it was really politics" defense; there was no need for an alternative map to do the same job. And we pay our precedents no respect when we extend them far beyond the circumstances for which they were designed.

V

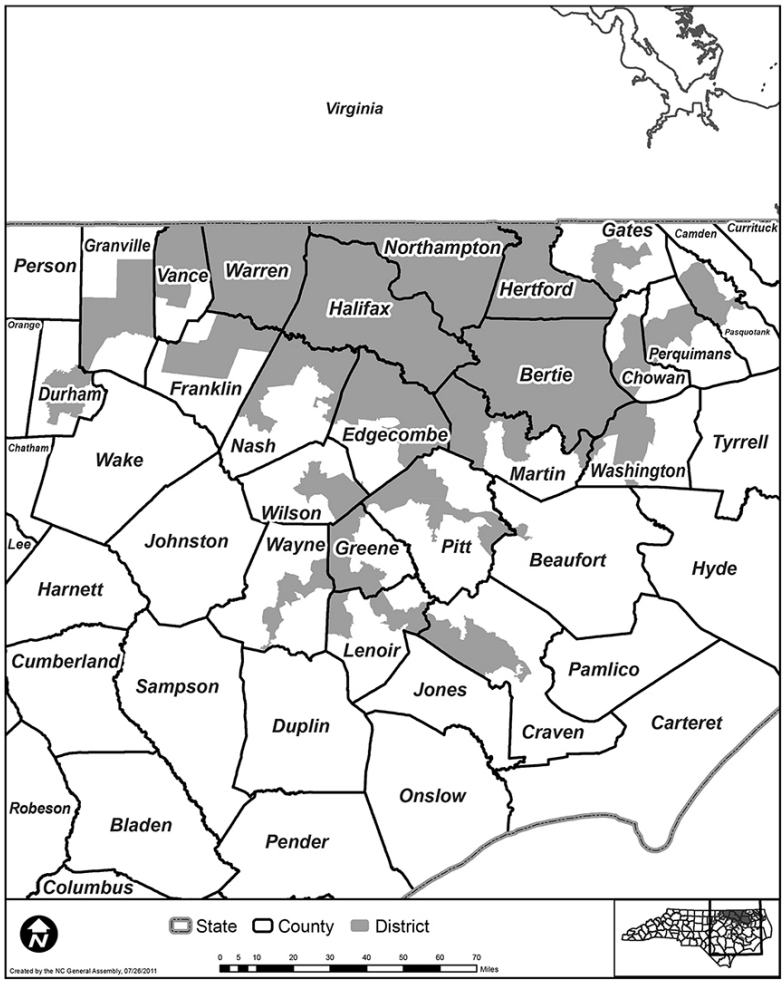
Applying a clear error standard, we uphold the District Court's conclusions that racial considerations predominated in designing both District 1 and District 12. For District 12, that is all we must do, because North Carolina has made no attempt to justify race-based districting there. For District 1, we further uphold the District Court's decision that §2 of the VRA gave North Carolina no good reason to re-

shuffle voters because of their race. We accordingly affirm the judgment of the District Court.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

[Appendix to opinion of the Court follows this page.]



Congressional District 1 (Enacted 2011)



Congressional District 12 (Enacted 2011)

JUSTICE THOMAS, concurring.

I join the opinion of the Court because it correctly applies our precedents under the Constitution and the Voting Rights Act of 1965 (VRA), 52 U. S. C. § 10301 *et seq.* I write briefly to explain the additional grounds on which I would affirm the three-judge District Court and to note my agreement, in particular, with the Court's clear-error analysis.

As to District 1, I think North Carolina's concession that it created the district as a majority-black district is by itself sufficient to trigger strict scrutiny. See Brief for Appellants 44; see also, *e. g.*, *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U. S. 178, 198 (2017) (THOMAS, J., concurring in judgment in part and dissenting in part). I also think that North Carolina cannot satisfy strict scrutiny based on its efforts to comply with § 2 of the VRA. See *ante*, at 301. In my view, § 2 does not apply to redistricting and therefore cannot justify a racial gerrymander. See *Holder* v. *Hall*, 512 U. S. 874, 922–923 (1994) (THOMAS, J., concurring in judgment).

As to District 12, I agree with the Court that the District Court did not clearly err when it determined that race was North Carolina's predominant motive in drawing the district. See *ante*, at 309–310. This is the same conclusion I reached when we last reviewed District 12. *Easley* v. *Cromartie*, 532 U. S. 234, 267 (2001) (*Cromartie II*) (dissenting opinion). The Court reached the contrary conclusion in *Cromartie II* only by misapplying our deferential standard for reviewing factual findings. See *id.*, at 259–262. Today's decision does not repeat *Cromartie II*'s error, and indeed it confines that case to its particular facts. It thus represents a welcome course correction to this Court's application of the clear-error standard.

JUSTICE ALITO, with whom THE CHIEF JUSTICE and JUSTICE KENNEDY join, concurring in the judgment in part and dissenting in part.

A precedent of this Court should not be treated like a disposable household item—say, a paper plate or napkin—to be

used once and then tossed in the trash. But that is what the Court does today in its decision regarding North Carolina's 12th Congressional District: The Court junks a rule adopted in a prior, remarkably similar challenge to this very same congressional district.

In *Easley* v. *Cromartie*, 532 U. S. 234 (2001) (*Cromartie II*), the Court considered the constitutionality of the version of District 12 that was adopted in 1997. *Id.*, at 238. That district had the same basic shape as the district now before us, and the challengers argued that the legislature's predominant reason for adopting this configuration was race. *Ibid.* The State responded that its motive was not race but politics. *Id.*, at 241. Its objective, the State insisted, was to create a district in which the Democratic candidate would win. See *ibid.*; Brief for State Appellants in *Easley* v. *Cromartie*, O. T. 2000, No. 99–1864 etc., p. 25. Rejecting that explanation, a three-judge court found that the legislature's predominant motive was racial, specifically to pack African-Americans into District 12. See *Cromartie* v. *Hunt*, 133 F. Supp. 2d 407, 420 (EDNC 2000). But this Court held that this finding of fact was clearly erroneous. *Cromartie II*, 532 U. S., at 256.

A critical factor in our analysis was the failure of those challenging the district to come forward with an alternative redistricting map that served the legislature's political objective as well as the challenged version without producing the same racial effects. Noting that race and party affiliation in North Carolina were "highly correlated," *id.*, at 243, we laid down this rule:

> "In a case such as this one . . . , the party attacking the legislatively drawn boundaries must show at the least that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles.

> That party must also show that those districting alternatives would have brought about significantly greater racial balance. Appellees failed to make any such showing here." *Id.*, at 258.

Now, District 12 is back before us. After the 2010 census, the North Carolina Legislature, with the Republicans in the majority, drew the present version of District 12. The challengers contend that this version violates equal protection because the predominant motive of the legislature was racial: to pack the district with African-American voters. The legislature responds that its objective was political: to pack the district with Democrats and thus to increase the chances of Republican candidates in neighboring districts.

You might think that the *Cromartie II* rule would be equally applicable in this case, which does not differ in any relevant particular, but the majority executes a stunning about-face. Now, the challengers' failure to produce an alternative map that meets the *Cromartie II* test is inconsequential. It simply "does not matter." *Ante*, at 318.

This is not the treatment of precedent that state legislatures have the right to expect from this Court. The failure to produce an alternative map doomed the challengers in *Cromartie II*, and the same should be true now. Partisan gerrymandering is always unsavory, but that is not the issue here. The issue is whether District 12 was drawn predominantly because of race. The record shows that it was not.[1]

I

Under the Constitution, state legislatures have "the initial power to draw districts for federal elections." *Vieth* v. *Ju-*

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[1] I concur in the judgment of the Court regarding Congressional District 1. The State concedes that the district was intentionally created as a majority-minority district. See Brief for Appellants 44. And appellants have not satisfied strict scrutiny.

belirer, 541 U. S. 267, 275 (2004) (plurality opinion).[2] This power, of course, must be exercised in conformity with the Fourteenth Amendment's Equal Protection Clause. And because the Equal Protection Clause's "central mandate is racial neutrality in governmental decisionmaking," *Miller* v. *Johnson*, 515 U. S. 900, 904 (1995), "effort[s] to separate voters into different districts on the basis of race" must satisfy the rigors of strict scrutiny, *Shaw* v. *Reno*, 509 U. S. 630, 649, 653 (1993) (*Shaw I*).

We have stressed, however, that courts are obligated to "exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Miller*, 515 U. S., at 916. "Federal-court review of districting legislation represents a serious intrusion on the most vital of local functions," and "the good faith of a state legislature must be presumed." *Id.*, at 915. A legislature will "almost always be aware of racial demographics" during redistricting, but evidence of such awareness does not show that the legislature violated equal protection. *Id.*, at 916. Instead, the Court has held, "[r]ace must not simply have been *a* motivation for the drawing of a majority-minority district, but the *predominant* factor motivating the legislature's districting decision." *Cromartie II*, 532 U. S., at 241 (citation and internal quotation marks omitted; emphasis in original).

This evidentiary burden "is a demanding one." *Ibid.* (internal quotation marks omitted). Thus, although "[t]he legislature's motivation is . . . a factual question," *Hunt* v. *Cromartie*, 526 U. S. 541, 549 (1999) (*Cromartie I*), an appellate court conducting clear-error review must always keep in mind the heavy evidentiary obligation borne by those challenging a districting plan. See *Cromartie II*, *supra*, at 241,

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[2] Article I, § 4, of the Constitution reserves to state legislatures the power to prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives," subject to Congress's authority to "make or alter such Regulations, except as to the Places of chusing Senators."

257. Recognizing "the intrusive potential of judicial intervention into the legislative realm," *Miller*, *supra*, at 916, we have warned that courts must be very cautious about imputing a racial motive to a State's redistricting plan.

II

That caution "is especially appropriate . . . where the State has articulated a legitimate political explanation for its districting decision, and the voting population is one in which race and political affiliation are highly correlated." *Cromartie II*, 532 U. S., at 242. We have repeatedly acknowledged the problem of distinguishing between racial and political motivations in the redistricting context. See *id.*, at 242, 257–258; *Cromartie I*, *supra*, at 551–552; *Bush* v. *Vera*, 517 U. S. 952, 967–968 (1996) (plurality opinion).

The problem arises from the confluence of two factors. The first is the status under the Constitution of partisan gerrymandering. As we have acknowledged, "[p]olitics and political considerations are inseparable from districting and apportionment," *Gaffney* v. *Cummings*, 412 U. S. 735, 753 (1973), and it is well known that state legislative majorities very often attempt to gain an electoral advantage through that process. See *Davis* v. *Bandemer*, 478 U. S. 109, 129 (1986). Partisan gerrymandering dates back to the founding, see *Vieth*, *supra*, at 274–276 (plurality opinion), and while some might find it distasteful, "[o]ur prior decisions have made clear that a jurisdiction may engage in constitutional political gerrymandering, even if it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact." *Cromartie I*, *supra*, at 551 (emphasis in original); *Vera*, *supra*, at 964 (plurality opinion).

The second factor is that "racial identification is highly correlated with political affiliation" in many jurisdictions. *Cromartie II*, 532 U. S., at 243 (describing correlation in North Carolina). This phenomenon makes it difficult to distinguish

between political and race-based decisionmaking. If around 90% of African-American voters cast their ballots for the Democratic candidate, as they have in recent elections,[3] a plan that packs Democratic voters will look very much like a plan that packs African-American voters. "[A] legislature may, by placing reliable Democratic precincts within a district without regard to race, end up with a district containing more heavily African–American precincts, but the reasons would be political rather than racial." *Id.*, at 245.

A

We addressed this knotty problem in *Cromartie II*, which, as noted, came to us after the District Court had held a trial and found as a fact that the legislature's predominant reason for drawing District 12 was race, not politics. *Id.*, at 239–241. Our review for clear error in that case did not exhibit the same diffidence as today's decision. We carefully examined each piece of direct and circumstantial evidence on which the District Court had relied and conceded that this evidence provided support for the court's finding. *Id.*, at 257. Then, at the end of our opinion, we stated:

> "We can put the matter more generally as follows: In a case such as this one where majority-minority districts (or the approximate equivalent) are at issue and where racial identification correlates highly with political af-

[3] According to polling data, around 90% of African-American voters have voted for the Democratic candidate for President in recent years. See https://ropercenter.cornell.edu/polls/us-elections/how-groups-voted/groups-voted-2016/ (all Internet materials as last visited May 19, 2017) (in 2016, 88%); https://ropercenter.cornell.edu/polls/us-elections/how-groups-voted/how-groups-voted-2012/ (in 2012, 93%); https://ropercenter.cornell.edu/polls/us-elections/how-groups-voted/how-groups-voted-2008/ (in 2008, 95%); https://ropercenter.cornell.edu/polls/us-elections/how-groups-voted/how-groups-voted-2004/ (in 2004, 88%); https://ropercenter.cornell.edu/polls/us-elections/how-groups-voted/how-groups-voted-2000/ (in 2000, 90%).

> filiation, the party attacking the legislatively drawn boundaries must show at the least that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles. That party must also show that those districting alternatives would have brought about significantly greater racial balance." *Id.*, at 258.

Because the plaintiffs had "failed to make any such showing," we held that the District Court had clearly erred in finding that race predominated in drawing District 12. *Ibid.*

Cromartie II plainly meant to establish a rule for use in a broad class of cases and not a rule to be employed one time only. We stated that we were "put[ting] the matter more generally" and were describing what must be shown in cases "where majority-minority districts (or the approximate equivalent) are at issue and where racial identification correlates highly with political affiliation." *Ibid.* We identified who would carry the burden of the new rule ("the party attacking the legislatively drawn boundaries") and what that party must show (that "the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles" while achieving "significantly greater racial balance"). *Ibid.* And we reversed the finding of racial predominance due to the plaintiffs' failure to carry the burden established by this evidentiary rule. *Ibid.*

Here, too, the plaintiffs failed to carry that burden. In this case, as in *Cromartie II*, the plaintiffs allege a racial gerrymander, and the State's defense is that political motives explain District 12's boundaries. In such a case, *Cromartie II* instructed, plaintiffs must submit an alternative redistricting map demonstrating that the legislature could have achieved its political goals without the racial effects giving rise to the racial gerrymandering allegation. But in spite of this instruction, plaintiffs in this case failed to submit such a

map.[4] See Brief for Appellees 31–36. Based on what we said in *Cromartie II* about *the same type of claim* involving *the same congressional district*, reversal should be a foregone conclusion. It turns out, however, that the *Cromartie II* rule was good for one use only. Even in a case involving the very same district, it is tossed aside.

B

The alternative-map requirement deserves better. It is a logical response to the difficult problem of distinguishing between racial and political motivations when race and political party preference closely correlate.

This is a problem with serious institutional and federalism implications. When a federal court says that race was a legislature's predominant purpose in drawing a district, it accuses the legislature of "offensive and demeaning" conduct. *Miller*, 515 U. S., at 912. Indeed, we have said that racial gerrymanders "bea[r] an uncomfortable resemblance to political apartheid." *Shaw I*, 509 U. S., at 647. That is a grave accusation to level against a state legislature.

In addition, "[f]ederal-court review of districting legislation represents a serious intrusion on the most vital of local functions" because "[i]t is well settled that reapportionment is primarily the duty and responsibility of the State." *Miller*, *supra*, at 915 (internal quotation marks omitted); see also *Cromartie II*, 532 U. S., at 242. When a federal court finds that race predominated in the redistricting process, it inserts itself into that process. That is appropriate—indeed, constitutionally required—if the legislature truly did draw district boundaries on the basis of race. But if a court mistakes a political gerrymander for a racial gerrymander, it illegitimately invades a traditional domain of state authority,

[4] The challengers' failure to do so is especially glaring given that at least two alternative maps *were* introduced during the legislative debates over the 2011 map, see 2 Record 357–366, 402–411; App. 883–887, though neither party contends that those maps met the legislature's political goals.

usurping the role of a State's elected representatives. This does violence to both the proper role of the Judiciary and the powers reserved to the States under the Constitution.

There is a final, often-unstated danger where race and politics correlate: that the federal courts will be transformed into weapons of political warfare. Unless courts "exercise extraordinary caution" in distinguishing race-based redistricting from politics-based redistricting, *Miller*, *supra*, at 916, they will invite the losers in the redistricting process to seek to obtain in court what they could not achieve in the political arena. If the majority party draws districts to favor itself, the minority party can deny the majority its political victory by prevailing on a racial gerrymandering claim. Even if the minority party loses in court, it can exact a heavy price by using the judicial process to engage in political trench warfare for years on end.

Although I do not imply that this is what occurred here, this case *does* reflect what litigation of this sort can look like. This is the *fifth time* that North Carolina's 12th Congressional District has come before this Court since 1993, and we have almost reached a new redistricting cycle without any certainty as to the constitutionality of North Carolina's *current* redistricting map. Given these dangers, *Cromartie II* was justified in crafting an evidentiary rule to prevent false positives.[5]

C

The majority nevertheless absolves the challengers of their failure to submit an alternative map. It argues that an alternative map cannot be "the *only* means" of proving

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[5] Ignoring all of these well-founded reasons supporting the alternative-map requirement, the majority mischaracterizes my argument as, at bottom, resting on the proposition that "little is lost by making suits like this one as hard as possible." *Ante*, at 319, n. 15. That is not my view, and it is richly ironic for the Court that announced the alternative-map requirement to accuse those who defend the requirement of erecting illegitimate and unnecessary barriers to the vindication of constitutional rights.

racial predominance, and it concludes from this that an alternative map "does not matter in this case." *Ante*, at 318 (emphasis in original). But even if there are cases in which a plaintiff could prove a racial gerrymandering claim without an alternative map, they would be exceptional ones in which the evidence of racial predominance is overwhelming. This most definitely is not one of those cases, see Part III–C, *infra*, and the plaintiffs' failure to produce an alternative map mandates reversal. Moreover, even in an exceptional case, the absence of such a map would still be strong evidence that a district's boundaries were determined by politics rather than race.[6] The absence of a map would "matter." Cf. *ante*, at 318.

The majority questions the legitimacy of the alternative-map requirement, *ante*, at 317–319, and n. 15, but the rule is a sound one. It rests on familiar principles regarding the allocation of the burdens of production and persuasion and the assessment of evidence. First, in accordance with the general rule in civil cases, plaintiffs in a case like this bear the burden of proving that the legislature's motive was unconstitutional. Second, what must be shown is not simply that race played a part in the districting process but that it played the predominant role. Third, a party challenging a districting plan must overcome the strong presumption that the plan was drawn for constitutionally permissible reasons. *Miller*, 515 U. S., at 915. Fourth, when those responsible for adopting a challenged plan contend that the plan was devised for partisan political ends, they are making an admission that may not sit well with voters, so the explanation should not be lightly dismissed. Cf. Fed. Rule Evid. 804(b)(3). And finally, the *Cromartie II* rule takes into account the difficulty of proving a negative.

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[6] The majority cites *Bush* v. *Vera*, 517 U. S. 952 (1996), as proof that the lack of an alternative-map requirement has not "made any difference" in our past cases. *Ante*, at 318. *Vera* was decided before *Cromartie II*, 532 U. S. 234 (2001), announced the alternative-map requirement, so its failure to mention that requirement is hardly surprising.

For challengers like those in the present case, producing a map that meets the *Cromartie II* test should not be hard if the predominant reason for a challenged plan really was race and not politics. Plaintiffs mounting a challenge to a districting plan are almost always sophisticated litigants who have the assistance of experts, and that is certainly true in the present case. Today, an expert with a computer can easily churn out redistricting maps that control for any number of specified criteria, including prior voting patterns and political party registration. Therefore, if it is indeed possible to find a map that meets the *Cromartie II* test, it should not be too hard for the challengers to do so. The State, on the other hand, cannot prove that no map meeting the *Cromartie II* test can be drawn. Even if a State submits, say, 100 alternative maps that fail the test, that would not prove that no such map could pass it. The relative ease with which the opposing parties can gather evidence is a familiar consideration in allocating the burden of production. See 1 C. Mueller & L. Kirkpatrick, Federal Evidence § 63, p. 316 (2d ed. 1994); 21 C. Wright & K. Graham, Federal Practice and Procedure § 5122, pp. 556–557 (1977).

III

Even if we set aside the challengers' failure to submit an alternative map, the District Court's finding that race predominated in the drawing of District 12 is clearly erroneous. The State offered strong and coherent evidence that politics, not race, was the legislature's predominant aim, and the evidence supporting the District Court's contrary finding is weak and manifestly inadequate in light of the high evidentiary standard that our cases require challengers to meet in order to prove racial predominance.[7]

[7] The majority accuses me of failing to accord proper deference to the District Court's factual findings and of disregarding the clear-error standard of review, *ante*, at 309, n. 8, but that is nonsense. Unlike the majority, I simply follow *Cromartie II* by evaluating the District Court's findings *in light of the plaintiffs' burden*. See 532 U. S., at 241, 257. The heavier

My analysis will proceed in three steps. First, I will discuss what the legislature's mapmaker did and why this approach is entirely consistent with his stated political objectives. Then, I will explain why this approach inevitably had the racial effect to which the challengers object. Finally, I will address the evidence of racial predominance on which the majority relies and show why it is inadequate to sustain the District Court's judgment.

A

In order to understand the mapmaker's approach, the first element to be kept in mind is that the basic shape of District 12 was legitimately taken as a given. When a new census requires redistricting, it is a common practice to start with the plan used in the prior map and to change the boundaries of the prior districts only as needed to comply with the one-person, one-vote mandate and to achieve other desired ends. This approach honors settled expectations and, if the prior plan survived legal challenge, minimizes the risk that the new plan will be overturned. And that is the approach taken by the veteran mapmaker in the present case, Dr. Thomas Hofeller. App. 523 ("the normal starting point is always from the existing districts").

Dr. Hofeller began with the prior version of District 12 even though that version had a strange, serpentine shape.

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a plaintiffs' evidentiary burden, the harder it is to find that plaintiffs have carried their burden—and the more likely that it would be clearly erroneous to find that they have. In this context, we are supposed to presume that the North Carolina Legislature acted in good faith and exercise "extraordinary caution" before rejecting the legislature's political explanation. *Miller* v. *Johnson*, 515 U. S. 900, 915–916 (1995). Given that the State has offered a coherent and persuasive political explanation for District 12's boundaries, plaintiffs bear a "demanding" burden in attempting to prove racial predominance. *Cromartie II*, *supra*, at 241, 257. Because the evidence they have put forward is so weak, see Part III–C, *infra*, they have failed to carry that burden, and it was clear error for the District Court to hold otherwise. See *Cromartie II*, *supra*, at 241, 257 (applying the same clear-error analysis that I apply here).

Cromartie I, 526 U. S., at 544; App. 1163. That design has a long history. It was first adopted in 1992, and subsequent redistricting plans have built on the 1992 plan. *Ibid.* In *Cromartie II*, we sustained the constitutionality of the 1997 version of District 12, which featured the same basic shape. See 532 U. S., at 258. And retention of this same basic shape is not challenged in this case.[8]

Using the prior design as his starting point, Dr. Hofeller assumed that District 12 would remain a "strong Democratic distric[t]." App. 521. He stated that he drew "the [overall redistricting] plan to . . . have an increased number of competitive districts for GOP candidates," *id.*, at 520, and that he therefore moved more Democratic voters into District 12 in order to "increase Republican opportunities in the surrounding districts," *id.*, at 1606.

Under the map now before us, District 12 is bordered by four districts.[9] Running counterclockwise, they are: District 5 to the northwest; District 9 to the southwest; District 8 to the southeast; and District 6 to the northeast. See Appendix to opinion of the Court, *ante*. According to Dr. Hofeller, the aim was to make these four districts—considered as a whole—more secure for Republicans. App. 1606, 2696.

To do this, Dr. Hofeller set out in search of pockets of Democratic voters that could be moved into District 12 from areas adjoining or very close to District 12's prior boundaries. Of the six counties through which District 12 passes, the three most heavily Democratic (and also the most populous) are Forsyth, Guilford, and Mecklenburg, which contain the major population centers of Winston-Salem, Greensboro, and Charlotte, respectively. See 7 Record 480–482; App. 1141. As a measure of voting preferences, Dr. Hofeller used

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[8] This same basic shape was retained in the map proposed in the state legislature by the Democratic leadership and in the map submitted by the Southern Coalition for Social Justice. See 2 Record 402, 357.

[9] A fifth district, District 2, appears to touch District 12 at the border of Guilford and Randolph Counties, but only to a *de minimis* extent.

the results of the then-most-recent Presidential election, *i. e.*, the election of 2008. *Id.*, at 1149, 2697, 2721–2722. In that election, these three counties voted strongly for the Democratic candidate, then-Senator Barack Obama, while the other three counties, Cabarrus, Davidson, and Rowan, all voted for the Republican candidate, Senator John McCain. See 4 Record 1341–1342.

Two of the three Democratic counties, Forsyth and Guilford, are located at the northern end of District 12, while the other Democratic county, Mecklenburg, is on the southern end. See Appendix to opinion of the Court, *ante*. The middle of the district (often called the corridor) passes through the three more Republican-friendly counties—Cabarrus, Davidson, and Rowan. *Ibid.* Thus, if a mapmaker sat down to increase the proportion of Democrats in District 12 and to reduce the proportion in neighboring districts, the most obvious way to do that was to pull additional Democrats into the district from the north and south (the most populous and heavily Democratic counties) while shifting Republican voters out of the corridor.

That, in essence, is what Dr. Hofeller did—as the majority acknowledges. *Ante*, at 295 (Dr. Hofeller "narrow[ed District 12's] already snakelike body while adding areas at either end"); App. 1150 (Table 1), 1163. Dr. Hofeller testified that he sought to shift parts of Mecklenburg County out of Districts 8 and 9 (in order to reduce the percentage of Democrats in these two districts) and that this required him to increase the coverage of Mecklenburg County in District 12. *Id.*, at 1142–1143, 1607, 2753.

Dr. Hofeller testified that he also had political plans for the current map's District 6, which differed substantially from the version in the prior map. Dr. Hofeller wanted to improve the Republicans' prospects in this new district by minimizing its coverage of Guilford County's Democratic population. *Id.*, at 1143, 1607, 2693, 2697, 2752. That also meant increasing the population of Guilford County Democrats in District 12. *Id.*, at 1143, 1607, 2697.

This influx of Democratic voters from the two most populous counties in District 12 required shedding voters elsewhere in order to comply with this Court's mandate of one-person, one-vote, see *Kirkpatrick* v. *Preisler*, 394 U. S. 526, 530–531 (1969),[10] and the population removed had to be added to a bordering district. App. 523. Parts of Davidson and Rowan Counties were therefore shifted to District 5, *id.*, at 1143, 1150 (Table 1), but Dr. Hofeller testified that this would not have been sufficient to satisfy the one-person, one-vote standard, so he also had to move voters from heavily Democratic Forsyth County into District 5, *id.*, at 1143, 2697, 2752–2753. Doing so did not undermine his political objective, he explained, because District 5 "was stronger [for Republicans] to begin with and could take those [Forsyth] Democratic precincts" without endangering Republican chances in the district. *Id.*, at 2753; see also *id.*, at 2697. The end result was that, under the new map now at issue, the three major counties in the north and south constitute a larger percentage of District 12's total population, while the corridor lost population. See *id.*, at 1150 (Table 1), 2149 (Finding 187).

A comparison of the 2008 Presidential election vote under the old and new versions of the districts shows the effect of Dr. Hofeller's map. District 8 (which, of the four districts bordering District 12 under the 2011 map, was the most Democratic district) saw a drop of almost 11% in the Democratic vote under the new map. See 2 Record 354, 421. District 9 saw a drop in the percentage of registered Democrats, *id.*, at 350, 417, although the vote percentage for the Democratic Presidential candidate remained essentially the same (increasing by 0.39%). *Id.*, at 354, 421. District 5, which was heavily Republican under the prior map and was redrawn to absorb Democrats from Forsyth County, saw about a seven-point swing in favor of the Democratic candi-

[10] District 12 was overpopulated by 2,847 people heading into the 2011 redistricting cycle. App. 1115; 2 Record 347.

date, but it remained a strong Republican district. *Ibid.* New District 6 is less susceptible to comparison because its boundaries are completely different from the district bearing that number under the old plan, but the new District 6 was solidly Republican, with a Republican Presidential vote percentage of nearly 56%. *Ibid.* As stated by the state court that considered and rejected the same constitutional challenge now before us:

> "By increasing the number of Democratic voters in the 2011 Twelfth Congressional District located in Mecklenburg and Guilford Counties, the 2011 Congressional Plan created other districts that were more competitive for Republican candidates as compared to the 2001 versions of these districts . . . ." App. 2150 (Finding 191).

The results of subsequent congressional elections show that Dr. Hofeller's plan achieved its goal. In 2010, prior to the adoption of the current plan, Democrats won 7 of the 13 districts, including District 8.[11] But by 2016, Republicans controlled 10 of the 13 districts, including District 8, and all the Republican candidates for the House of Representatives won their races with at least 56% of the vote.[12] In accordance with the map's design, the only Democratic seats remaining after 2016 were in Districts 1, 4, and 12. *Id.*, at 521.

In sum, there is strong evidence in the record to support Dr. Hofeller's testimony that the changes made to the 2001 map were designed to maximize Republican opportunities.

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[11] North Carolina State Board of Elections, 11/02/2010 Official General Election Results—Statewide, http://er.ncsbe.gov/?election_dt=11/02/2010&county_id=0&office=FED&contest=0.

[12] North Carolina State Board of Elections, 11/08/2016 Official General Election Results—Statewide, http://er.ncsbe.gov/?election_dt=11/08/2016&county_id=0&office=FED&contest=0.

B

I now turn to the connection between the mapmaker's strategy and the effect on the percentage of African-Americans in District 12.

As we recognized in *Cromartie II*, political party preference and race are highly correlated in North Carolina generally and in the area of Congressional District 12 in particular. App. 2022 (state trial court finding that "racial identification correlates highly with political affiliation" in North Carolina). The challenger's expert, Dr. Stephen Ansolabehere, corroborated this important point. Dr. Ansolabehere calculated the statewide correlation between race and voting in 2008[13] and found a correlation of 0.8, which is "very high." *Id.*, at 342, 352 (Table 1). See also J. Levin, J. Fox, & D. Forde, Elementary Statistics in Social Research 370 (12th ed. 2014); R. Witte & J. Witte, Statistics 138 (10th ed. 2015).

In the area of District 12, the correlation is even higher. There, Dr. Ansolabehere found that the correlation "approach[ed] 1," App. 342, that is, almost complete overlap. These black Democrats also constitute a supermajority of Democrats in the area covered by the district. Under the 2001 version of District 12—which was drawn by Democrats and was never challenged as a racial gerrymander—black registered voters constituted 71.44% of Democrats in the district. 2 Record 350; see also App. 2145 (Finding 173).[14]

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[13] As noted, Dr. Hofeller used the results of the 2008 Presidential election as a measure of party preference. In 2008, the Democratic candidate for President was then-Senator Barack Obama, the first black major party Presidential nominee, and it is true that President Obama won a higher percentage of the nationwide African-American vote in 2008 (95%) than did the Democratic Presidential candidates in 2000 (90%), 2004 (88%), and 2016 (88%). See n. 3, *supra*. But as these figures show, the correlation between race and political party preference was very high in all these elections. Therefore, the use of 2008 statistics does not appear to have substantially affected the analysis.

[14] Even two alternative redistricting plans offered prior to the enactment of the 2011 map—one submitted by the Southern Coalition for Social Justice and the other submitted by Democratic leaders in the state legisla-

What this means is that a mapmaker seeking to pull Democrats into District 12 would unavoidably pull in a very large percentage of African-Americans.

The distribution of Democratic voters magnified this effect. Dr. Hofeller's plan required the identification of areas of Democratic strength that were near District 12's prior boundaries. Dr. Hofeller prepared maps showing the distribution of Democratic voters by precinct,[15] see *id.*, at 1148–1149, 1176–1177, 1181, and those maps show that these voters were highly concentrated around the major urban areas of Winston-Salem (in Forsyth County), Greensboro (in Guilford County), and Charlotte (in Mecklenberg County). Dr. Ansolabehere, the challengers' expert, prepared maps showing the distribution of black registered voters in these same counties, see *id.*, at 322–328; 1 Record 128–133, and a comparison of these two sets of maps reveals that the clusters of Democratic voters generally overlap with those of registered black voters. In other words, the population of nearby Democrats who could be moved into District 12 was heavily black.

The upshot is that, so long as the legislature chose to retain the basic shape of District 12 and to increase the number of Democrats in the district, it was inevitable that the Democrats brought in would be disproportionately black.

None of this should come as a surprise. After all, when the basic shape of District 12 was created after the 1990 census, the express goal of the North Carolina Legislature was to create a majority-minority district. See *Shaw I*, 509 U. S., at 633–636. It has its unusual shape *because* it was

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ture—retained the basic shape of District 12 and resulted in black voters constituting 71.53% and 69.14% of registered Democrats, respectively. 2 Record 361 (Southern Coalition for Social Justice map), 406 (Congressional Fair and Legal map); see also App. 883–887, 2071 (Finding 34), 2145 (Finding 173).

[15] To minimize jargon, I will use the term "precincts" to refer to vote tabulation districts (VTDs). See *id.*, at 1609–1610, for an explanation of VTDs.

originally designed to capture pockets of black voters. See *Shaw* v. *Hunt*, 517 U. S. 899, 905–906 (1996) (*Shaw II*). Although the legislature has modified the district since then, see *Cromartie I*, 526 U. S., at 544 (describing changes from the 1991 version to the 1997 version), "it retains its basic 'snakelike' shape and continues to track Interstate 85." *Ibid.*; 1 Record 35 (Appellees' Complaint) ("Congressional District 12 has existed in roughly its current form since 1992, when it was drawn as a majority African-American district . . . "); see also App. 1163 (showing the 1997, 2001, and 2011 versions of District 12). The original design of the district was devised to ensure a high concentration of black voters, and as long as the basic design is retained (as it has been), one would expect that to continue.

While plaintiffs failed to offer any alternative map, Dr. Hofeller produced a map showing what District 12 would have looked like if his computer was programmed simply to maximize the Democratic vote percentage in the district, while still abiding by the requirement of one-person, one-vote. *Id.*, at 1148. The result was a version of District 12 that is very similar to the version approved by the North Carolina Legislature. See *id.*, at 1175; *id.*, at 1615–1618. Indeed, this maximum-Democratic plan had a black voting age population of 50.73%, which is actually *higher* than District 12's black voting age population of 50.66%. *Id.*, at 1154 (Table 5).

Thus, the increase in the black voting age population of District 12 is easily explained by a coherent (and generally successful) political strategy. *Cromartie II*, 532 U. S., at 245 ("[A] legislature may, by placing reliable Democratic precincts within a district without regard to race, end up with a district containing more heavily African-American precincts, but the reasons would be political rather than racial").

Amazingly, a reader of the majority opinion (and the opinion of the District Court) would remain almost entirely ignorant of the legislature's political strategy and the relationship between that strategy and the racial composition of

District 12.[16] The majority's analysis is like Hamlet without the prince.[17]

C

The majority focuses almost all its attention on a few references to race by those responsible for the drafting and adoption of the redistricting plan. But the majority reads far too much into these references. First, what the plaintiffs had to prove was not simply that race played *some* role in the districting process but that it was the legislature's *predominant* consideration. Second, as I have explained, a court must exercise "extraordinary caution" before finding that a state legislature's predominant reason for a districting plan was racial. *Miller*, 515 U. S., at 916. This means that comments should not be taken out of context and given the most sinister possible meaning. Third, the findings of the state courts in a virtually identical challenge to District 12 are entitled to respectful consideration. A North Carolina trial court, after hearing much the same evidence as the court below, found that the legislature's predominant motive was political, not racial. That decision was affirmed by the North Carolina Supreme Court. *Dickson* v. *Rucho*, 367 N. C. 542, 766 S. E. 2d 238 (2014), vacated and remanded, 575

[16] The District Court's description of the legislature's political strategy was cursory, and it spent no time analyzing the demographics of the region. See *Harris* v. *McCrory*, 159 F. Supp. 3d 600, 618–619 (MDNC 2016).

[17] The majority concedes that this is a "thoroughly two-sided case," *ante*, at 307, n. 6, yet the majority's opinion is thoroughly one sided. It offers no excuse for its failure to meaningfully describe—much less engage with—the State's political explanation for District 12's boundaries. Instead, it tries to change the subject, accusing me of treating the State's account as essentially uncontested. *Ante*, at 307–308, n. 6. This is a hollow accusation. In this opinion, I lay out the evidence supporting the State's political explanation in Parts III–A and III–B, but I do not accept that account at face value. Instead, I go on to demonstrate that the plaintiffs' contrary arguments are exceedingly weak (Part III–C). Only after considering the evidence on both sides do I conclude that the State's explanation holds up.

U. S. 959, aff'd on remand, 368 N. C. 481, 781 S. E. 2d 404 (2015), cert. pending, No. 16–24. Even if the judgment in the state case does not bar the present case under the doctrine of res judicata, see *ante*, at 296–298, the state-court finding illustrates the thinness of the plaintiffs' proof.

Finally, it must be kept in mind that references to race by those responsible for drawing or adopting a redistricting plan are not necessarily evidence that the plan was adopted for improper racial reasons. Under our precedents, it is unconstitutional for the government to consider race in almost any context, and therefore any mention of race by the decisionmakers may be cause for suspicion. We have said, however, that that is not so in the redistricting context. For one thing, a State like North Carolina that was either wholly or partially within the coverage of § 5 of the Voting Rights Act of 1965 could not redistrict without heeding that provision's prohibition against racial retrogression, see 52 U. S. C. § 10304(b); *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254, 261–262 (2015), and therefore race had to be kept in mind. In addition, all legislatures must also take into account the possibility of a challenge under § 2 of the Voting Rights Act claiming that a plan illegally dilutes the voting strength of a minority community. See *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 425 (2006). If a State ultimately concludes that it must take race into account in order to comply with the Voting Rights Act, it must show that it had a "'strong basis in evidence' in support of the (race-based) choice that it has made." *Alabama Legislative Black Caucus*, *supra*, at 278. But those involved in the redistricting process may legitimately make statements about Voting Rights Act compliance before deciding that the Act does not provide a need for race-based districting. And it is understandable for such individuals to explain that a race-neutral plan happens to satisfy the criteria on which Voting Rights Act challengers might insist. In

short, because of the Voting Rights Act, consideration and discussion of the racial effects of a plan may be expected.

1

The June 17, 2011, Statement

I begin with a piece of evidence that the majority does *not* mention, namely, the very first item cited by the District Court in support of its racial-predominance finding. This evidence consisted of a June 17, 2001, statement by Senator Rucho and Representative Lewis, the state legislators who took the lead in the adoption of the current map. In that statement, Rucho and Lewis referred to "constructing [Voting Rights Act] majority black districts." App. 1025. Seizing upon the use of the plural term "districts," the court below seemed to think that it had found a smoking gun. *Harris* v. *McCrory*, 159 F. Supp. 3d 600, 616 (MDNC 2016). The State had insisted that its plan drew only one majority-minority congressional district, District 1, but since the June 17 statement "clearly refers to multiple districts that are now majority minority," *ibid.*, the court below viewed the statement as telling evidence that an additional congressional district, presumably District 12, had been intentionally designed to be a majority-minority district and was thus based on race.

There is a glaring problem with this analysis: The June 17 statement was about *state legislative districts*, not *federal congressional districts*. See App. 1024–1033. The United States, as *amicus curiae* in support of plaintiffs, concedes that the District Court made a mistake by relying on the June 17 statement. Brief for United States 27, n. 13. The majority, by contrast, tries to ignore this error. But the District Court gave the June 17 statement pride-of-place in its opinion, mentioning it first in its analysis, and the District Court seemed to think that this evidence was particularly significant, stating that the reference to multiple districts was not "the result of happenstance, a mere slip of the

pen." 159 F. Supp. 3d, at 616. The District Court's error shows a troubling lack of precision.

2

The § 5 Preclearance Request

Under § 5 of the Voting Rights Act, North Carolina requested preclearance from the Department of Justice shortly after the legislature approved the new congressional plan. *Id.*, at 608. In its preclearance application, the State noted that "[o]ne of the concerns of the Redistricting Chairs was that in 1992, the Justice Department had objected to the 1991 Congressional Plan because of a failure by the State to create a second majority minority district." App. 478. The application says that the redistricting chairs "sought input from Congressman [Mel] Watt[, the African-American incumbent who represented District 12,] regarding options for redrawing his district," and that after this consultation, "the Chairs had the impression that Congressman Watt would oppose any redrawing of the Twelfth District . . . as originally contemplated by the 1992 Justice Department objection." *Ibid.* The chairs drew District 12 "[b]ased in part on this input from Congressman Watt." *Id.*, at 478–479. Two sentences later in the same paragraph, the application observed that the black voting age population for District 12 went up from 43.77% to 50.66% and that therefore the district "maintains, and in fact increases, the African-American community's ability to elect their candidate of choice in District 12." *Id.*, at 479.

According to the majority, this statement shows a "determination to concentrate black voters in District 12." *Ante*, at 311. In fact, it shows no such thing. The statement explains that Senator Rucho and Representative Lewis decided *not* to construct District 12 as a majority-minority district—as the 1992 Justice Department had demanded—"[b]ased in part on" the input they received from Congressman Watt,

whom they thought "would oppose" drawing the district "as originally contemplated by the 1992 Justice Department objection." App. 478–479. If anything, this document cuts *against* a finding of racial predominance.

The statement's matter-of-fact reference to the increase in District 12's black voting age population hardly shows that the legislature altered District 12 *for the purpose* of causing this increase. An entirely natural interpretation is that the redistricting chairs simply reported this fact so that it would be before the Justice Department in the event that the Department had renewed Voting Rights Act concerns. Only by reading a great deal between the lines and adopting the most sinister possible interpretation can the statement be viewed as pointed evidence of a predominantly racial motive.

3

The Mel Watt Testimony

In both the District Court and the state trial court, Congressman Watt testified that, while the redistricting plan was being developed, Senator Rucho invited him to his home to discuss the new boundaries of District 12. *Id.*, at 2368–2369, 1343–1344. According to Congressman Watt, Senator Rucho said that the Republican leadership wanted him to "ramp the 12th Congressional District up to over 50 percent black" because "they believed it was required . . . by the Voting Rights Act." *Id.*, at 1344, 2369, 2393. In the state proceedings, Senator Rucho denied making any such statement, *id.*, at 1703, and another state legislator present at the meeting, Representative Ruth Samuelson, gave similar testimony, *id.*, at 1698. Neither Senator Rucho nor Representative Samuelson testified in federal court (although their state-court testimony was made part of the federal record). See *id.*, at 2847. But the District Court credited Congressman Watt's testimony based on its assessment of his demeanor and the consistency of his recollection, 159 F. Supp.

3d, at 617–618, and I accept that credibility finding for purposes of our review.[18]

But even assuming that Congressman Watt's recollection was completely accurate, all that his testimony shows is that legislative leaders *at one point in the process* thought that they had to draw District 12 as a majority-minority district in order to comply with the Voting Rights Act; it does *not* show that they actually *did* draw District 12 with the goal of creating a majority-minority district. And as explained in the discussion of the preclearance request above, Senator Rucho and Representative Lewis stated that they ultimately turned away from the creation of a majority-minority district after consulting with Congressman Watt. "Based in part on this input from Congressman Watt," they said they decided *not* to draw the district as the 1992 Department of Justice had suggested—that is, as a majority-minority district. App. 478–479.

This account is fully consistent with Congressman Watt's testimony about his meeting with Senator Rucho. Congressman Watt noted that Senator Rucho was uncomfortable with the notion of increasing the black voting age population, *id.*, at 2369, 2393, and Congressman Watt testified that he told Senator Rucho that he was opposed to the idea, *id.*, at

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[18] That being said, Congressman Watt's testimony was double-hearsay: Congressman Watt testified about what Senator Rucho said *someone else* said. See App. 1345 (state trial court evidentiary ruling). For unknown reasons, appellants failed to raise this objection below, but that only means that the testimony was *admitted*. The *weight* of that testimony is a different matter, and in general, hearsay should be viewed with great skepticism. *Ellicott* v. *Pearl*, 10 Pet. 412, 436 (1836) (majority opinion of Story, J.) (hearsay is "exceedingly infirm, unsatisfactory and intrinsically weak in its very nature and character"); *Queen* v. *Hepburn*, 7 Cranch 290, 296 (1813) (majority opinion of Marshall, C. J.) ("Its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which might be practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible"); see also *Chambers* v. *Mississippi*, 410 U. S. 284, 298 (1973).

1345, 2369, 2393. So it makes sense that Senator Rucho was dissuaded from taking that course by Congressman Watt's reaction. And Dr. Hofeller consistently testified that he was never asked to meet a particular black voting age population target, see Part III–C–5, *infra*, and that the only data displayed on his screen when he drew District 12 was political data. See n. 19, *infra*. Thus, Congressman Watt's testimony, even if taken at face value, is entirely consistent with what the preclearance request recounts: After initially contemplating the possibility of drawing District 12 as a majority-minority district, the legislative leadership met with Congressman Watt, who convinced them not to do so.

4

Dr. Hofeller's Statements About Guilford County

Under the prior map, both Guilford County and the Greensboro African-American community were divided between the 12th and 13th Districts. This had been done, Dr. Hofeller explained, "to make both the Old 12th and 13th Districts strongly Democratic." App. 1103; see also *id.*, at 555, 2821; 1 Record 132–133 (showing racial demographics of Guilford precincts under 2001 and 2011 maps). But the Republican legislature wanted to make the area surrounding District 12 more Republican. The new map eliminated the old 13th District and created a new district bearing that number farther to the east. The territory to the north of Greensboro that had previously been in the 13th District was placed in a new district, District 6, which was constructed to be a Republican-friendly district, and the new map moved more of the Greensboro area into the new District 12. This move was entirely consistent with the legislature's stated goal of concentrating Democrats in the 12th District and making the surrounding districts hospitable to Republican candidates.

Dr. Hofeller testified that the placement of the Greensboro African-American community in the 12th District was the result of this political strategy. He stated that the portion

of Guilford County absorbed by District 12 "wasn't moved into CD 12 because it had a substantial black population. It was moved into CD 12 because it had a substantial Democratic political voting record . . . ." App. 2824. And Dr. Hofeller maintained that he was never instructed to draw District 12 as a majority-minority district or to increase the district's black voting age population. See, *e. g.*, *id.*, at 520, 556–558, 1099, 1603–1604, 2682–2683, 2789. Instead, he testified that political considerations determined the boundaries of District 12 and that the only data displayed on his computer screen when he drew the challenged map was voting data from the 2008 Presidential election.[19] *Id.*, at 1149, 2697, 2721–2722.

Dr. Hofeller acknowledged, however, that there had been concern about the possibility of a Voting Rights Act challenge to this treatment of the Greensboro African-American community. Guilford County was covered by § 5 of the Voting Rights Act, and as noted, § 5 prohibits retrogression. Under the old map, the Guilford County African-American community was split between the old District 13 and District 12, and in both of those districts, black voters were able to elect the candidates of their choice by allying with white Democratic voters. Under the new map, however, if the Greensboro black community had been split between District 12 and the new Republican-friendly District 6, the black voters in the latter district would be unlikely to elect the candidate of their choice. Placing the African-American community in District 12 avoided this consequence. Even Congressman Watt conceded that there were potential § 5

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[19] Significantly, while the District Court doubted Dr. Hofeller's contention that politics, not race, dictated the boundaries of District 12 and that Dr. Hofeller was unaware of the relevant racial demographics in the region, see 159 F. Supp. 3d, at 619–620, and n. 8, it did not dispute that only political data was displayed on his screen when he drew the district. The state trial court expressly found that only political data was displayed on Dr. Hofeller's screen. See App. 2150 (Finding 188).

concerns relating to the black community in Guilford County. *Id.*, at 2387–2388.

The thrust of many of Dr. Hofeller's statements about the treatment of Guilford County was that the reuniting of the Greensboro black community in District 12 was nothing more than a welcome byproduct of his political strategy. He testified that he *first* drew the district based on political considerations and *then* checked to ensure that Guilford County's black population was not fractured. *Id.*, at 2822 ("[W]hen we checked it, we found that we did not have an issue in Guilford County with fracturing the black . . . community"); see also *id.*, at 556, 2821, 2823. This testimony is entirely innocuous.

There is no doubt, however, that Dr. Hofeller also made a few statements that may be read to imply that concern about Voting Rights Act litigation was part of the motivation for the treatment of Guilford County. He testified at trial that he "was instructed [not] to use race in any form *except perhaps with regard to Guilford County*." *Id.*, at 2791 (emphasis added). See *id.*, at 1103 (the legislature "determined that it was prudent to reunify the African-American community in Guilford County"); *id.*, at 558 ("[I]t was decided to reunite the black community in Guilford County into the Twelfth").

These statements by Dr. Hofeller convinced the District Court that the drawing of District 12 was not a "purely . . . politically driven affair." 159 F. Supp. 3d, at 619. But in order to prevail, the plaintiffs had to show much more—that race was the *predominant* reason for the drawing of District 12, and these few bits of testimony fall far short of that showing.

Our decision in *Cromartie II* illustrates this point. In that case, the legislature's mapmaker made a statement that is remarkably similar to Dr. Hofeller's. Gerry Cohen, the "legislative staff member responsible for drafting districting plans," reported: "'I have moved Greensboro Black commu-

nity into the 12th, and now need to take [about] 60,000 out of the 12th. I await your direction on this.' " 532 U. S., at 254. This admission did not persuade the Court that the legislature's predominant motive was racial. The majority ignores this obvious parallel with *Cromartie II*.

Moreover, in an attempt to magnify the importance of the treatment of Guilford County, the majority plays games with statistics. It states that "District 12 saw a net increase of more than 25,000 black voters in Guilford County, relative to a net gain of fewer than 35,000 across the district: So the newly added parts of that county played a major role in pushing the district's BVAP over 50%." *Ante*, at 314.

This is highly misleading. First, since the black voting age population of District 12 is just barely over 50%—specifically, 50.66%—almost *any* decision that increased the number of voting age blacks in District 12 could be said to have "played a major role in pushing the district's BVAP over 50%."

Second, the majority provides the total number of voting age blacks added to District 12 from Guilford County (approximately 25,000) alongside the total number of voting age blacks added to the district (approximately 35,000), and this has the effect of making Guilford County look like it is the overwhelming contributor to the district's net increase in black voting age population. In truth, Mecklenburg County was by far the greatest contributor of voting age blacks to District 12 in both absolute terms (approximately 147,000) and in terms of new voting age blacks (approximately 37,000). See App. 384, 500–502. Indeed, if what matters to the majority is how much individual counties increased District 12's black voting age population percentage, Davidson County deserves attention as well, since the portion of the county within District 12 lost over 26,000 more voting age whites than blacks. *Ibid.* That is greater than the net number of voting age blacks added to the district by Guilford County or Mecklenburg County. *Ibid.* As with so much in

the majority opinion, the issue here is more nuanced—and much more favorable to the State—than the majority would have it seem.

5

The July 1, 2011, Statement

For reasons similar to those just explained, the majority makes far too much of a statement issued by Senator Rucho and Representative Lewis on July 1, 2011, when the new districting plan was proposed. Particularly in light of Dr. Hofeller's later testimony about the legislature's partisan objectives, it is apparent that this statement does not paint an entirely reliable picture of the legislature's aims. The statement begins with this proclamation: "From the beginning, our goal has remained the same: the development of fair and legal congressional and legislative districts," *id.*, at 353, and the statement seriously downplays the role of politics in the map-drawing process, acknowledging only that "we have not been ignorant of the partisan impacts of the districts we have created," *id.*, at 361.

The statement discusses the treatment of Guilford County in a section with the heading "Compliance with the Voting Rights Act." *Id.*, at 355–358. In that section, Rucho and Lewis state: "Because of the presence of Guilford County in the Twelfth District, we have drawn our proposed Twelfth District at a black voting age level that is above the percentage of black voting age population found in the current Twelfth District. We believe that this measure will ensure preclearance of the plan." *Id.*, at 358.

The majority and the District Court interpret this passage to say that Rucho and Lewis decided to move black voters from Guilford County into District 12 in order to ward off Voting Rights Act liability. *Ante*, at 311 ("*Because of* the VRA, [Rucho and Lewis] increased the number of African-Americans" in District 12 (citing 159 F. Supp. 3d, at 617; em-

phasis in original)). But that is hardly the only plausible interpretation. The statement could just as easily be understood as "an explanation by [the] legislature that *because* they chose to add Guilford County back into CD 12, the district ended up with an increased ability to elect African-American candidates, rather than the legislature explaining that they chose to add Guilford County back into CD 12 because of the [racial] results that addition created." *Id.*, at 635 (Osteen, J., concurring in part and dissenting in part) (emphasis in original). And because we are obligated to presume the good faith of the North Carolina Legislature, this latter interpretation is the appropriate one.

But even if one adopts the majority's interpretation, it adds little to the analysis. The majority's close and incriminating reading of a statement issued to win public support for the new plan may represent poetic justice: Having attempted to blur the partisan aim of the new District 12, the legislature is hoisted on its own petard. But poetic justice is not the type of justice that we are supposed to dispense. This statement is *some* evidence that race played a role in the drawing of District 12, but it is a mistake to give this political statement too much weight.

Again, we made precisely this point in *Cromartie II*. There, the "legislative redistricting leader," then-Senator Roy Cooper, testified before a legislative committee that the proposed plan "'provides for . . . *racial* and partisan *balance*.'" 532 U. S., at 253 (emphasis added). The District Court read the statement literally and concluded that the district had been drawn with a racial objective. *Ibid.* But this Court dismissed the statement, reasoning that although "the phrase shows that the legislature considered race, along with other partisan and geographic considerations; . . . it says little or nothing about whether race played a *predominant* role comparatively speaking." *Ibid.*

What was good in *Cromartie II* should also be good here.

6

Dr. Ansolabehere's Testimony

Finally, the majority cites Dr. Ansolabehere's testimony that black registered voters in the counties covered by District 12 were more likely to be drawn into District 12 than white registered voters and that black registered Democrats were more likely to be pulled in than white registered Democrats. *Ante*, at 315–316.

There is an obvious flaw in Dr. Ansolabehere's analysis. He assumed that, if race was not the driving force behind the drawing of District 12, "white and black registered voters would have approximately the same likelihood of inclusion in a given Congressional District." App. 2597 (internal quotation marks omitted). But that would be true only if black and white voters were *evenly distributed* throughout the region, and his own maps showed that this was not so. See *id.*, at 322–328; 1 Record 128–133. Black voters were concentrated in the cities located at the north and south ends of the district and constituted a supermajority of Democrats in the area covered by District 12. See Part III–B, *supra*. As long as the basic shape of the district was retained, moving Democrats from areas outside but close to the old district boundaries naturally picked up far more black Democrats than white Democrats.

This explanation eluded Dr. Ansolabehere because he refused to consider either the implications of the political strategy that the legislature claimed to have pursued or the effects of the changes to District 12 on the surrounding districts. App. 2578–2582. The result was a distorted—and largely useless—analysis.

IV

Reviewing the evidence outlined above,[20] two themes emerge. First, District 12's borders and racial composition

[20] The District Court relied on other evidence as well, but its probative value is so weak that even the majority does not cite it.

are readily explained by political considerations and the effects of the legislature's political strategy on the demographics of District 12. Second, the majority largely ignores this explanation, as did the court below, and instead adopts the most damning interpretation of all available evidence.

Both of these analytical maneuvers violate our clearly established precedent. Our cases say that we must "'exercise extraordinary caution'" "'where the State has articulated a legitimate political explanation for its districting decision,'" *Cromartie II*, *supra*, at 242 (emphasis deleted); the majority ignores that political explanation. Our cases say that "the good faith of a state legislature must be presumed," *Miller*, 515 U. S., at 915; the majority presumes the opposite. And *Cromartie II* held that plaintiffs in a case like this are obligated to produce a map showing that the legislature could have achieved its political objectives without the racial effect seen in the challenged plan; here, the majority junks that rule and says that the plaintiffs' failure to produce such a map simply "does not matter." *Ante*, at 318.

The judgment below regarding District 12 should be reversed, and I therefore respectfully dissent.

Syllabus

IMPRESSION PRODUCTS, INC. *v.* LEXMARK INTERNATIONAL, INC.

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

No. 15–1189. Argued March 21, 2017—Decided May 30, 2017

A United States patent entitles the patent holder to "exclude others from making, using, offering for sale, or selling [its] invention throughout the United States or importing the invention into the United States." 35 U. S. C. § 154(a). Whoever engages in one of these acts "without authority" from the patentee may face liability for patent infringement. § 271(a). When a patentee sells one of its products, however, the patentee can no longer control that item through the patent laws—its patent rights are said to "exhaust."

Respondent Lexmark International, Inc. designs, manufactures, and sells toner cartridges to consumers in the United States and abroad. It owns a number of patents that cover components of those cartridges and the manner in which they are used. When Lexmark sells toner cartridges, it gives consumers two options: One option is to buy a toner cartridge at full price, with no restrictions. The other option is to buy a cartridge at a discount through Lexmark's "Return Program." In exchange for the lower price, customers who buy through the Return Program must sign a contract agreeing to use the cartridge only once and to refrain from transferring the cartridge to anyone but Lexmark.

Companies known as remanufacturers acquire empty Lexmark toner cartridges—including Return Program cartridges—from purchasers in the United States, refill them with toner, and then resell them. They do the same with Lexmark cartridges that they acquire from purchasers overseas and import into the United States. Lexmark sued a number of these remanufacturers, including petitioner Impression Products, Inc., for patent infringement with respect to two groups of cartridges. The first group consists of Return Program cartridges that Lexmark had sold within the United States. Lexmark argued that, because it expressly prohibited reuse and resale of these cartridges, Impression Products infringed the Lexmark patents when it refurbished and resold them. The second group consists of all toner cartridges that Lexmark had sold abroad and that Impression Products imported into the country. Lexmark claimed that it never gave anyone authority to import these cartridges, so Impression Products infringed its patent rights by doing just that.

Syllabus

Impression Products moved to dismiss on the grounds that Lexmark's sales, both in the United States and abroad, exhausted its patent rights in the cartridges, so Impression Products was free to refurbish and resell them, and to import them if acquired overseas. The District Court granted the motion to dismiss as to the domestic Return Program cartridges, but denied the motion as to the cartridges sold abroad. The Federal Circuit then ruled for Lexmark with respect to both groups of cartridges. Beginning with the Return Program cartridges that Lexmark sold domestically, the Federal Circuit held that a patentee may sell an item and retain the right to enforce, through patent infringement lawsuits, clearly communicated, lawful restrictions on post-sale use or resale. Because Impression Products knew about Lexmark's restrictions and those restrictions did not violate any laws, Lexmark's sales did not exhaust its patent rights, and it could sue Impression Products for infringement. As for the cartridges that Lexmark sold abroad, the Federal Circuit held that, when a patentee sells a product overseas, it does not exhaust its patent rights over that item. Lexmark was therefore free to sue for infringement when Impression Products imported cartridges that Lexmark had sold abroad. Judge Dyk, joined by Judge Hughes, dissented.

Held:

1. Lexmark exhausted its patent rights in the Return Program cartridges that it sold in the United States. A patentee's decision to sell a product exhausts all of its patent rights in that item, regardless of any restrictions the patentee purports to impose. As a result, even if the restrictions in Lexmark's contracts with its customers were clear and enforceable under contract law, they do not entitle Lexmark to retain patent rights in an item that it has elected to sell. Pp. 370–377.

(a) The Patent Act grants patentees the "right to exclude others from making, using, offering for sale, or selling [their] invention[s]." 35 U. S. C. § 154(a). For over 160 years, the doctrine of patent exhaustion has imposed a limit on that right to exclude: When a patentee sells an item, that product "is no longer within the limits of the [patent] monopoly" and instead becomes the "private, individual property" of the purchaser. *Bloomer* v. *McQuewan*, 14 How. 539, 549–550. If the patentee negotiates a contract restricting the purchaser's right to use or resell the item, it may be able to enforce that restriction as a matter of contract law, but may not do so through a patent infringement lawsuit.

The exhaustion rule marks the point where patent rights yield to the common law principle against restraints on alienation. The Patent Act promotes innovation by allowing inventors to secure the financial rewards for their inventions. Once a patentee sells an item, it has se-

cured that reward, and the patent laws provide no basis for restraining the use and enjoyment of the product. Allowing further restrictions would run afoul of the "common law's refusal to permit restraints on the alienation of chattels." *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 568 U. S. 519, 538. As Lord Coke put it in the 17th century, if an owner restricts the resale or use of an item after selling it, that restriction "is voide, because . . . it is against Trade and Traffique, and bargaining and contracting betweene man and man." 1 E. Coke, Institutes of the Laws of England § 360, p. 223 (1628). Congress enacted and has repeatedly revised the Patent Act against the backdrop of this hostility toward restraints on alienation, which is reflected in the exhaustion doctrine.

This Court accordingly has long held that, even when a patentee sells an item under an express, otherwise lawful restriction, the patentee does not retain patent rights in that product. See, *e. g.*, *Quanta Computer, Inc.* v. *LG Electronics, Inc.*, 553 U. S. 617. And that well-settled line of precedent allows for only one answer in this case: Lexmark cannot bring a patent infringement suit against Impression Products with respect to the Return Program cartridges sold in the United States because, once Lexmark sold those cartridges, it exhausted its right to control them through the patent laws. Pp. 370–374.

(b) The Federal Circuit reached a different result because it started from the premise that the exhaustion doctrine is an interpretation of the patent infringement statute, which prohibits anyone from using or selling a patented article "without authority" from the patentee. According to the Federal Circuit, exhaustion reflects a default rule that selling an item "*presumptively* grant[s] 'authority' for the purchaser to use it and resell it." 816 F. 3d 721, 742. But if a patentee withholds some authority by expressly limiting the purchaser's rights, the patentee may enforce that restriction through patent infringement lawsuits. See *id.*, at 741.

The problem with the Federal Circuit's logic is that the exhaustion doctrine is not a presumption about the authority that comes along with a sale; it is a limit on the scope of the patentee's rights. The Patent Act gives patentees a limited exclusionary power, and exhaustion extinguishes that power. A purchaser has the right to use, sell, or import an item because those are the rights that come along with ownership, not because it purchased authority to engage in those practices from the patentee. Pp. 374–377.

2. Lexmark also sold toner cartridges abroad, which Impression Products acquired from purchasers and imported into the United States. Lexmark cannot sue Impression Products for infringement with respect to these cartridges. An authorized sale outside the United States, just

as one within the United States, exhausts all rights under the Patent Act.

The question about international exhaustion of intellectual property rights has arisen in the context of copyright law. Under the first sale doctrine, when a copyright owner sells a lawfully made copy of its work, it loses the power to restrict the purchaser's right "to sell or otherwise dispose of . . . that copy." 17 U. S. C. § 109(a). In *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 568 U. S. 519, this Court held that the first sale doctrine applies to copies of works made and sold abroad. Central to that decision was the fact that the first sale doctrine has its roots in the common law principle against restraints on alienation. Because that principle makes no geographical distinctions and the text of the Copyright Act did not provide such a distinction, a straightforward application of the first sale doctrine required concluding that it applies overseas.

Applying patent exhaustion to foreign sales is just as straightforward. Patent exhaustion, too, has its roots in the antipathy toward restraints on alienation, and nothing in the Patent Act shows that Congress intended to confine that principle to domestic sales. Differentiating between the patent exhaustion and copyright first sale doctrines would also make little theoretical or practical sense: The two share a "strong similarity . . . and identity of purpose," *Bauer & Cie* v. *O'Donnell*, 229 U. S. 1, 13, and many everyday products are subject to both patent and copyright protections.

Lexmark contends that a foreign sale does not exhaust patent rights because the Patent Act limits a patentee's power to exclude others from making, using, selling, or importing its products to acts that occur in the United States. Because those exclusionary powers do not apply abroad, the patentee may not be able to sell its products overseas for the same price as it could in the United States, and therefore is not sure to receive the reward guaranteed by American patent laws. Without that reward, says Lexmark, there should be no exhaustion.

The territorial limit on patent rights is no basis for distinguishing copyright protections; those do not have extraterritorial effect either. Nor does the territorial limit support Lexmark's argument. Exhaustion is a distinct limit on the patent grant, which is triggered by the patentee's decision to give a patented item up for whatever fee it decides is appropriate. The patentee may not be able to command the same amount for its products abroad as it does in the United States. But the Patent Act does not guarantee a particular price. Instead, the Patent Act just ensures that the patentee receives one reward—of whatever it deems to be satisfactory compensation—for every item that passes outside the scope of its patent monopoly.

Syllabus

This Court's decision in *Boesch* v. *Gräff*, 133 U. S. 697, is not to the contrary. That decision did not, as Lexmark contends, exempt all foreign sales from patent exhaustion. Instead, it held that a sale abroad does not exhaust a patentee's rights when the patentee had nothing to do with the transaction. That just reaffirms the basic premise that only the patentee can decide whether to make a sale that exhausts its patent rights in an item.

Finally, the United States advocates what it views as a middle-ground position: that a foreign sale exhausts patent rights unless the patentee expressly reserves those rights. This express-reservation rule is based on the idea that overseas buyers expect to be able to use and resell items freely, so exhaustion should be the presumption. But, at the same time, lower courts have long allowed patentees to expressly reserve their rights, so that option should remain open to patentees. The sparse and inconsistent decisions the Government cites, however, provide no basis for any expectation, let alone a settled one, that patentees can reserve rights when they sell abroad. The theory behind the express-reservation rule also wrongly focuses on the expectations of the patentee and purchaser during a sale. More is at stake when it comes to patent exhaustion than the dealings between the parties, which can be addressed through contracts. Instead, exhaustion occurs because allowing patent rights to stick to an already-sold item as it travels through the market would violate the principle against restraints on alienation. As a result, restrictions and location are irrelevant for patent exhaustion; what matters is the patentee's decision to make a sale. Pp. 377–382.

816 F. 3d 721, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which KENNEDY, THOMAS, BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. GINSBURG, J., filed an opinion concurring in part and dissenting in part, *post*, p. 382. GORSUCH, J., took no part in the consideration or decision of the case.

Andrew J. Pincus argued the cause for petitioner. With him on the briefs were *Paul W. Hughes*, *Matthew A. Waring*, and *Edward F. O'Connor*.

Deputy Solicitor General Stewart argued the cause for the United States as *amicus curiae* urging reversal in part and vacatur in part. With him on the brief were *Acting Solicitor General Francisco*, *Acting Assistant Attorney General Branda*, *Elizabeth B. Prelogar*, *Mark R. Freeman*, and *Melissa N. Patterson*.

Counsel

Constantine L. Trela, Jr., argued the cause for respondent. With him on the brief were *Robert N. Hochman*, *Benjamin Beaton*, *Joshua J. Fougere*, *Timothy C. Meece*, *V. Bryan Medlock, Jr.*, *Audra C. Eidem Heinze*, *Steven B. Loy*, and *D. Brent Lambert*.*

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*Briefs of *amici curiae* urging reversal were filed for the Association of Medical Device Reprocessors by *Robert A. Surette* and *Christopher M. Scharff*; for the Association of Service and Computer Dealers International, Inc./North American Association of Telecom Dealers et al. by *W. Douglas Kari*; for the Auto Care Association et al. by *Seth D. Greenstein*; for Costco Wholesale Corp. et al. by *Roy T. Englert, Jr.*, *Ariel N. Lavinbuk*, and *Daniel N. Lerman*; for HTC Corp. et al. by *Steven M. Anzalone*; for Huawei Technologies Co., Ltd., by *Scott F. Partridge* and *Aaron M. Streett*; for Intel Corp. et al. by *Mark S. Davies*, *Matthew J. Hult*, and *Rachel Wainer Apter*; for the Mitchell Hamline School of Law for Intellectual Property Institute by *R. Carl Moy*; for Public Citizen, Inc., by *Scott L. Nelson* and *Allison M. Zieve*; for Public Knowledge et al. by *Charles Duan*, *Daniel Nazer*, and *Barbara Jones*; for Quanta Computer, Inc., by *Peter J. Wied* and *Vincent K. Yip*; for Intellectual Property Professors et al. by *Phillip R. Malone*; for Frederick M. Abbott by *Mr. Abbott*, *pro se*; and for Robin Feldman et al. by *Mr. Feldman*, *pro se*.

Briefs of *amici curiae* urging affirmance were filed for the Biotechnology Innovation Organization et al. by *Barbara A. Fiacco*; for the Boston Patent Law Association by *Daniel L. Shores*, *Milton M. Oliver*, and *Glenn E. Karta*; for Dolby Laboratories, Inc., by *Garrard R. Beeney*; for the Imaging Supplies Coalition by *Mark Schonfeld*; for the Intellectual Property Owners Association by *Robert M. Isackson*, *William D. Coston*, *Joshua C. Cumby*, *Kevin H. Rhodes*, and *Steven W. Miller*; for InterDigital, Inc., by *David S. Steuer*, *Michael B. Levin*, *Maura L. Rees*, and *Andrew G. Isztwan*; for International Business Machines Corp. by *Paul D. Clement*, *George W. Hicks, Jr.*, and *Marian Underweiser*; for the Medical Device Manufacturers Association by *Paul A. Stewart* and *Joseph S. Cianfrani*; for Medtronic PLC et al. by *Kathleen A. Daley* and *J. Derek McCorquindale*; for the New York International Property Law Association by *Noah M. Leibowitz*, *Jonathan C. Sanders*, *Walter E. Hanley, Jr.*, *Charles R. Macedo*, *David P. Goldberg*, and *Robert J. Rando*; for Nokia Technologies Oy et al. by *John D. Haynes*; for Pharmaceutical Research and Manufacturers of America by *Jeffrey L. Handwerker*, *R. Reeves Anderson*, *James C. Stansel*, and *David E. Korn*; for Plantronics, Inc., by *Rachel C. Hughey*; for Qualcomm Inc. by *Jeffrey A. Lamken*, *Lauren M. Weinstein*, *Richard J. Stark*, and *Roger G. Brooks*; for Adam Mossoff et al. by *Mi-*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

A United States patent entitles the patent holder (the "patentee"), for a period of 20 years, to "exclude others from making, using, offering for sale, or selling [its] invention throughout the United States or importing the invention into the United States." 35 U. S. C. § 154(a). Whoever engages in one of these acts "without authority" from the patentee may face liability for patent infringement. § 271(a).

When a patentee sells one of its products, however, the patentee can no longer control that item through the patent laws—its patent rights are said to "exhaust." The purchaser and all subsequent owners are free to use or resell the product just like any other item of personal property, without fear of an infringement lawsuit.

This case presents two questions about the scope of the patent exhaustion doctrine: First, whether a patentee that sells an item under an express restriction on the purchaser's right to reuse or resell the product may enforce that restriction through an infringement lawsuit. And second, whether a patentee exhausts its patent rights by selling its product outside the United States, where American patent laws do not apply. We conclude that a patentee's decision to sell a product exhausts all of its patent rights in that item, regardless of any restrictions the patentee purports to impose or the location of the sale.

I

The underlying dispute in this case is about laser printers—or, more specifically, the cartridges that contain the

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randa Y. Jones; and for 44 Law, Economics, and Business Professors by *Ted M. Sichelman.*

Briefs of *amici curiae* were filed for the American Intellectual Property Law Association by *Kristin L. Yohannan* and *Mark L. Whitaker*; for the Austin Intellectual Property Law Association by *David W. O'Brien*; for the Licensing Executives Society (U. S. A. and Canada), Inc., by *Daniel S. Stringfield*, *Katherine H. Johnson*, and *Brian P. O'Shaughnessy*; and for John F. Duffy et al. by *Matthew J. Dowd.*

powdery substance, known as toner, that laser printers use to make an image appear on paper. Respondent Lexmark International, Inc. designs, manufactures, and sells toner cartridges to consumers in the United States and around the globe. It owns a number of patents that cover components of those cartridges and the manner in which they are used.

When toner cartridges run out of toner they can be refilled and used again. This creates an opportunity for other companies—known as remanufacturers—to acquire empty Lexmark cartridges from purchasers in the United States and abroad, refill them with toner, and then resell them at a lower price than the new ones Lexmark puts on the shelves.

Not blind to this business problem, Lexmark structures its sales in a way that encourages customers to return spent cartridges. It gives purchasers two options: One is to buy a toner cartridge at full price, with no strings attached. The other is to buy a cartridge at roughly 20-percent off through Lexmark's "Return Program." A customer who buys through the Return Program still owns the cartridge but, in exchange for the lower price, signs a contract agreeing to use it only once and to refrain from transferring the empty cartridge to anyone but Lexmark. To enforce this single-use/no-resale restriction, Lexmark installs a microchip on each Return Program cartridge that prevents reuse once the toner in the cartridge runs out.

Lexmark's strategy just spurred remanufacturers to get more creative. Many kept acquiring empty Return Program cartridges and developed methods to counteract the effect of the microchips. With that technological obstacle out of the way, there was little to prevent the remanufacturers from using the Return Program cartridges in their resale business. After all, Lexmark's contractual single-use/no-resale agreements were with the initial customers, not with downstream purchasers like the remanufacturers.

Lexmark, however, was not so ready to concede that its plan had been foiled. In 2010, it sued a number of remanu-

facturers, including petitioner Impression Products, Inc., for patent infringement with respect to two groups of cartridges. One group consists of Return Program cartridges that Lexmark sold within the United States. Lexmark argued that, because it expressly prohibited reuse and resale of these cartridges, the remanufacturers infringed the Lexmark patents when they refurbished and resold them. The other group consists of all toner cartridges that Lexmark sold abroad and that remanufacturers imported into the country. Lexmark claimed that it never gave anyone authority to import these cartridges, so the remanufacturers ran afoul of its patent rights by doing just that.

Eventually, the lawsuit was whittled down to one defendant, Impression Products, and one defense: that Lexmark's sales, both in the United States and abroad, exhausted its patent rights in the cartridges, so Impression Products was free to refurbish and resell them, and to import them if acquired abroad. Impression Products filed separate motions to dismiss with respect to both groups of cartridges. The District Court granted the motion as to the domestic Return Program cartridges, but denied the motion as to the cartridges Lexmark sold abroad. Both parties appealed.

The Federal Circuit considered the appeals en banc and ruled for Lexmark with respect to both groups of cartridges. The court began with the Return Program cartridges that Lexmark sold in the United States. Relying on its decision in *Mallinckrodt, Inc.* v. *Medipart, Inc.*, 976 F. 2d 700 (1992), the Federal Circuit held that a patentee may sell an item and retain the right to enforce, through patent infringement lawsuits, "clearly communicated, . . . lawful restriction[s] as to post-sale use or resale." 816 F. 3d 721, 735 (2016). The exhaustion doctrine, the court reasoned, derives from the prohibition on making, using, selling, or importing items "without authority." *Id.*, at 734 (quoting 35 U. S. C. § 271(a)). When you purchase an item you presumptively also acquire

the authority to use or resell the item freely, but that is just a presumption; the same authority does not run with the item when the seller restricts post-sale use or resale. 816 F. 3d, at 742. Because the parties agreed that Impression Products knew about Lexmark's restrictions and that those restrictions did not violate any laws, the Federal Circuit concluded that Lexmark's sales had not exhausted all of its patent rights, and that the company could sue for infringement when Impression Products refurbished and resold Return Program cartridges.

As for the cartridges that Lexmark sold abroad, the Federal Circuit once again looked to its precedent. In *Jazz Photo Corp.* v. *International Trade Commission*, 264 F. 3d 1094 (2001), the court had held that a patentee's decision to sell a product abroad did not terminate its ability to bring an infringement suit against a buyer that "import[ed] the article and [sold] . . . it in the United States." 816 F. 3d, at 726–727. That rule, the court concluded, makes good sense: Exhaustion is justified when a patentee receives "the reward available from [selling in] American markets," which does not occur when the patentee sells overseas, where the American patent offers no protection and therefore cannot bolster the price of the patentee's goods. *Id.*, at 760–761. As a result, Lexmark was free to exercise its patent rights to sue Impression Products for bringing the foreign-sold cartridges to market in the United States.

Judge Dyk, joined by Judge Hughes, dissented. In their view, selling the Return Program cartridges in the United States exhausted Lexmark's patent rights in those items because any "authorized sale of a patented article . . . free[s] the article from any restrictions on use or sale based on the patent laws." *Id.*, at 775–776. As for the foreign cartridges, the dissenters would have held that a sale abroad also results in exhaustion, unless the seller "explicitly reserve[s] [its] United States patent rights" at the time of sale.

Id., at 774, 788. Because Lexmark failed to make such an express reservation, its foreign sales exhausted its patent rights.

We granted certiorari to consider the Federal Circuit's decisions with respect to both domestic and international exhaustion, 580 U. S. 1017 (2016), and now reverse.

II

A

First up are the Return Program cartridges that Lexmark sold in the United States. We conclude that Lexmark exhausted its patent rights in these cartridges the moment it sold them. The single-use/no-resale restrictions in Lexmark's contracts with customers may have been clear and enforceable under contract law, but they do not entitle Lexmark to retain patent rights in an item that it has elected to sell.

The Patent Act grants patentees the "right to exclude others from making, using, offering for sale, or selling [their] invention[s]." 35 U. S. C. § 154(a). For over 160 years, the doctrine of patent exhaustion has imposed a limit on that right to exclude. See *Bloomer* v. *McQuewan*, 14 How. 539 (1853). The limit functions automatically: When a patentee chooses to sell an item, that product "is no longer within the limits of the monopoly" and instead becomes the "private, individual property" of the purchaser, with the rights and benefits that come along with ownership. *Id.*, at 549–550. A patentee is free to set the price and negotiate contracts with purchasers, but may not, "*by virtue of his patent*, control the use or disposition" of the product after ownership passes to the purchaser. *United States* v. *Univis Lens Co.*, 316 U. S. 241, 250 (1942) (emphasis added). The sale "terminates all patent rights to that item." *Quanta Computer, Inc.* v. *LG Electronics, Inc.*, 553 U. S. 617, 625 (2008).

This well-established exhaustion rule marks the point where patent rights yield to the common law principle

against restraints on alienation. The Patent Act "promote[s] the progress of science and the useful arts by granting to [inventors] a limited monopoly" that allows them to "secure the financial rewards" for their inventions. *Univis*, 316 U. S., at 250. But once a patentee sells an item, it has "enjoyed all the rights secured" by that limited monopoly. *Keeler* v. *Standard Folding Bed Co.*, 157 U. S. 659, 661 (1895). Because "the purpose of the patent law is fulfilled . . . when the patentee has received his reward for the use of his invention," that law furnishes "no basis for restraining the use and enjoyment of the thing sold." *Univis*, 316 U. S., at 251.

We have explained in the context of copyright law that exhaustion has "an impeccable historic pedigree," tracing its lineage back to the "common law's refusal to permit restraints on the alienation of chattels." *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 568 U. S. 519, 538 (2013). As Lord Coke put it in the 17th century, if an owner restricts the resale or use of an item after selling it, that restriction "is voide, because . . . it is against Trade and Traffique, and bargaining and contracting betweene man and man." 1 E. Coke, Institutes of the Laws of England § 360, p. 223 (1628); see J. Gray, Restraints on the Alienation of Property § 27, p. 18 (2d ed. 1895) ("A condition or conditional limitation on alienation attached to a transfer of the entire interest in personalty is as void as if attached to a fee simple in land").

This venerable principle is not, as the Federal Circuit dismissively viewed it, merely "one common-law jurisdiction's general judicial policy at one time toward anti-alienation restrictions." 816 F. 3d, at 750. Congress enacted and has repeatedly revised the Patent Act against the backdrop of the hostility toward restraints on alienation. That enmity is reflected in the exhaustion doctrine. The patent laws do not include the right to "restrain[ ] . . . further alienation" after an initial sale; such conditions have been "hateful to the law from Lord Coke's day to ours" and are "obnoxious to the public interest." *Straus* v. *Victor Talking Machine Co.*,

243 U. S. 490, 501 (1917). "The inconvenience and annoyance to the public that an opposite conclusion would occasion are too obvious to require illustration." *Keeler*, 157 U. S., at 667.

But an illustration never hurts. Take a shop that restores and sells used cars. The business works because the shop can rest assured that, so long as those bringing in the cars own them, the shop is free to repair and resell those vehicles. That smooth flow of commerce would sputter if companies that make the thousands of parts that go into a vehicle could keep their patent rights after the first sale. Those companies might, for instance, restrict resale rights and sue the shop owner for patent infringement. And even if they refrained from imposing such restrictions, the very threat of patent liability would force the shop to invest in efforts to protect itself from hidden lawsuits. Either way, extending the patent rights beyond the first sale would clog the channels of commerce, with little benefit from the extra control that the patentees retain. And advances in technology, along with increasingly complex supply chains, magnify the problem. See Brief for Costco Wholesale Corp. et al. as *Amici Curiae* 7–9; Brief for Intel Corp. et al. as *Amici Curiae* 17, n. 5 ("A generic smartphone assembled from various high-tech components could practice an estimated 250,000 patents").

This Court accordingly has long held that, even when a patentee sells an item under an express restriction, the patentee does not retain patent rights in that product. In *Boston Store of Chicago* v. *American Graphophone Co.*, for example, a manufacturer sold graphophones—one of the earliest devices for recording and reproducing sounds—to retailers under contracts requiring those stores to resell at a specific price. 246 U. S. 8, 17–18 (1918). When the manufacturer brought a patent infringement suit against a retailer who sold for less, we concluded that there was "no room for controversy" about the result: By selling the item, the manu-

facturer placed it "beyond the confines of the patent law, [and] could not, by qualifying restrictions as to use, keep [it] under the patent monopoly." *Id.*, at 20, 25.

Two decades later, we confronted a similar arrangement in *United States* v. *Univis Lens Co.* There, a company that made eyeglass lenses authorized an agent to sell its products to wholesalers and retailers only if they promised to market the lenses at fixed prices. The Government filed an antitrust lawsuit, and the company defended its arrangement on the ground that it was exercising authority under the Patent Act. We held that the initial sales "relinquish[ed] . . . the patent monopoly with respect to the article[s] sold," so the "stipulation . . . fixing resale prices derive[d] no support from the patent and must stand on the same footing" as restrictions on unpatented goods. 316 U. S., at 249–251.

It is true that *Boston Store* and *Univis* involved resale price restrictions that, at the time of those decisions, violated the antitrust laws. But in both cases it was the sale of the items, rather than the illegality of the restrictions, that prevented the patentees from enforcing those resale price agreements through patent infringement suits. And if there were any lingering doubt that patent exhaustion applies even when a sale is subject to an express, otherwise lawful restriction, our recent decision in *Quanta Computer, Inc.* v. *LG Electronics, Inc.* settled the matter. In that case, a technology company—with authorization from the patentee—sold microprocessors under contracts requiring purchasers to use those processors with other parts that the company manufactured. One buyer disregarded the restriction, and the patentee sued for infringement. Without so much as mentioning the lawfulness of the contract, we held that the patentee could not bring an infringement suit because the "authorized sale . . . took its products outside the scope of the patent monopoly." 553 U. S., at 638.

Turning to the case at hand, we conclude that this well-settled line of precedent allows for only one answer: Lex-

mark cannot bring a patent infringement suit against Impression Products to enforce the single-use/no-resale provision accompanying its Return Program cartridges. Once sold, the Return Program cartridges passed outside of the patent monopoly, and whatever rights Lexmark retained are a matter of the contracts with its purchasers, not the patent law.

B

The Federal Circuit reached a different result largely because it got off on the wrong foot. The "exhaustion doctrine," the court believed, "must be understood as an interpretation of" the infringement statute, which prohibits anyone from using or selling a patented article "without authority" from the patentee. 816 F. 3d, at 734 (quoting 35 U. S. C. § 271(a)). Exhaustion reflects a default rule that a patentee's decision to sell an item "*presumptively* grant[s] 'authority' to the purchaser to use it and resell it." 816 F. 3d, at 742. But, the Federal Circuit explained, the patentee does not have to hand over the full "bundle of rights" every time. *Id.*, at 741 (internal quotation marks omitted). If the patentee expressly withholds a stick from the bundle—perhaps by restricting the purchaser's resale rights—the buyer never acquires that withheld authority, and the patentee may continue to enforce its right to exclude that practice under the patent laws.

The misstep in this logic is that the exhaustion doctrine is not a presumption about the authority that comes along with a sale; it is instead a limit on "the scope of the *patentee's rights*." *United States* v. *General Elec. Co.*, 272 U. S. 476, 489 (1926) (emphasis added). The right to use, sell, or import an item exists independently of the Patent Act. What a patent adds—and grants exclusively to the patentee—is a limited right to prevent others from engaging in those practices. See *Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U. S. 24, 35 (1923). Exhaustion extinguishes that exclusionary power. See *Bloomer*, 14 How., at 549 (the

purchaser "exercises no rights created by the act of Congress, nor does he derive title to [the item] by virtue of the . . . exclusive privilege granted to the patentee"). As a result, the sale transfers the right to use, sell, or import because those are the rights that come along with ownership, and the buyer is free and clear of an infringement lawsuit because there is no exclusionary right left to enforce.

The Federal Circuit also expressed concern that preventing patentees from reserving patent rights when they sell goods would create an artificial distinction between such sales and sales by licensees. Patentees, the court explained, often license others to make and sell their products, and may place restrictions on those licenses. A computer developer could, for instance, license a manufacturer to make its patented devices and sell them only for non-commercial use by individuals. If a licensee breaches the license by selling a computer for commercial use, the patentee can sue the licensee for infringement. And, in the Federal Circuit's view, our decision in *General Talking Pictures Corp.* v. *Western Elec. Co.*, 304 U. S. 175, aff'd on reh'g, 305 U. S. 124 (1938), established that—when a patentee grants a license "under clearly stated restrictions on post-sale activities" of those who purchase products from the licensee—the patentee can *also* sue for infringement those purchasers who knowingly violate the restrictions. 816 F. 3d, at 743–744. If patentees can employ licenses to impose post-sale restrictions on purchasers that are enforceable through infringement suits, the court concluded, it would make little sense to prevent patentees from doing so when they sell directly to consumers.

The Federal Circuit's concern is misplaced. A patentee can impose restrictions on licensees because a license does not implicate the same concerns about restraints on alienation as a sale. Patent exhaustion reflects the principle that, when an item passes into commerce, it should not be shaded by a legal cloud on title as it moves through the marketplace. But a license is not about passing title to a

product, it is about changing the contours of the patentee's monopoly: The patentee agrees not to exclude a licensee from making or selling the patented invention, expanding the club of authorized producers and sellers. See *General Elec. Co.*, 272 U. S., at 489–490. Because the patentee is exchanging rights, not goods, it is free to relinquish only a portion of its bundle of patent protections.

A patentee's authority to limit *licensees* does not, as the Federal Circuit thought, mean that patentees can use licenses to impose post-sale restrictions on *purchasers* that are enforceable through the patent laws. So long as a licensee complies with the license when selling an item, the patentee has, in effect, authorized the sale. That licensee's sale is treated, for purposes of patent exhaustion, as if the patentee made the sale itself. The result: The sale exhausts the patentee's rights in that item. See *Hobbie* v. *Jennison*, 149 U. S. 355, 362–363 (1893). A license may require the licensee to impose a restriction on purchasers, like the license limiting the computer manufacturer to selling for noncommercial use by individuals. But if the licensee does so—by, perhaps, having each customer sign a contract promising not to use the computers in business—the sale nonetheless exhausts all patent rights in the item sold. See *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*, 243 U. S. 502, 506–507, 516 (1917). The purchasers might not comply with the restriction, but the only recourse for the licensee is through contract law, just as if the patentee itself sold the item with a restriction.

General Talking Pictures involved a fundamentally different situation: There, a licensee "knowingly ma[de] . . . sales . . . *outside* the scope of its license." 304 U. S., at 181–182 (emphasis added). We treated the sale "as if no license whatsoever had been granted" by the patentee, which meant that the patentee could sue both the licensee and the purchaser—who knew about the breach—for infringement. *General Talking Pictures Corp.* v. *Western Elec. Co.*, 305

U. S. 124, 127 (1938). This does not mean that patentees can use licenses to impose post-sale restraints on purchasers. Quite the contrary: The licensee infringed the patentee's rights because it did *not* comply with the terms of its license, and the patentee could bring a patent suit against the purchaser only because the purchaser participated in the licensee's infringement. *General Talking Pictures*, then, stands for the modest principle that, if a patentee has not given authority for a licensee to make a sale, that sale cannot exhaust the patentee's rights.

In sum, patent exhaustion is uniform and automatic. Once a patentee decides to sell—whether on its own or through a licensee—that sale exhausts its patent rights, regardless of any post-sale restrictions the patentee purports to impose, either directly or through a license.

III

Our conclusion that Lexmark exhausted its patent rights when it sold the domestic Return Program cartridges goes only halfway to resolving this case. Lexmark also sold toner cartridges abroad and sued Impression Products for patent infringement for "importing [Lexmark's] invention into the United States." 35 U. S. C. § 154(a). Lexmark contends that it may sue for infringement with respect to all of the imported cartridges—not just those in the Return Program—because a foreign sale does not trigger patent exhaustion unless the patentee "expressly or implicitly transfer[s] or license[s]" its rights. Brief for Respondent 36–37. The Federal Circuit agreed, but we do not. An authorized sale outside the United States, just as one within the United States, exhausts all rights under the Patent Act.

This question about international exhaustion of intellectual property rights has also arisen in the context of copyright law. Under the "first sale doctrine," which is codified at 17 U. S. C. § 109(a), when a copyright owner sells a lawfully made copy of its work, it loses the power to restrict the

purchaser's freedom "to sell or otherwise dispose of . . . that copy." In *Kirtsaeng* v. *John Wiley & Sons, Inc.*, we held that this "'first sale' [rule] applies to copies of a copyrighted work lawfully made [and sold] abroad." 568 U. S., at 525. We began with the text of § 109(a), but it was not decisive: The language neither "restrict[s] the scope of [the] 'first sale' doctrine geographically," nor clearly embraces international exhaustion. *Id.*, at 528–533. What helped tip the scales for global exhaustion was the fact that the first sale doctrine originated in "the common law's refusal to permit restraints on the alienation of chattels." *Id.*, at 538. That "common-law doctrine makes no geographical distinctions." *Id.*, at 539. The lack of any textual basis for distinguishing between domestic and international sales meant that "a straightforward application" of the first sale doctrine required the conclusion that it applies overseas. *Id.*, at 540 (internal quotation marks omitted).

Applying patent exhaustion to foreign sales is just as straightforward. Patent exhaustion, too, has its roots in the antipathy toward restraints on alienation, see *supra*, at 370–373, and nothing in the text or history of the Patent Act shows that Congress intended to confine that borderless common law principle to domestic sales. In fact, Congress has not altered patent exhaustion at all; it remains an unwritten limit on the scope of the patentee's monopoly. See *Astoria Fed. Sav. & Loan Assn.* v. *Solimino*, 501 U. S. 104, 108 (1991) ("[W]here a common-law principle is well established, . . . courts may take it as given that Congress has legislated with an expectation that the principle will apply except when a statutory purpose to the contrary is evident" (internal quotation marks omitted)). And differentiating the patent exhaustion and copyright first sale doctrines would make little theoretical or practical sense: The two share a "strong similarity . . . and identity of purpose," *Bauer & Cie* v. *O'Donnell*, 229 U. S. 1, 13 (1913), and many everyday products—"automobiles, microwaves, calculators,

mobile phones, tablets, and personal computers"—are subject to both patent and copyright protections, see *Kirtsaeng*, 568 U. S., at 542; Brief for Costco Wholesale Corp. et al. as *Amici Curiae* 14–15. There is a "historic kinship between patent law and copyright law," *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417, 439 (1984), and the bond between the two leaves no room for a rift on the question of international exhaustion.

Lexmark sees the matter differently. The Patent Act, it points out, limits the patentee's "right to exclude others" from making, using, selling, or importing its products to acts that occur in the United States. 35 U. S. C. § 154(a). A domestic sale, it argues, triggers exhaustion because the sale compensates the patentee for "surrendering [those] *U. S.* rights." Brief for Respondent 38. A foreign sale is different: The Patent Act does not give patentees exclusionary powers abroad. Without those powers, a patentee selling in a foreign market may not be able to sell its product for the same price that it could in the United States, and therefore is not sure to receive "the reward guaranteed by U. S. patent law." *Id.*, at 39 (internal quotation marks omitted). Absent that reward, says Lexmark, there should be no exhaustion. In short, there is no patent exhaustion from sales abroad because there are no patent rights abroad to exhaust.

The territorial limit on patent rights is, however, no basis for distinguishing copyright protections; those protections "do not have any extraterritorial operation" either. 5 M. Nimmer & D. Nimmer, Copyright § 17.02, p. 17–26 (2017). Nor does the territorial limit support the premise of Lexmark's argument. Exhaustion is a separate limit on the patent grant, and does not depend on the patentee receiving some undefined premium for selling the right to access the American market. A purchaser buys an item, not patent rights. And exhaustion is triggered by the patentee's decision to give that item up and receive whatever fee it decides is appropriate "for the article and the invention which it em-

bodies." *Univis*, 316 U. S., at 251. The patentee may not be able to command the same amount for its products abroad as it does in the United States. But the Patent Act does not guarantee a particular price, much less the price from selling to American consumers. Instead, the right to exclude just ensures that the patentee receives one reward—of whatever amount the patentee deems to be "satisfactory compensation," *Keeler*, 157 U. S., at 661—for every item that passes outside the scope of the patent monopoly.

This Court has addressed international patent exhaustion in only one case, *Boesch* v. *Gräff*, decided over 125 years ago. All that case illustrates is that a sale abroad does not exhaust a patentee's rights when the patentee had nothing to do with the transaction. *Boesch*—from the days before the widespread adoption of electrical lighting—involved a retailer who purchased lamp burners from a manufacturer in Germany, with plans to sell them in the United States. The manufacturer had authority to make the burners under German law, but there was a hitch: Two individuals with no ties to the German manufacturer held the American patent to that invention. These patentees sued the retailer for infringement when the retailer imported the lamp burners into the United States, and we rejected the argument that the German manufacturer's sale had exhausted the American patentees' rights. The German manufacturer had no permission to sell in the United States from the American patentees, and the American patentees had not exhausted their patent rights in the products because they had not sold them to anyone, so "purchasers from [the German manufacturer] could not be thereby authorized to sell the articles in the United States." 133 U. S. 697, 703 (1890).

Our decision did not, as Lexmark contends, exempt all foreign sales from patent exhaustion. See Brief for Respondent 44–45. Rather, it reaffirmed the basic premise that only the patentee can decide whether to make a sale that exhausts its patent rights in an item. The American patentees did

not do so with respect to the German products, so the German sales did not exhaust their rights.

Finally, the United States, as an *amicus*, advocates what it views as a middle-ground position: that "a foreign sale authorized by the U. S. patentee exhausts U. S. patent rights unless those rights are expressly reserved." Brief for United States 7–8. Its position is largely based on policy rather than principle. The Government thinks that an overseas "buyer's legitimate expectation" is that a "sale conveys all of the seller's interest in the patented article," so the presumption should be that a foreign sale triggers exhaustion. *Id.*, at 32–33. But, at the same time, "lower courts long ago coalesced around" the rule that "a patentee's express reservation of U. S. patent rights at the time of a foreign sale will be given effect," so that option should remain open to the patentee. *Id.*, at 22 (emphasis deleted).

The Government has little more than "long ago" on its side. In the 1890s, two Circuit Courts—in cases involving the same company—did hold that patentees may use express restrictions to reserve their patent rights in connection with foreign sales. See *Dickerson* v. *Tinling*, 84 F. 192, 194–195 (CA8 1897); *Dickerson* v. *Matheson*, 57 F. 524, 527 (CA2 1893). But no "coalesc[ing]" ever took place: Over the following hundred-plus years, only a smattering of lower court decisions mentioned this express-reservation rule for foreign sales. See, *e. g.*, *Sanofi, S. A.* v. *Med-Tech Veterinarian Prods., Inc.*, 565 F. Supp. 931, 938 (NJ 1983). And in 2001, the Federal Circuit adopted its blanket rule that foreign sales do not trigger exhaustion, even if the patentee fails to expressly reserve its rights. *Jazz Photo*, 264 F. 3d, at 1105. These sparse and inconsistent decisions provide no basis for any expectation, let alone a settled one, that patentees can reserve patent rights when they sell abroad.

The theory behind the Government's express-reservation rule also wrongly focuses on the likely expectations of the patentee and purchaser during a sale. Exhaustion does not

arise because of the parties' expectations about how sales transfer patent rights. More is at stake when it comes to patents than simply the dealings between the parties, which can be addressed through contract law. Instead, exhaustion occurs because, in a sale, the patentee elects to give up title to an item in exchange for payment. Allowing patent rights to stick remora-like to that item as it flows through the market would violate the principle against restraints on alienation. Exhaustion does not depend on whether the patentee receives a premium for selling in the United States, or the type of rights that buyers expect to receive. As a result, restrictions and location are irrelevant; what matters is the patentee's decision to make a sale.

* * *

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

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

JUSTICE GINSBURG, concurring in part and dissenting in part.

I concur in the Court's holding regarding domestic exhaustion—a patentee who sells a product with an express restriction on reuse or resale may not enforce that restriction through an infringement lawsuit, because the U. S. sale exhausts the U. S. patent rights in the product sold. See *ante*, at 370–377. I dissent, however, from the Court's holding on international exhaustion. A foreign sale, I would hold, does not exhaust a U. S. inventor's U. S. patent rights.

Patent law is territorial. When an inventor receives a U. S. patent, that patent provides no protection abroad. See

Deepsouth Packing Co. v. *Laitram Corp.*, 406 U. S. 518, 531 (1972) ("Our patent system makes no claim to extraterritorial effect."). See also 35 U. S. C. § 271(a) (establishing liability for acts of patent infringement "within the United States" and for "import[ation] into the United States [of] any patented invention"). A U. S. patentee must apply to each country in which she seeks the exclusive right to sell her invention. *Microsoft Corp.* v. *AT&T Corp.*, 550 U. S. 437, 456 (2007) ("[F]oreign law alone, not United States law, currently governs the manufacture and sale of components of patented inventions in foreign countries."). See also Convention at Brussels, An Additional Act Modifying the Paris Convention for the Protection of Industrial Property of Mar. 20, 1883, Dec. 14, 1900, Art. I, 32 Stat. 1940 ("Patents applied for in the different contracting States . . . shall be independent of the patents obtained for the same invention in the other States."). And patent laws vary by country; each country's laws "may embody different policy judgments about the relative rights of inventors, competitors, and the public in patented inventions." *Microsoft*, 550 U. S., at 455 (internal quotation marks omitted).

Because a sale abroad operates independently of the U. S. patent system, it makes little sense to say that such a sale exhausts an inventor's U. S. patent rights. U. S. patent protection accompanies none of a U. S. patentee's sales abroad—a competitor could sell the same patented product abroad with no U. S.-patent-law consequence. Accordingly, the foreign sale should not diminish the protections of U. S. law in the United States.

The majority disagrees, in part because this Court decided, in *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 568 U. S. 519, 525 (2013), that a foreign sale exhausts U. S. *copyright* protections. Copyright and patent exhaustion, the majority states, "share a strong similarity." *Ante*, at 378 (internal quotation marks omitted). I dissented from our decision in

Kirtsaeng and adhere to the view that a foreign sale should not exhaust U. S. copyright protections. See 568 U. S., at 557.

But even if I subscribed to *Kirtsaeng*'s reasoning with respect to copyright, that decision should bear little weight in the patent context. Although there may be a "historic kinship" between patent law and copyright law, *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417, 439 (1984), the two "are not identical twins," *ibid.*, n. 19. The Patent Act contains no analogue to 17 U. S. C. § 109(a), the Copyright Act first-sale provision analyzed in *Kirtsaeng*. See *ante*, at 377–378. More importantly, copyright protections, unlike patent protections, are harmonized across countries. Under the Berne Convention, which 174 countries have joined,* members "agree to treat authors from other member countries as well as they treat their own." *Golan* v. *Holder*, 565 U. S. 302, 308 (2012) (citing Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Stockholm on July 14, 1967, Arts. 1, 5(1), 828 U. N. T. S. 225, 231–233). The copyright protections one receives abroad are thus likely to be similar to those received at home, even if provided under each country's separate copyright regime.

For these reasons, I would affirm the Federal Circuit's judgment with respect to foreign exhaustion.

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*See WIPO-Administered Treaties: Contracting Parties: Berne Convention, www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=15 (as last visited May 25, 2017).

Syllabus

ESQUIVEL-QUINTANA *v.* SESSIONS, ATTORNEY GENERAL

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

No. 16–54. Argued February 27, 2017—Decided May 30, 2017

Petitioner, a citizen of Mexico and lawful permanent resident of the United States, pleaded no contest in a California court to a statutory rape offense criminalizing "unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator." Cal. Penal Code Ann. § 261.5(c). For purposes of that offense, California defines "minor" as "a person under the age of 18." § 261.5(a). Based on this conviction, the Department of Homeland Security initiated removal proceedings under the Immigration and Nationality Act (INA), which makes removable "[a]ny alien who is convicted of an aggravated felony," 8 U. S. C. § 1227(a)(2)(A)(iii), including "sexual abuse of a minor," § 1101(a)(43)(A). An Immigration Judge ordered petitioner removed to Mexico. The Board of Immigration Appeals agreed that petitioner's crime constituted sexual abuse of a minor and dismissed his appeal. A divided Court of Appeals denied his petition for review.

Held: In the context of statutory rape offenses that criminalize sexual intercourse based solely on the ages of the participants, the generic federal definition of "sexual abuse of a minor" requires the age of the victim to be less than 16. Pp. 389–398.

(a) Under the categorical approach employed to determine whether an alien's conviction qualifies as an aggravated felony, the Court asks whether "'the state statute defining the crime of conviction' categorically fits within the 'generic' federal definition of a corresponding aggravated felony." *Moncrieffe* v. *Holder*, 569 U. S. 184, 190. Petitioner's state conviction is thus an "aggravated felony" only if the least of the acts criminalized by the state statute falls within the generic federal definition of sexual abuse of a minor. *Johnson* v. *United States*, 559 U. S. 133, 137. Pp. 389–390.

(b) The least of the acts criminalized by Cal. Penal Code § 261.5(c) would be consensual sexual intercourse between a victim who is almost 18 and a perpetrator who just turned 21. Regardless of the actual facts of the case, this Court presumes that petitioner's conviction was based on those acts. P. 390.

(c) In the context of statutory rape offenses that criminalize sexual intercourse based solely on the ages of the participants, the generic

federal definition of "sexual abuse of a minor" requires that the victim be younger than 16. The Court begins, as always, with the text. Pp. 390–393.

(1) Congress added sexual abuse of a minor to the INA in 1996. At that time, the ordinary meaning of "sexual abuse" included "the engaging in sexual contact with a person who is below a specified age or who is incapable of giving consent because of age or mental or physical incapacity." Merriam-Webster's Dictionary of Law 454. By providing that the abuse must be "of a minor," the INA focuses on age, rather than mental or physical incapacity. Accordingly, to qualify as sexual abuse of a minor, the statute of conviction must prohibit certain sexual acts based at least in part on the age of the victim. Statutory rape laws, which are one example of this category of crimes, generally provide that an older person may not engage in sexual intercourse with a younger person under the "age of consent." Reliable dictionaries indicate that the "generic" age of consent in 1996 was 16, and it remains so today. Pp. 391–392.

(2) The Government argues that sexual abuse of a minor includes any conduct that is illegal, involves sexual activity, and is directed at a person younger than 18. For support, it points to the 1990 Black's Law Dictionary, which defined sexual abuse of a minor as "[i]llegal sex acts performed against a minor by a parent, guardian, relative, or acquaintance" and defined "[m]inor" as "[a]n infant or person who is under the age of legal competence," which in "most states" was "18." But the generic federal offense does not correspond to the Government's definition, for three reasons. First, the Government's definition is inconsistent with its own dictionary's requirement that a special relationship of trust exist between the victim and offender. Second, in the statutory rape context, "of a minor" refers to the age of consent, not the age of legal competence. Third, the Government's definition turns the categorical approach on its head by defining the generic federal offense as whatever is illegal under the law of the State of conviction. Pp. 392–393.

(d) The structure of the INA, a related federal statute, and evidence from state criminal codes confirm that, for a statutory rape offense based solely on the age of the participants to qualify as sexual abuse of a minor under the INA, the victim must be younger than 16. The INA lists sexual abuse of a minor as an "aggravated" felony, § 1227(a)(2)(A)(iii), and lists it in the same subparagraph as "murder" and "rape," § 1101(a)(43)(A), suggesting that it encompasses only especially egregious felonies. A different statute, 18 U. S. C. § 2243, criminalizes "[s]exual abuse of a minor or ward." Section 2243 was amended to protect anyone under age 16 in the same omnibus law that added

sexual abuse of a minor to the INA, suggesting that Congress understood that phrase to cover victims under (but not over) age 16. Finally, a significant majority of state criminal codes set the age of consent at 16 for statutory rape offenses predicated exclusively on the age of the participants. Pp. 393–397.

(e) This Court does not decide whether the generic crime of sexual abuse of a minor requires a particular age differential between the victim and the perpetrator or whether it encompasses sexual intercourse involving victims over 16 that is abusive because of the nature of the relationship between the participants. P. 397.

(f) Because the statute, read in context, unambiguously forecloses the Board's interpretation of sexual abuse of a minor, neither the rule of lenity nor *Chevron* deference applies. Pp. 397–398.

810 F. 3d 1019, reversed.

THOMAS, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.

Jeffrey L. Fisher argued the cause for petitioner. With him on the briefs were *David T. Goldberg*, *Pamela S. Karlan*, *Jayashri Srikantiah*, and *Michael Carlin.*

Allon Kedem argued the cause for respondent. With him on the briefs were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Kneedler*, *Donald E. Keener*, *John W. Blakeley*, and *Patrick J. Glen.**

JUSTICE THOMAS delivered the opinion of the Court.

The Immigration and Nationality Act (INA), 66 Stat. 163, as amended, provides that "[a]ny alien who is convicted of an aggravated felony after admission" to the United States may be removed from the country by the Attorney General. 8 U. S. C. § 1227(a)(2)(A)(iii). One of the many crimes that

*Briefs of *amici curiae* urging reversal were filed for the Immigrant Defense Project et al. by *Alan E. Schoenfeld* and *David M. Lehn*; for the National Association of Criminal Defense Lawyers by *Benjamin J. Horwich* and *David Markus*; and for the National Immigrant Justice Center et al. by *Michael B. Kimberly*, *Kevin S. Ranlett*, *Chuck Roth*, and *Rebecca Sharpless*.

constitutes an aggravated felony under the INA is "sexual abuse of a minor." § 1101(a)(43)(A). A conviction for sexual abuse of a minor is an aggravated felony regardless of whether it is for a "violation of Federal or State law." § 1101(a)(43). The INA does not expressly define sexual abuse of a minor.

We must decide whether a conviction under a state statute criminalizing consensual sexual intercourse between a 21-year-old and a 17-year-old qualifies as sexual abuse of a minor under the INA. We hold that it does not.

I

Petitioner Juan Esquivel-Quintana is a native and citizen of Mexico. He was admitted to the United States as a lawful permanent resident in 2000. In 2009, he pleaded no contest in the Superior Court of California to a statutory rape offense: "unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator," Cal. Penal Code Ann. § 261.5(c) (West 2014); see also § 261.5(a) ("Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor"). For purposes of that offense, California defines "minor" as "a person under the age of 18 years." *Ibid.*

The Department of Homeland Security initiated removal proceedings against petitioner based on that conviction. An Immigration Judge concluded that the conviction qualified as "sexual abuse of a minor," 8 U. S. C. § 1101(a)(43)(A), and ordered petitioner removed to Mexico. The Board of Immigration Appeals (Board) dismissed his appeal. 26 I. & N. Dec. 469 (2015). "[F]or a statutory rape offense involving a 16- or 17-year-old victim" to qualify as "'sexual abuse of a minor,'" it reasoned, "the statute must require a meaningful age difference between the victim and the perpetrator." *Id.*, at 477. In its view, the 3-year age difference required by Cal. Penal Code § 261.5(c) was meaningful. *Id.*, at 477.

Accordingly, the Board concluded that petitioner's crime of conviction was an aggravated felony, making him removable under the INA. *Ibid.* A divided Court of Appeals denied Esquivel-Quintana's petition for review, deferring to the Board's interpretation of sexual abuse of a minor under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). 810 F. 3d 1019 (CA6 2016); see also *id.*, at 1027 (Sutton, J., concurring in part and dissenting in part). We granted certiorari, 580 U. S. 951 (2016), and now reverse.

II

Section 1227(a)(2)(A)(iii) makes aliens removable based on the nature of their convictions, not based on their actual conduct. See *Mellouli* v. *Lynch*, 575 U. S. 798, 805–806 (2015). Accordingly, to determine whether an alien's conviction qualifies as an aggravated felony under that section, we "employ a categorical approach by looking to the statute . . . of conviction, rather than to the specific facts underlying the crime." *Kawashima* v. *Holder*, 565 U. S. 478, 483 (2012); see, *e. g.*, *Gonzales* v. *Duenas-Alvarez*, 549 U. S. 183, 186 (2007) (applying the categorical approach set forth in *Taylor* v. *United States*, 495 U. S. 575 (1990), to the INA). Under that approach, we ask whether "'the state statute defining the crime of conviction' categorically fits within the 'generic' federal definition of a corresponding aggravated felony." *Moncrieffe* v. *Holder*, 569 U. S. 184, 190 (2013) (quoting *Duenas-Alvarez*, *supra*, at 186). In other words, we presume that the state conviction "rested upon . . . the least of th[e] acts" criminalized by the statute, and then we determine whether that conduct would fall within the federal definition of the crime. *Johnson* v. *United States*, 559 U. S. 133, 137 (2010); see also *Moncrieffe*, *supra*, at 191 (focusing "on the minimum conduct criminalized by the state statute").[1] Petitioner's

[1] Where a state statute contains several different crimes that are described separately, we employ what is known as the "modified categorical approach." See *Gonzales* v. *Duenas-Alvarez*, 549 U. S. 183, 187 (2007)

state conviction is thus an "aggravated felony" under the INA only if the least of the acts criminalized by the state statute falls within the generic federal definition of sexual abuse of a minor.

A

Because Cal. Penal Code § 261.5(c) criminalizes "unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator" and defines a minor as someone under age 18, the conduct criminalized under this provision would be, at a minimum, consensual sexual intercourse between a victim who is almost 18 and a perpetrator who just turned 21. Regardless of the actual facts of petitioner's crime, we must presume that his conviction was based on acts that were no more criminal than that. If those acts do not constitute sexual abuse of a minor under the INA, then petitioner was not convicted of an aggravated felony and is not, on that basis, removable.

Petitioner concedes that sexual abuse of a minor under the INA includes some statutory rape offenses. But he argues that a statutory rape offense based solely on the partners' ages (like the one here) is "'abuse'" "only when the younger partner is under 16." Reply Brief 2. Because the California statute criminalizes sexual intercourse when the victim is up to 17 years old, petitioner contends that it does not categorically qualify as sexual abuse of a minor.

B

We agree with petitioner that, in the context of statutory rape offenses that criminalize sexual intercourse based solely on the age of the participants, the generic federal definition of sexual abuse of a minor requires that the victim be

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(internal quotation marks omitted). Under that approach, which is not at issue here, the court may review the charging documents, jury instructions, plea agreement, plea colloquy, and similar sources to determine the actual crime of which the alien was convicted. See *ibid.*

younger than 16. Because the California statute at issue in this case does not categorically fall within that definition, a conviction pursuant to it is not an aggravated felony under § 1101(a)(43)(A). We begin, as always, with the text.

1

Section 1101(a)(43)(A) does not expressly define sexual abuse of a minor, so we interpret that phrase using the normal tools of statutory interpretation. "Our analysis begins with the language of the statute." *Leocal* v. *Ashcroft*, 543 U. S. 1, 8 (2004); see also *Lopez* v. *Gonzales*, 549 U. S. 47, 53 (2006) ("The everyday understanding of" the term used in § 1101 "should count for a lot here, for the statutes in play do not define the term, and so remit us to regular usage to see what Congress probably meant").

Congress added sexual abuse of a minor to the INA in 1996, as part of a comprehensive immigration reform Act. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 321(a)(i), 110 Stat. 3009–627. At that time, the ordinary meaning of "sexual abuse" included "the engaging in sexual contact with a person who is below a specified age or who is incapable of giving consent because of age or mental or physical incapacity." Merriam-Webster's Dictionary of Law 454 (1996). By providing that the abuse must be "of a minor," the INA focuses on age, rather than mental or physical incapacity. Accordingly, to qualify as sexual abuse of a minor, the statute of conviction must prohibit certain sexual acts based at least in part on the age of the victim.

Statutory rape laws are one example of this category of crimes. Those laws generally provide that an older person may not engage in sexual intercourse with a younger person under a specified age, known as the "age of consent." See *id.*, at 20 (defining "age of consent" as "the age at which a person is deemed competent by law to give consent esp. to sexual intercourse" and cross-referencing "statutory rape").

Many laws also require an age differential between the two partners.

Although the age of consent for statutory rape purposes varies by jurisdiction, see *infra*, at 395–396, reliable dictionaries provide evidence that the "generic" age—in 1996 and today—is 16. See B. Garner, A Dictionary of Modern Legal Usage 38 (2d ed. 1995) ("*Age of consent*, usu[ally] 16, denotes the age when one is legally capable of agreeing . . . to sexual intercourse" and cross-referencing "statutory rape"); Black's Law Dictionary 73 (10th ed. 2014) (noting that the age of consent is "usu[ally] defined by statute as 16 years").

2

Relying on a different dictionary (and "sparse" legislative history), the Government suggests an alternative "'everyday understanding'" of "sexual abuse of a minor." Brief for Respondent 16–17 (citing Black's Law Dictionary 1375 (6th ed. 1990)). Around the time sexual abuse of a minor was added to the INA's list of aggravated felonies, that dictionary defined "[s]exual abuse" as "[i]llegal sex acts performed against a minor by a parent, guardian, relative, or acquaintance," and defined "[m]inor" as "[a]n infant or person who is under the age of legal competence," which in "most states" was "18." *Id.*, at 997, 1375. "'Sexual abuse of a minor,'" the Government accordingly contends, "most naturally connotes conduct that (1) is illegal, (2) involves sexual activity, and (3) is directed at a person younger than 18 years old." Brief for Respondent 17.

We are not persuaded that the generic federal offense corresponds to the Government's definition. First, the Government's proposed definition is flatly inconsistent with the definition of sexual abuse contained in the very dictionary on which it relies; the Government's proposed definition does not require that the act be performed "*by a parent, guardian, relative, or acquaintance.*" Black's Law Dictionary, at 1375 (emphasis added). In any event, as we explain below,

offenses predicated on a special relationship of trust between the victim and offender are not at issue here and frequently have a different age requirement than the general age of consent. Second, in the context of statutory rape, the prepositional phrase "of a minor" naturally refers not to the age of legal competence (when a person is legally capable of agreeing to a contract, for example), but to the age of consent (when a person is legally capable of agreeing to sexual intercourse). Third, the Government's definition turns the categorical approach on its head by defining the generic federal offense of sexual abuse of a minor as whatever is illegal under the particular law of the State where the defendant was convicted. Under the Government's preferred approach, there is no "generic" definition at all. See *Taylor*, 495 U. S., at 591 (requiring "a clear indication that . . . Congress intended to abandon its general approach of using uniform categorical definitions to identify predicate offenses"); *id.*, at 592 ("We think that 'burglary' in § 924(e) must have some uniform definition independent of the labels employed by the various States' criminal codes").

C

The structure of the INA, a related federal statute, and evidence from state criminal codes confirm that, for a statutory rape offense to qualify as sexual abuse of a minor under the INA based solely on the age of the participants, the victim must be younger than 16.

1

Surrounding provisions of the INA guide our interpretation of sexual abuse of a minor. See A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 167 (2012). This offense is listed in the INA as an "*aggravated* felony." 8 U. S. C. § 1227(a)(2)(A)(iii) (emphasis added). "An 'aggravated' offense is one 'made worse or more serious by circumstances such as violence, the presence of a deadly weapon,

or the intent to commit another crime.'" *Carachuri-Rosendo* v. *Holder*, 560 U. S. 563, 574 (2010) (quoting Black's Law Dictionary 75 (9th ed. 2009)). Moreover, the INA lists sexual abuse of a minor in the same subparagraph as "murder" and "rape," § 1101(a)(43)(A)—among the most heinous crimes it defines as aggravated felonies. § 1227(a)(2)(A)(iii). The structure of the INA therefore suggests that sexual abuse of a minor encompasses only especially egregious felonies.

A closely related federal statute, 18 U. S. C. § 2243, provides further evidence that the generic federal definition of sexual abuse of a minor incorporates an age of consent of 16, at least in the context of statutory rape offenses predicated solely on the age of the participants. Cf. *Leocal*, 543 U. S., at 12–13, n. 9 (concluding that Congress' treatment of 18 U. S. C. § 16 in an Act passed "just nine months earlier" provided "stron[g] suppor[t]" for our interpretation of § 16 as incorporated into the INA); *Powerex Corp.* v. *Reliant Energy Services, Inc.*, 551 U. S. 224, 232 (2007). Section 2243, which criminalizes "[s]exual abuse of a minor or ward," contains the only definition of that phrase in the United States Code. As originally enacted in 1986, § 2243 proscribed engaging in a "sexual act" with a person between the ages of 12 and 16 if the perpetrator was at least four years older than the victim. In 1996, Congress expanded § 2243 to include victims who were younger than 12, thereby protecting anyone under the age of 16. § 2243(a); see also § 2241(c). Congress did this in the same omnibus law that added sexual abuse of a minor to the INA, which suggests that Congress understood that phrase to cover victims under age 16.[2] See Omnibus Consolidated Appropriations Act, 1997, §§ 121(7), 321, 110 Stat. 3009–31, 3009–627.

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[2] To eliminate a redundancy, Congress later amended § 2243(a) to revert to the pre-1996 language. See Protection of Children From Sexual Predators Act of 1998, § 301(b), 112 Stat. 2979. That amendment does not change Congress' understanding in 1996, when it added sexual abuse of a minor to the INA.

Petitioner does not contend that the definition in § 2243(a) must be imported wholesale into the INA, Brief for Petitioner 17, and we do not do so. One reason is that the INA does not cross-reference § 2243(a), whereas many other aggravated felonies in the INA are defined by cross-reference to other provisions of the United States 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)"). Another is that § 2243(a) requires a 4-year age difference between the perpetrator and the victim. Combining that element with a 16-year age of consent would categorically exclude the statutory rape laws of most States. See Brief for Respondent 34–35; cf. *Taylor*, 495 U. S., at 594 (declining to "construe[] 'burglary' to mean common-law burglary" because that "would come close to nullifying that term's effect in the statute," since "few of the crimes now generally recognized as burglaries would fall within the common-law definition"). Accordingly, we rely on § 2243(a) for evidence of the meaning of sexual abuse of a minor, but not as providing the complete or exclusive definition.

2

As in other cases where we have applied the categorical approach, we look to state criminal codes for additional evidence about the generic meaning of sexual abuse of a minor. See *id.*, at 598 (interpreting "'burglary'" under the Armed Career Criminal Act of 1984 according to "the generic sense in which the term is now used in the criminal codes of most States"); *Duenas-Alvarez*, 549 U. S., at 190 (interpreting "theft" in the INA in the same manner). When "sexual abuse of a minor" was added to the INA in 1996, 31 States and the District of Columbia set the age of consent at 16 for statutory rape offenses that hinged solely on the age of the participants. As for the other States, 1 set the age of consent at 14; 2 set the age of consent at 15; 6 set the age of consent at 17; and the remaining 10, including California, set the age of consent at 18. See Appendix, *infra*; cf. ALI,

Model Penal Code §213.3(1)(a) (1980) (in the absence of a special relationship, setting the default age of consent at 16 for the crime of "[c]orruption of [m]inors").[3] A significant majority of jurisdictions thus set the age of consent at 16 for statutory rape offenses predicated exclusively on the age of the participants.

Many jurisdictions set a different age of consent for offenses that include an element apart from the age of the participants, such as offenses that focus on whether the perpetrator is in some special relationship of trust with the victim. That was true in the two States that had offenses labeled "sexual abuse of a minor" in 1996. See Alaska Stat. §11.41.438(a)(2) (1996) (age of consent for third-degree "sexual abuse of a minor" was 16 generally but 18 where "the offender occupie[d] a position of authority in relation to the victim"); Me. Rev. Stat. Ann., Tit. 17–A, §254(1) (1983), as amended by 1995 Me. Laws p. 123 (age of consent for "[s]exual abuse of minors" was 16 generally but 18 where the victim was "a student" and the offender was "a teacher, employee or other official in the . . . school . . . in which the student [was] enrolled"). And that is true in four of the five jurisdictions that have offenses titled "sexual abuse of a minor" today. Compare, *e. g.*, D. C. Code §§22–3001 (2012), 22–3008 (2016 Cum. Supp.) (age of consent is 16 in the absence of a significant relationship) with §22–3009.01 (age of consent is 18 where the offender "is in a significant relationship" with the victim); see also Brief for Respondent 31 (listing statutes with that title). Accordingly, the generic crime of sexual abuse of a minor may include a different age of consent where the perpetrator and victim are in a significant

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[3] The Government notes that this sort of multijurisdictional analysis can "be useful insofar as it helps shed light on the 'common understanding and meaning' of the federal provision being interpreted," but that it is not required by the categorical approach. Brief for Respondent 23–25 (quoting *Perrin* v. *United States*, 444 U. S. 37, 45 (1979)). We agree. In this case, state criminal codes aid our interpretation of "sexual abuse of a minor" by offering useful context.

relationship of trust. As relevant to this case, however, the general consensus from state criminal codes points to the same generic definition as dictionaries and federal law: Where sexual intercourse is abusive solely because of the ages of the participants, the victim must be younger than 16.

D

The laws of many States and of the Federal Government include a minimum age differential (in addition to an age of consent) in defining statutory rape. We need not and do not decide whether the generic crime of sexual abuse of a minor under 8 U. S. C. § 1101(a)(43)(A) includes an additional element of that kind. Petitioner has "show[n] something *special* about California's version of the doctrine"—that the age of consent is 18, rather than 16—and needs no more to prevail. *Duenas-Alvarez*, *supra*, at 191. Absent some special relationship of trust, consensual sexual conduct involving a younger partner who is at least 16 years of age does not qualify as sexual abuse of a minor under the INA, regardless of the age differential between the two participants. We leave for another day whether the generic offense requires a particular age differential between the victim and the perpetrator, and whether the generic offense encompasses sexual intercourse involving victims over the age of 16 that is abusive because of the nature of the relationship between the participants.

III

Finally, petitioner and the Government debate whether the Board's interpretation of sexual abuse of a minor is entitled to deference under *Chevron*, 467 U. S. 837. Petitioner argues that any ambiguity in the meaning of this phrase must be resolved in favor of the alien under the rule of lenity. See Brief for Petitioner 41–45. The Government responds that ambiguities should be resolved by deferring to the Board's interpretation. See Brief for Respondent 45–53. We have no need to resolve whether the rule of lenity or *Chevron* receives priority in this case because the statute,

read in context, unambiguously forecloses the Board's interpretation. Therefore, neither the rule of lenity nor *Chevron* applies.

* * *

We hold that in the context of statutory rape offenses focused solely on the age of the participants, the generic federal definition of "sexual abuse of a minor" under § 1101(a)(43)(A) requires the age of the victim to be less than 16. The judgment of the Court of Appeals, accordingly, is reversed.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

APPENDIX

These tables list offenses criminalizing sexual intercourse solely because of the age of the participants. The tables are organized according to the statutory age of consent as of September 30, 1996—the date "sexual abuse of a minor" was added to the INA.

14 Years

Hawaii	Haw. Rev. Stat. § 707–730(1)(b) (1993)

15 Years

Colorado	Colo. Rev. Stat. § 18–3–403(1)(e) (1997)
South Carolina	S. C. Code Ann. § 16–3–655(2) (1985)

16 Years

Alabama	Ala. Code §§ 13A–6–62(a)(1), 13A–6–70(c)(1) (1994)

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Alaska	Alaska Stat. § 11.41.436(a)(1) (1996)
Arkansas	Ark. Code Ann. §§ 5–14–106(a), 5–14–107(a) (1997)
Connecticut	Conn. Gen. Stat. § 53a–71(a)(1) (1995)
Delaware	Del. Code Ann., Tit. 11, § 773(2) (1995)
District of Columbia	D. C. Code §§ 22–4101(3), 22–4108 (1996)
Georgia	Ga. Code Ann. § 16–6–3(a) (1996)
Indiana	1998 Ind. Acts § 8, p. 774
Iowa	Iowa Code § 709.4(2) (1987), as amended by 1994 Iowa Acts p. 290
Kansas	Kan. Stat. Ann. § 21–3504(a)(1) (1995)
Kentucky	Ky. Rev. Stat. Ann. §§ 510.020(3)(a), 510.060(1)(b) (Lexis 1990)
Maine	Me. Rev. Stat. Ann., Tit. 17–A, § 254(1) (1983), as amended by 1995 Me. Laws p. 123
Maryland	Md. Ann. Code, Art. 27, §§ 464B(a)(4), (5), 464C(a)(2), (3) (1996)
Massachusetts	Mass. Gen. Laws, ch. 265, § 23 (1992)
Michigan	Mich. Comp. Laws § 750.520d(1)(a) (1991), as amended by 1996 Mich. Pub. Acts p. 393
Minnesota	Minn. Stat. § 609.344.1(b) (1996)
Montana	Mont. Code Ann. §§ 45–5–501(1)(b)(iii), 45–5–503(3)(a) (1995)
Nebraska	Neb. Rev. Stat. § 28–319(1) (1994 Cum. Supp.)

Nevada	Nev. Rev. Stat. §§ 200.364(3), 200.368 (1997)
New Hampshire	N. H. Rev. Stat. Ann. § 632–A:3(II) (1986)
New Jersey	N. J. Stat. Ann. § 2C:14–2(c)(5) (West 1995)
North Carolina	N. C. Gen. Stat. Ann. § 14–27.7A (1998 Cum. Supp.)
Ohio	Ohio Rev. Code Ann. § 2907.04(A) (Lexis 1996)
Oklahoma	Okla. Stat., Tit. 21, § 1111(A)(1) (1983), as amended by 1995 Okla. Sess. Laws ch. 22, § 1, p. 119
Pennsylvania	18 Pa. Cons. Stat. § 3122.1, added by 1995 Pa. Laws § 5, p. 987
Rhode Island	R. I. Gen. Laws § 11–37–6 (1994)
South Dakota	S. D. Codified Laws § 22–22–1(5) (1998)
Utah	1983 Utah Laws ch. 88, § 16
Vermont	Vt. Stat. Ann., Tit. 13, § 3252(a)(3) (1998)
Washington	Wash. Rev. Code § 9A.44.079 (1994)
West Virginia	W. Va. Code Ann. §§ 61–8B–2(c)(1), 61–8B–5(a)(2) (Lexis 1997)
Wyoming	Wyo. Stat. Ann. § 6–2–304(a)(i) (1997)

17 Years

Illinois	Ill. Comp. Stat., ch. 720, §§ 5/12–15(b)–(c), 5/12–16(d) (West 1996)
Louisiana	La. Rev. Stat. Ann. § 14:80(A)(1) (West 1986), as amended by 1995 La. Acts no. 241, p. 670
Missouri	Mo. Rev. Stat. § 566.034 (1994)

New Mexico	N. M. Stat. Ann. § 30–9–11(F), as amended by 1995 N. M. Laws ch. 159, p. 1414
New York	N. Y. Penal Law Ann. §§ 130.05(3)(a), 130.20(1), 130.25(2) (West 1998)
Texas	Tex. Penal Code Ann. §§ 22.011(a)(2), (c)(1) (West 1994)

18 Years

Arizona	Ariz. Rev. Stat. Ann. § 13–1405(A) (1989)
California	Cal. Penal Code Ann. § 261.5(a) (West Supp. 1998)
Florida	Fla. Stat. § 794.05(1) (1991)
Idaho	Idaho Code Ann. § 18–6101(1) (Supp. 1996)
Mississippi	Miss. Code Ann. § 97–3–67 (Supp. 1993)
North Dakota	N. D. Cent. Code Ann. § 12.1–20–05 (Supp. 1983); § 14–10–01 (1997)
Oregon	Ore. Rev. Stat. §§ 163.315(1), 163.435(1), 163.445(1) (1997)
Tennessee	Tenn. Code Ann. § 39–13–506(a) (Supp. 1996)
Virginia	Va. Code Ann. § 18.2–371 (1996)
Wisconsin	Wis. Stat. §§ 948.01(1), 948.09 (1993–1994)

Syllabus

BNSF RAILWAY CO. *v.* TYRRELL, SPECIAL ADMINISTRATOR FOR THE ESTATE OF TYRRELL, DECEASED, ET AL.

CERTIORARI TO THE SUPREME COURT OF MONTANA

No. 16–405. Argued April 25, 2017—Decided May 30, 2017

The Federal Employers' Liability Act (FELA), 45 U. S. C. § 51 *et seq.*, makes railroads liable in money damages to their employees for on-the-job injuries. Respondent Robert Nelson, a North Dakota resident, brought a FELA suit against petitioner BNSF Railway Company (BNSF) in a Montana state court, alleging that he had sustained injuries while working for BNSF. Respondent Kelli Tyrrell, appointed in South Dakota as the administrator of her husband Brent Tyrrell's estate, also sued BNSF under FELA in a Montana state court, alleging that Brent had developed a fatal cancer from his exposure to carcinogenic chemicals while working for BNSF. Neither worker was injured in Montana. Neither incorporated nor headquartered there, BNSF maintains less than 5% of its work force and about 6% of its total track mileage in the State. Contending that it is not "at home" in Montana, as required for the exercise of general personal jurisdiction under *Daimler AG* v. *Bauman*, 571 U. S. 117, 127, BNSF moved to dismiss both suits. Its motion was granted in Nelson's case and denied in Tyrrell's. After consolidating the two cases, the Montana Supreme Court held that Montana courts could exercise general personal jurisdiction over BNSF because the railroad both "d[id] business" in the State within the meaning of 45 U. S. C. § 56 and was "found within" the State within the compass of Mont. Rule Civ. Proc. 4(b)(1). The due process limits articulated in *Daimler*, the court added, did not control because *Daimler* did not involve a FELA claim or a railroad defendant.

Held:

1. Section 56 does not address personal jurisdiction over railroads. Pp. 408–412.

(a) Section 56's first relevant sentence provides that "an action may be brought in a district court of the United States," in, among other places, the district "in which the defendant shall be doing business at the time of commencing such action." This Court has comprehended that sentence as a venue prescription, not as one governing personal jurisdiction. *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, 52. Congress generally uses the expression, where suit "may be brought," to indicate the federal districts in which venue is proper, see, *e. g.*, 28

U. S. C. § 1391(b), while it typically provides for the exercise of personal jurisdiction by authorizing service of process, see, *e. g.*, 15 U. S. C. § 22. Nelson and Tyrrell contend that the 1888 Judiciary Act provision that prompted § 56's enactment concerned both personal jurisdiction and venue, but this Court has long read that Judiciary Act provision to concern venue only, see, *e. g.*, *Green* v. *Chicago, B. & Q. R. Co.*, 205 U. S. 530, 532–533. Pp. 408–410.

(b) The second relevant sentence of § 56—that "[t]he jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States"—refers to concurrent *subject-matter* jurisdiction of state and federal courts over FELA actions. See *Second Employers' Liability Cases*, 223 U. S. 1, 55–56. Congress added this clarification after the Connecticut Supreme Court held that Congress intended to confine FELA litigation to federal courts, and that state courts had no obligation to entertain FELA claims. Pp. 410–411.

(c) None of the cases featured by the Montana Supreme Court in reaching its contrary conclusion resolved a question of personal jurisdiction. *Pope* v. *Atlantic Coast Line R. Co.*, 345 U. S. 379; *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698; *Kepner*, 314 U. S. 44; and *Denver & Rio Grande Western R. Co.* v. *Terte*, 284 U. S. 284, distinguished. Moreover, all these cases, save *Pope*, were decided before this Court's transformative decision on personal jurisdiction in *International Shoe Co.* v. *Washington*, 326 U. S. 310. Pp. 411–412.

2. The Montana courts' exercise of personal jurisdiction under Montana law does not comport with the Fourteenth Amendment's Due Process Clause. Only the propriety of general personal jurisdiction is at issue here because neither Nelson nor Tyrrell alleges injury from work in or related to Montana.

A state court may exercise general jurisdiction over out-of-state corporations when their "affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler*, 571 U. S., at 127. The "paradigm" forums in which a corporate defendant is "at home" are the corporation's place of incorporation and its principal place of business, *e. g.*, *id.*, at 137, but in an "exceptional case," a corporate defendant's operations in another forum "may be so substantial and of such a nature as to render the corporation at home in that State," *id.*, at 139, n. 19. *Daimler* involved no FELA claim or railroad defendant, but the due process constraint described there applies to all state-court assertions of general jurisdiction over nonresident defendants; that constraint does not vary with the type of claim asserted or business enterprise sued.

Here, BNSF is not incorporated or headquartered in Montana and its activity there is not "so substantial and of such a nature as to render the corporation at home in that State." *Ibid.* Pp. 412–415.

383 Mont. 417, 373 P. 3d 1, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, BREYER, ALITO, KAGAN, and GORSUCH, JJ., joined. SOTOMAYOR, J., filed an opinion concurring in part and dissenting in part, *post*, p. 415.

Andrew S. Tulumello argued the cause for petitioner. With him on the briefs was *Michael R. Huston*.

Nicole A. Saharsky argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Acting Solicitor General Francisco*, *Acting Assistant Attorney General Readler*, *Deputy Solicitor General Kneedler*, and *Michael S. Raab*.

Julie A. Murray argued the cause for respondents. With her on the brief were *Scott L. Nelson*, *Allison M. Zieve*, and *Robert S. Fain, Jr.**

JUSTICE GINSBURG delivered the opinion of the Court.

The two cases we decide today arise under the Federal Employers' Liability Act (FELA), 35 Stat. 65, as amended, 45 U. S. C. § 51 *et seq.*, which makes railroads liable in money damages to their employees for on-the-job injuries. Both

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*Briefs of *amici curiae* urging reversal were filed for the Association of American Railroads by *Daniel Saphire*; for the Chamber of Commerce for the United States of America et al. by *Paul D. Clement*, *George W. Hicks, Jr.*, *Edmund G. LaCour, Jr.*, *Kate Comerford Todd*, *Sheldon Gilbert*, *Karen R. Harned*, and *Elizabeth Milito*; for the National Association of Manufacturers et al. by *Philip S. Goldberg*, *Cary Silverman*, *Dawinder S. Sidhu*, and *Linda E. Kelly*; for the Washington Legal Foundation et al. by *Cory L. Andrews*; and for Stephen E. Sachs by *Mr. Sachs*, *pro se*.

Briefs of *amici curiae* urging affirmance were filed for the Academy of Rail Labor Attorneys by *Lawrence M. Mann*; for the American Association for Justice by *Jeffrey R. White* and *Julie Braman Kane*; and for the Brotherhood of Maintenance of Way Employes Division/IBT by *Richard S. Edelman*.

suits were pursued in Montana state courts although the injured workers did not reside in Montana, nor were they injured there. The defendant railroad, BNSF Railway Company (BNSF), although "doing business" in Montana when the litigation commenced, was not incorporated in Montana, nor did it maintain its principal place of business in that State. To justify the exercise of personal jurisdiction over BNSF, the Montana Supreme Court relied on § 56, which provides in relevant part:

> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States."

We hold that § 56 does not address personal jurisdiction over railroads. Its first relevant sentence is a venue prescription governing proper locations for FELA suits filed in federal court. The provision's second relevant sentence, using the term "concurrent" jurisdiction, refers to subject-matter jurisdiction, not personal jurisdiction. It simply clarifies that the federal courts do not have exclusive subject-matter jurisdiction over FELA suits; state courts can hear them, too.

Montana's Supreme Court, in the alternative, relied on state law, under which personal jurisdiction could be asserted over "persons found within . . . Montana." Mont. Rule Civ. Proc. 4(b)(1) (2015). BNSF fit that bill, the court stated, because it has over 2,000 miles of railroad track and employs more than 2,000 workers in Montana. Our precedent, however, explains that the Fourteenth Amendment's Due Process Clause does not permit a State to hale an out-of-state corporation before its courts when the corpora-

tion is not "at home" in the State and the episode-in-suit occurred elsewhere. *Daimler AG* v. *Bauman*, 571 U. S. 117, 127 (2014) (internal quotation marks omitted). We therefore reverse the judgment of the Montana Supreme Court.

I

In March 2011, respondent Robert Nelson, a North Dakota resident, brought a FELA suit against BNSF in a Montana state court to recover damages for knee injuries Nelson allegedly sustained while working for BNSF as a fuel-truck driver. 383 Mont. 417, 419, 373 P. 3d 1, 3 (2016). In May 2014, respondent Kelli Tyrrell, appointed in South Dakota as the administrator of her husband Brent Tyrrell's estate, similarly sued BNSF under FELA in a Montana state court. *Id.*, at 419–420, 373 P. 3d, at 3. Brent Tyrrell, his widow alleged, had developed a fatal kidney cancer from his exposure to carcinogenic chemicals while working for BNSF. *Id.*, at 420, 373 P. 3d, at 3. Neither plaintiff alleged injuries arising from or related to work performed in Montana; indeed, neither Nelson nor Brent Tyrrell appears ever to have worked for BNSF in Montana. *Id.*, at 419–420, 373 P. 3d, at 3.

BNSF is incorporated in Delaware and has its principal place of business in Texas. *Id.*, at 419, 373 P. 3d, at 3. It operates railroad lines in 28 States. No. DV 14–699 (13th Jud. Dist., Yellowstone Cty., Mont., Oct. 7, 2014), App. to Pet. for Cert. 63a. BNSF has 2,061 miles of railroad track in Montana (about 6% of its total track mileage of 32,500), employs some 2,100 workers there (less than 5% of its total work force of 43,000), generates less than 10% of its total revenue in the State, and maintains only one of its 24 automotive facilities in Montana (4%). *Ibid.* Contending that it is not "at home" in Montana, as required for the exercise of general personal jurisdiction under *Daimler AG* v. *Bauman*, 571 U. S. 117, 127 (2014) (internal quotation marks omitted), BNSF moved to dismiss both suits for lack of per-

sonal jurisdiction. Its motion was granted in Nelson's case and denied in Tyrrell's. 383 Mont., at 419, 373 P. 3d, at 2.

After consolidating the two cases, the Montana Supreme Court held that Montana courts could exercise general personal jurisdiction over BNSF. *Id.*, at 429, 373 P. 3d, at 9. Section 56, the court determined, authorizes state courts to exercise personal jurisdiction over railroads "doing business" in the State. *Id.*, at 426, 373 P. 3d, at 7 (internal quotation marks omitted). In addition, the court observed, Montana law provides for the exercise of general jurisdiction over "[a]ll persons found within" the State. *Id.*, at 427, 373 P. 3d, at 8 (quoting Mont. Rule Civ. Proc. 4(b)(1) (2015)). In view of the railroad's many employees and miles of track in Montana, the court concluded, BNSF is both "doing business" and "found within" the State, such that both FELA and Montana law authorized the exercise of personal jurisdiction. 383 Mont., at 426, 428, 373 P. 3d, at 7–8 (internal quotation marks omitted). The due process limits articulated in *Daimler*, the court added, did not control, because *Daimler* did not involve a FELA claim or a railroad defendant. 383 Mont., at 424, 373 P. 3d, at 6.

Justice McKinnon dissented. Section 56, she wrote, is a federal-court venue prescription, and also confers subject-matter jurisdiction on state courts in FELA cases, concurrent with federal courts. *Id.*, at 435–437, 373 P. 3d, at 13. But § 56, she maintained, does not touch or concern personal jurisdiction. *Ibid.* Furthermore, she concluded, *Daimler* controls, rendering the Montana courts' exercise of personal jurisdiction impermissible because BNSF is not "at home" in Montana. 383 Mont., at 433–434, 373 P. 3d, at 11–12.

We granted certiorari, 580 U. S. 1089 (2017), to resolve whether § 56 authorizes state courts to exercise personal jurisdiction over railroads doing business in their States but not incorporated or headquartered there, and whether the Montana courts' exercise of personal jurisdiction in these cases comports with due process.

II

Nelson and Tyrrell contend that § 56's first relevant sentence confers personal jurisdiction on federal courts, and that the section's second relevant sentence extends that grant of jurisdiction to state courts. Neither contention is tenable. Section 56's first relevant sentence concerns venue; its next sentence speaks to subject-matter jurisdiction.[1]

A

The first sentence of § 56 states that "an action may be brought in a district court of the United States," in, among other places, the district "in which the defendant shall be doing business at the time of commencing such action." In *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44 (1941), we comprehended this clause as "establish[ing] venue" for a federal-court action. *Id.*, at 52. Congress, we explained, designed § 56 to expand venue beyond the limits of the 1888 Judiciary Act's general venue provision, which allowed suit only "in districts of which the defendant was an inhabitant." *Id.*, at 49; see Act of Aug. 13, 1888, § 1, 25 Stat. 434. Nowhere in *Kepner* or in any other decision did we intimate that § 56 might affect personal jurisdiction.

Congress generally uses the expression, where suit "may be brought," to indicate the federal districts in which venue is proper. See, *e. g.*, 28 U. S. C. § 1391(b) (general venue statute specifying where "[a] civil action may be brought"); J. Oakley, ALI, Fed. Judicial Code Rev. Project 253–290 (2004) (listing special venue statutes, many with similar language). See also *Kepner*, 314 U. S., at 56 (Frankfurter, J., dissenting) ("The phrasing of [§ 56] follows the familiar pattern generally employed by Congress in framing venue provisions.").

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[1] Section 56's first sentence, which provides a time bar for FELA claims, is not relevant to the issue at hand. For ease of reference, we hereinafter refer to the first relevant sentence, describing where suit "may be brought," as the provision's "first" sentence, and the sentence that immediately follows, referring to "concurrent" jurisdiction, as the "second."

In contrast, Congress' typical mode of providing for the exercise of personal jurisdiction has been to authorize service of process. See, *e. g.*, 15 U. S. C. § 22 (Clayton Act provision stating that "all process in [cases against a corporation arising under federal antitrust laws] may be served in the district of which [the defendant] is an inhabitant, or wherever [the defendant] may be found"); § 53(a) (under Federal Trade Commission Act, "process may be served on any person, partnership, or corporation wherever it may be found"). See also *Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U. S. 97, 106–107 (1987) (discussing statutes that authorize (or fail to authorize) nationwide service of process). But cf. *Schlanger* v. *Seamans*, 401 U. S. 487, 490, n. 4 (1971) (though "Congress has provided for nationwide service of process" in 28 U. S. C. § 1391(e) (1964 ed., Supp. V), that statute was meant to expand venue, not personal jurisdiction). Congress uses this terminology because, absent consent, a basis for service of a summons on the defendant is prerequisite to the exercise of personal jurisdiction. See *Omni Capital*, 484 U. S., at 104.

Nelson and Tyrrell, however, argue that § 56 relates to personal jurisdiction. In their view, the 1888 Judiciary Act provision that prompted § 56's enactment, 25 Stat. 434, concerned *both* personal jurisdiction and venue. According to House and Senate Reports, they contend, two cases had brought to Congress' attention the problem with the prior provision—namely, that in federal-question cases it authorized suit only in the district of the defendant's residence. Brief for Respondents 16–18. See H. R. Rep. No. 513, 61st Cong., 2d Sess., 6 (1910) (citing *Macon Grocery Co.* v. *Atlantic Coast Line R. Co.*, 215 U. S. 501 (1910); *Cound* v. *Atchison, T. & S. F. R. Co.*, 173 F. 527 (WD Tex. 1909)); S. Rep. No. 432, 61st Cong., 2d Sess., 4 (1910) (same). In both cases, the courts had dismissed FELA suits for "want of jurisdiction." *Macon Grocery*, 215 U. S., at 510; *Cound*, 173 F., at 534. To avert such jurisdictional dismissals, they urge, Congress enacted § 56.

Legislative history "throws little light" here. *Kepner*, 314 U. S., at 50.[2] Driving today's decision, we have long read the 1888 Judiciary Act provision to concern venue only. See *Green* v. *Chicago, B. & Q. R. Co.*, 205 U. S. 530, 532–533 (1907) (analyzing personal jurisdiction separately, after concluding that venue was proper under 1888 Judiciary Act provision). See also *Lee* v. *Chesapeake & Ohio R. Co.*, 260 U. S. 653, 655 (1923) (noting that materially identical successor to 1888 Judiciary Act provision, Act of Mar. 3, 1911, § 51, 36 Stat. 1101, "relates to the venue of suits"). Indeed, reading the 1888 Judiciary Act provision to authorize the exercise of personal jurisdiction would have yielded an anomalous result: In diversity cases, the provision allowed for suit "in the district of the residence of either the plaintiff or the defendant." 25 Stat. 434. Interpreting that clause to provide for jurisdiction would have allowed a plaintiff to hale a defendant into court in the plaintiff's home district, even if the district was one with which the defendant had no affiliation, and the episode-in-suit, no connection.

B

The second § 56 sentence in point provides that "[t]he jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States." Nelson and Tyrrell argue that this sentence extends to state courts the first sentence's alleged conferral of personal jurisdiction on federal courts. But, as just discussed, the first sentence concerns federal-court venue and confers no personal jurisdiction on any court.

We have understood § 56's second sentence to provide for the concurrent *subject-matter* jurisdiction of state and federal courts over actions under FELA. See *Second Employ-*

[2] We note, moreover, that Nelson and Tyrrell overlooked the Senate Report's explicit reference to the first sentence of § 56 as a venue provision, with no mention of personal jurisdiction. S. Rep. No. 432, 61st Cong., 2d Sess., 3 (1910).

ers' Liability Cases, 223 U. S. 1, 55–56 (1912). As Nelson and Tyrrell acknowledge, Congress added the provision to confirm concurrent subject-matter jurisdiction after the Connecticut Supreme Court held that Congress intended to confine FELA litigation to federal courts, and that state courts had no obligation to entertain FELA claims. See Brief for Respondents 23 (citing *Hoxie* v. *New York, N. H. & H. R. Co.*, 82 Conn. 352, 73 A. 754 (1909)). As Justice McKinnon recognized in her dissent from the Montana Supreme Court's decision in Nelson's and Tyrrell's cases, "[t]he phrase 'concurrent jurisdiction' is a well-known term of art long employed by Congress and courts to refer to subject-matter jurisdiction, not personal jurisdiction." 383 Mont., at 436, 373 P. 3d, at 13. See, *e. g.*, *Mims* v. *Arrow Financial Services, LLC*, 565 U. S. 368, 372 (2012) ("federal and state courts have concurrent jurisdiction over private suits arising under the [Telephone Consumer Protection Act of 1991, 47 U. S. C. § 227]"); *Claflin* v. *Houseman*, 93 U. S. 130, 133–134 (1876) (State courts retain "concurrent jurisdiction" over "suits in which a bankrupt" party is involved, notwithstanding exclusive federal jurisdiction over bankruptcy matters).

C

Pointing to a quartet of cases, the Montana Supreme Court observed that this Court "consistently has interpreted [§]56 to allow state courts to hear cases brought under FELA even where the only basis for jurisdiction is the railroad doing business in the forum [S]tate." 383 Mont., at 421–423, 425–426, 373 P. 3d, at 4–7 (citing *Pope* v. *Atlantic Coast Line R. Co.*, 345 U. S. 379 (1953); *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698 (1942); *Kepner*, 314 U. S. 44; *Denver & Rio Grande Western R. Co.* v. *Terte*, 284 U. S. 284 (1932)).

None of the decisions featured by the Montana Supreme Court resolved a question of personal jurisdiction. *Terte* held that a FELA plaintiff, injured in Colorado, could bring suit in Missouri state court against a railroad incorporated

elsewhere. *Id.*, at 286–287. The dispute, however, was over the Dormant Commerce Clause, not personal jurisdiction; the railroad defendants argued that the suit would unduly burden interstate commerce, and the decision rested on two Commerce Clause decisions, *Michigan Central R. Co.* v. *Mix*, 278 U. S. 492 (1929), and *Hoffman* v. *Missouri ex rel. Foraker*, 274 U. S. 21 (1927), not on an interpretation of § 56. See *Terte*, 284 U. S., at 285, 287. In *Kepner* and *Miles*, this Court held that a state court may not, based on inconvenience to a railroad defendant, enjoin its residents from bringing a FELA suit in another State's federal (*Kepner*) or state (*Miles*) courts. *Kepner*, 314 U. S., at 54; *Miles*, 315 U. S., at 699–700, 704. *Pope* held that 28 U. S. C. § 1404(a)'s provision for transfer from one federal court to another did not bear on the question decided in *Miles*: A state court still could not enjoin a FELA action brought in another State's courts. 345 U. S., at 383–384.

Moreover, all these cases, save *Pope*, were decided before this Court's transformative decision on personal jurisdiction in *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1945). See *Daimler*, 571 U. S., at 138, n. 18 (cautioning against reliance on cases "decided in the era dominated by" the "territorial thinking" of *Pennoyer* v. *Neff*, 95 U. S. 714 (1878)).

III

Because FELA does not authorize state courts to exercise personal jurisdiction over a railroad solely on the ground that the railroad does some business in their States, the Montana courts' assertion of personal jurisdiction over BNSF here must rest on Mont. Rule Civ. Proc. 4(b)(1), the State's provision for the exercise of personal jurisdiction over "persons found" in Montana. See *supra*, at 407. BNSF does not contest that it is "found within" Montana as the State's courts comprehend that rule. We therefore inquire whether the Montana courts' exercise of personal jurisdiction under Montana law comports with the Due Process Clause of the Fourteenth Amendment.

In *International Shoe*, this Court explained that a state court may exercise personal jurisdiction over an out-of-state defendant who has "certain minimum contacts with [the State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" 326 U. S., at 316. Elaborating on this guide, we have distinguished between specific or case-linked jurisdiction and general or all-purpose jurisdiction. See, *e. g.*, *Daimler*, 571 U. S., at 127; *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U. S. 915, 919 (2011); *Helicopteros Nacionales de Colombia, S. A.* v. *Hall*, 466 U. S. 408, 414, nn. 8, 9 (1984). Because neither Nelson nor Tyrrell alleges any injury from work in or related to Montana, only the propriety of general jurisdiction is at issue here.

Goodyear and *Daimler* clarified that "[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler*, 571 U. S., at 127 (quoting *Goodyear*, 564 U. S., at 919). The "paradigm" forums in which a corporate defendant is "at home," we explained, are the corporation's place of incorporation and its principal place of business. *Daimler*, 571 U. S., at 137; *Goodyear*, 564 U. S., at 924. The exercise of general jurisdiction is not limited to these forums; in an "exceptional case," a corporate defendant's operations in another forum "may be so substantial and of such a nature as to render the corporation at home in that State." *Daimler*, 571 U. S., at 139, n. 19. We suggested that *Perkins* v. *Benguet Consol. Mining Co.*, 342 U. S. 437 (1952), exemplified such a case. *Daimler*, 571 U. S., at 139, n. 19. In *Perkins*, war had forced the defendant corporation's owner to temporarily relocate the enterprise from the Philippines to Ohio. 342 U. S., at 447–448. Because Ohio then became "the center of the corporation's wartime activities," *Daimler*, 571 U. S., at 130, n. 8, suit was proper there, *Perkins*, 342 U. S., at 448.

The Montana Supreme Court distinguished *Daimler* on the ground that we did not there confront "a FELA claim or a railroad defendant." 383 Mont., at 424, 373 P. 3d, at 6. The Fourteenth Amendment due process constraint described in *Daimler*, however, applies to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or business enterprise sued.[3]

BNSF, we repeat, is not incorporated in Montana and does not maintain its principal place of business there. Nor is BNSF so heavily engaged in activity in Montana "as to render [it] essentially at home" in that State. See *Daimler*, 571 U. S., at 127 (internal quotation marks omitted). As earlier noted, BNSF has over 2,000 miles of railroad track and more than 2,000 employees in Montana. But, as we observed in *Daimler*, "the general jurisdiction inquiry does not focus solely on the magnitude of the defendant's in-state contacts." *Id.*, at 139, n. 20 (internal quotation marks and alterations omitted). Rather, the inquiry "calls for an appraisal of a corporation's activities in their entirety"; "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.*, at 140, n. 20. In short, the business BNSF does in Montana is sufficient to subject the railroad to specific personal jurisdiction in that State on claims related to the business it does in Montana. But in-state business, we clarified in *Daimler* and *Goodyear*, does not suffice to permit the assertion of general jurisdiction over claims like Nelson's and Tyrrell's that are unrelated to any activity occurring in Montana.[4]

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[3] The Montana Supreme Court also erred in asserting that "Congress drafted the FELA to make a railroad 'at home' for jurisdictional purposes wherever it is 'doing business.'" 383 Mont. 417, 425, 373 P. 3d 1, 6 (2016). As discussed, *supra*, at 408–410, in § 56's first sentence, Congress dealt with venue only, not personal jurisdiction.

[4] JUSTICE SOTOMAYOR, dissenting in part, renews a debate comprehensively aired in *Daimler AG* v. *Bauman*, 571 U. S. 117 (2014). There, as again here, JUSTICE SOTOMAYOR treats the assertion of jurisdiction by the State of Washington courts in *International Shoe Co.* v. *Washington*, 326

IV

Nelson and Tyrrell present a further argument—that BNSF has consented to personal jurisdiction in Montana. See Brief for Respondents 50–51. The Montana Supreme Court did not address this contention, see 383 Mont., at 429, n. 3, 373 P. 3d, at 9, n. 3, so we do not reach it. See *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005) ("[W]e are a court of review, not of first view.").

* * *

For the reasons stated, the judgment of the Montana Supreme Court is reversed, and the cases are remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE SOTOMAYOR, concurring in part and dissenting in part.

I concur in the Court's conclusion that the Federal Employers' Liability Act (FELA), 45 U. S. C. § 51 *et seq.*, does

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U. S. 310 (1945), as an exercise of general, dispute-blind, jurisdiction, *post*, at 417–418, thereby overlooking the fundamental difference between *International Shoe* and these cases. In *International Shoe*, the defendant corporation's in-state activities had "not only been continuous and systematic, but also g[a]ve rise to the liabilities sued on." 326 U. S., at 317. The state courts there asserted jurisdiction not over claims that had nothing to do with the State; instead, they exercised adjudicatory authority to hold the defendant corporation accountable for activity pursued within the State of Washington. *Daimler*, 571 U. S., at 126, 133, n. 10. This Court, therefore, had no occasion in *International Shoe* to "engage in a comparison between International Shoe's contacts within the State of Washington and the other States in which it operated." *Post*, at 418. In marked contrast to *International Shoe*, Nelson's and Tyrrell's claims have no relationship to anything that occurred or had its principal impact in Montana.

This Court's opinion is not limited to § 56 because the Montana Supreme Court went on to address and decide the question: Do "Montana courts have personal jurisdiction over BNSF under Montana law?" 383 Mont., at 426, 373 P. 3d, at 7. See also *id.*, at 429, 373 P. 3d, at 9 ("Under Montana law, Montana courts have general personal jurisdiction over BNSF.").

not confer personal jurisdiction over railroads on state courts. I also agree that the Montana Supreme Court erred when it concluded that the nature of the claim here—a FELA claim against a railroad—answers the question whether the Due Process Clause allows the exercise of personal jurisdiction over BNSF. But my agreement with the majority ends there. I continue to disagree with the path the Court struck in *Daimler AG* v. *Bauman*, 571 U. S. 117 (2014), which limits general jurisdiction over a corporate defendant only to those States where it is "'essentially at home,'" *id.*, at 127. And even if the Court insists on adhering to that standard, I dissent from its decision to apply it here in the first instance rather than remanding to the Montana Supreme Court for it to conduct what should be a fact-intensive analysis under the proper legal framework. Accordingly, I join Parts I and II of the Court's opinion, but dissent from Part III and the judgment.

The Court would do well to adhere more faithfully to the direction from *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1945), which instructed that general jurisdiction is proper when a corporation's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Id.*, at 318. Under *International Shoe*, in other words, courts were to ask whether the benefits a defendant attained in the forum State warranted the burdens associated with general personal jurisdiction. See *id.*, at 317–318. The majority itself acknowledges that *International Shoe* should govern, describing the question as whether a defendant's affiliations with a State are sufficiently "'continuous and systematic'" to warrant the exercise of general jurisdiction there. *Ante*, at 413. If only its analysis today reflected that directive. Instead, the majority opinion goes on to reaffirm the restrictive "at home" test set out in *Daimler*—a test that, as I have explained, has no home in our precedents and creates serious

inequities. See 571 U. S., at 149–160 (SOTOMAYOR, J., concurring in judgment).

The majority's approach grants a jurisdictional windfall to large multistate or multinational corporations that operate across many jurisdictions. Under its reasoning, it is virtually inconceivable that such corporations will ever be subject to general jurisdiction in any location other than their principal places of business or of incorporation. Foreign businesses with principal places of business outside the United States may never be subject to general jurisdiction in this country even though they have continuous and systematic contacts within the United States. See *id.*, at 158–159. What was once a holistic, nuanced contacts analysis backed by considerations of fairness and reasonableness has now effectively been replaced by the rote identification of a corporation's principal place of business or place of incorporation.[1] The result? It is individual plaintiffs, harmed by the actions of a farflung foreign corporation, who will bear the brunt of the majority's approach and be forced to sue in distant jurisdictions with which they have no contacts or connection.

Moreover, the comparative-contacts analysis invented in *Daimler* resurfaces here and proves all but dispositive. The majority makes much of the fact that BNSF's contacts in Montana are only a percentage of its contacts with other jurisdictions. *Ante*, at 406–407, 414. But *International Shoe*, which the majority agrees is the springboard for our modern personal jurisdiction jurisprudence, *ante*, at 412, ap-

[1] As many commentators have observed, lower courts adhered to the continuous-and-systematic standard for decades before *Daimler*, and its predecessor *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U. S. 915 (2011), wrought the present sea change. See, *e. g.*, Cornett & Hoffheimer, Good-Bye Significant Contacts: General Personal Jurisdiction After *Daimler AG* v. *Bauman*, 76 Ohio St. L. J. 101 (2015); Parry, Rethinking Personal Jurisdiction After *Bauman* and *Walden*, 19 Lewis & Clark L. Rev. 607 (2015); Doernberg, Resoling *International Shoe*, 2 Tex. A&M L. Rev. 247 (2014); Feder, *Goodyear*, "Home," and the Uncertain Future of Doing Business Jurisdiction, 63 S. C. L. Rev. 671 (2012).

plied no comparative-contacts test. There the Court analyzed whether the Delaware corporation had "by its activities in the State of Washington rendered itself amenable to proceedings" in the State. 326 U. S., at 311. The Court evaluated whether the corporation had offices in the forum State, made contracts there, delivered goods there, or employed salesmen there. See *id.*, at 313. Despite acknowledging that the corporation maintained places of business in several States, *ibid.*, the Court did not engage in a comparison between International Shoe's contacts within the State of Washington and the other States in which it operated.[2] The Court noted that the corporation employed 11 to 13 salesmen in Washington but did not query how that number compared to the number of salesmen in other States. *Ibid.* As well it should not have; the relative percentage of contacts is irrelevant. The focus should be on the quality and quantity of the defendant's contacts in the forum State.[3]

The majority does even *Daimler* itself a disservice, paying only lipservice to the question the Court purported to reserve there—the possibility of an "exceptional case" in which general jurisdiction would be proper in a forum State that is neither a corporate defendant's place of incorporation nor its principal place of business. See 571 U. S., at 139, n. 19. Its opinion here could be understood to limit that exception to

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[2] The majority responds that the language from *International Shoe* informs only a specific jurisdiction case. *Ante*, at 414, n. 4. But the majority's view of *International Shoe* is overly restrictive. The terms "specific jurisdiction" and "general jurisdiction" are nowhere to be found in that opinion. And I continue to believe, as I noted in *Daimler*, that there is no material difference between the "continuous and systematic" terminology *International Shoe* used for what we now call specific jurisdiction and the "continuous" and "substantial" terminology it used for what we now call general jurisdiction. See *Daimler*, 571 U. S., at 149, n. 6 (SOTOMAYOR, J., concurring in judgment).

[3] Indeed, in neither *Perkins* v. *Benguet Consol. Mining Co.*, 342 U. S. 437 (1952), nor *Helicopteros Nacionales de Colombia, S. A.* v. *Hall*, 466 U. S. 408 (1984), did the Court engage in a comparative-contacts analysis.

the exact facts of *Perkins* v. *Benguet Consol. Mining Co.*, 342 U. S. 437 (1952). See *ante*, at 413. That reading is so narrow as to read the exception out of existence entirely; certainly a defendant with significant contacts with more than one State falls outside its ambit. And so it is inevitable under its own reasoning that the majority would conclude that BNSF's contacts with Montana are insufficient to justify the exercise of personal jurisdiction here. This result is perverse. Despite having reserved the possibility of an "exceptional case" in *Daimler*, the majority here has rejected that possibility out of hand.

Worse, the majority reaches its conclusion only by departing from the Court's normal practice.[4] Had it remanded to the Montana Supreme Court to reevaluate the due process question under the correct legal standard, that court could have examined whether this is such an "exceptional case." Instead, with its ruling today, the Court unnecessarily sends a signal to the lower courts that the exceptional-circumstances inquiry is all form, no substance.

I respectfully concur in part and dissent in part.

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[4] The Montana Supreme Court reached this question only by wrongly assuming that 45 U. S. C. § 56 is a jurisdictional statute and that a defendant's unique status as a railroad company is dispositive of the jurisdictional question. A remand rather than an outright reversal is this Court's traditional practice where a lower court applies the incorrect legal standard; we have done it repeatedly just this Term. See, *e. g.*, *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U. S. 178 (2017); *Bolivarian Republic of Venezuela* v. *Helmerich & Payne Int'l Drilling Co.*, *ante*, p. 170; *McLane Co.* v. *EEOC*, *ante*, p. 72; *Moore* v. *Texas*, *ante*, p. 1.

Syllabus

COUNTY OF LOS ANGELES, CALIFORNIA, ET AL. *v.* MENDEZ ET AL.

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

No. 16–369. Argued March 22, 2017—Decided May 30, 2017

The Los Angeles County Sheriff's Department received word from a confidential informant that a potentially armed and dangerous parolee-at-large had been seen at a certain residence. While other officers searched the main house, Deputies Conley and Pederson searched the back of the property where, unbeknownst to the deputies, respondents Mendez and Garcia were napping inside a shack where they lived. Without a search warrant and without announcing their presence, the deputies opened the door of the shack. Mendez rose from the bed, holding a BB gun that he used to kill pests. Deputy Conley yelled, "Gun!" and the deputies immediately opened fire, shooting Mendez and Garcia multiple times. Officers did not find the parolee in the shack or elsewhere on the property.

Mendez and Garcia sued Deputies Conley and Pederson and the county under 42 U. S. C. § 1983, pressing three Fourth Amendment claims: a warrantless entry claim, a knock-and-announce claim, and an excessive force claim. On the first two claims, the District Court awarded Mendez and Garcia nominal damages. On the excessive force claim, the court found that the deputies' use of force was reasonable under *Graham* v. *Connor*, 490 U. S. 386, but held them liable nonetheless under the Ninth Circuit's provocation rule, which makes an officer's otherwise reasonable use of force unreasonable if (1) the officer "intentionally or recklessly provokes a violent confrontation" and (2) "the provocation is an independent Fourth Amendment violation," *Billington* v. *Smith*, 292 F. 3d 1177, 1189. On appeal, the Ninth Circuit held that the officers were entitled to qualified immunity on the knock-and-announce claim and that the warrantless entry violated clearly established law. It also affirmed the District Court's application of the provocation rule, and held, in the alternative, that basic notions of proximate cause would support liability even without the provocation rule.

Held: The Fourth Amendment provides no basis for the Ninth Circuit's "provocation rule." Pp. 426–432.

(a) The provocation rule is incompatible with this Court's excessive force jurisprudence, which sets forth a settled and exclusive framework for analyzing whether the force used in making a seizure complies with

the Fourth Amendment. See *Graham*, *supra*, at 395. The operative question in such cases is "whether the totality of the circumstances justifie[s] a particular sort of search or seizure." *Tennessee* v. *Garner*, 471 U. S. 1, 8–9. When an officer carries out a seizure that is reasonable, taking into account all relevant circumstances, there is no valid excessive force claim. The provocation rule, however, instructs courts to look back in time to see if a *different* Fourth Amendment violation was somehow tied to the eventual use of force, an approach that mistakenly conflates distinct Fourth Amendment claims. The proper framework is set out in *Graham*. To the extent that a plaintiff has other Fourth Amendment claims, they should be analyzed separately.

The Ninth Circuit attempts to cabin the provocation rule by defining a two-prong test: First, the separate constitutional violation must "creat[e] a situation which led to" the use of force; and second, the separate constitutional violation must be committed recklessly or intentionally. 815 F. 3d 1178, 1193. Neither limitation, however, solves the fundamental problem: namely, that the provocation rule is an unwarranted and illogical expansion of *Graham*. In addition, each limitation creates problems of its own. First, the rule relies on a vague causal standard. Second, while the reasonableness of a search or seizure is almost always based on objective factors, the provocation rule looks to the subjective intent of the officers who carried out the seizure.

There is no need to distort the excessive force inquiry in this way in order to hold law enforcement officers liable for the foreseeable consequences of all their constitutional torts. Plaintiffs can, subject to qualified immunity, generally recover damages that are proximately caused by any Fourth Amendment violation. See, *e. g.*, *Heck* v. *Humphrey*, 512 U. S. 477, 483. Here, if respondents cannot recover on their excessive force claim, that will not foreclose recovery for injuries proximately caused by the warrantless entry. Pp. 426–431.

(b) The Ninth Circuit's proximate cause holding is similarly tainted. Its analysis appears to focus solely on the risks foreseeably associated with the failure to knock and announce—the claim on which the court concluded that the deputies had qualified immunity—rather than the warrantless entry. On remand, the court should revisit the question whether proximate cause permits respondents to recover damages for their injuries based on the deputies' failure to secure a warrant at the outset. Pp. 431–432.

815 F. 3d 1178, vacated and remanded.

ALITO, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.

E. Joshua Rosenkranz argued the cause for petitioners. With him on the briefs were *Thomas M. Brady*, *Andrew D. Silverman*, *Matthew L. Bush*, *Mary C. Wickham*, *Rodrigo A. Castro-Silva*, *Jennifer Lehman*, *Millicent Rolon*, *Thomas C. Hurrell*, and *Melinda Cantrall*.

Nicole A. Saharsky argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Acting Solicitor General Francisco*, *Acting Assistant Attorney General Branda*, *Deputy Solicitor General Dreeben*, *Douglas N. Letter*, *Barbara L. Herwig*, and *Edward Himmelfarb*.

Leonard Feldman argued the cause for respondents. With him on the brief were *Sara Berry*, *Eric Schnapper*, and *Rachel Lee*.*

JUSTICE ALITO delivered the opinion of the Court.

If law enforcement officers make a "seizure" of a person using force that is judged to be reasonable based on a consideration of the circumstances relevant to that determination, may the officers nevertheless be held liable for injuries caused by the seizure on the ground that they committed a

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*Briefs of *amici curiae* urging reversal were filed for the Los Angeles County Police Chiefs' Association by *J. Scott Tiedemann* and *Leighton Davis Henderson*; for the Major County Sheriffs' Association by *Gaëtan Gerville-Réache*, *Conor B. Dugan*, and *Joseph John Summerill IV*; and for the National Association of Counties et al. by *Daniel P. Collins*, *Mark R. Yohalem*, and *Lisa Soronen*.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *David D. Cole* and *Ezekiel R. Edwards*; for the Georgetown University Law Center Chapter of the Black Law Students Association by *Aderson B. Francois*; for the National Association for the Advancement of Colored People et al. by *William Harry Ehlies II* and *Anita S. Earls*; for the National Police Accountability Project by *Christopher Wimmer*, *Jeff Dominic Price*, *Julia Yoo*, and *Eugene Iredale*; and for The Rutherford Institute by *Anand Agneshwar* and *John W. Whitehead*.

Martin J. Mayer, *James R. Touchstone*, and *Krista MacNevin Jee* filed a brief for the California State Sheriffs' Association et al. as *amici curiae*.

separate Fourth Amendment violation that contributed to their need to use force? The Ninth Circuit has adopted a "provocation rule" that imposes liability in such a situation.

We hold that the Fourth Amendment provides no basis for such a rule. A different Fourth Amendment violation cannot transform a later, reasonable use of force into an unreasonable seizure.

I

A

In October 2010, deputies from the Los Angeles County Sheriff's Department were searching for a parolee-at-large named Ronnie O'Dell. A felony arrest warrant had been issued for O'Dell, who was believed to be armed and dangerous and had previously evaded capture. Findings of Fact and Conclusions of Law, No. 2:11–cv–04771 (CD Cal.), App. to Pet. for Cert. 56a, 64a. Deputies Christopher Conley and Jennifer Pederson were assigned to assist the task force searching for O'Dell. *Id.*, at 57a–58a. The task force received word from a confidential informant that O'Dell had been seen on a bicycle at a home in Lancaster, California, owned by Paula Hughes, and the officers then mapped out a plan for apprehending O'Dell. *Id.*, at 58a. Some officers would approach the front door of the Hughes residence, while Deputies Conley and Pederson would search the rear of the property and cover the back door of the residence. *Id.*, at 59a. During this briefing, it was announced that a man named Angel Mendez lived in the backyard of the Hughes home with a pregnant woman named Jennifer Garcia (now Mrs. Jennifer Mendez). *Ibid.* Deputy Pederson heard this announcement, but at trial Deputy Conley testified that he did not remember it. *Ibid.*

When the officers reached the Hughes residence around midday, three of them knocked on the front door while Deputies Conley and Pederson went to the back of the property. *Id.*, at 63a. At the front door, Hughes asked if the officers

had a warrant. *Ibid.* A sergeant responded that they did not but were searching for O'Dell and had a warrant for his arrest. *Ibid.* One of the officers heard what he thought were sounds of someone running inside the house. *Id.*, at 64a. As the officers prepared to open the door by force, Hughes opened the door and informed them that O'Dell was not in the house. *Ibid.* She was placed under arrest, and the house was searched, but O'Dell was not found. *Ibid.*

Meanwhile, Deputies Conley and Pederson, with guns drawn, searched the rear of the residence, which was cluttered with debris and abandoned automobiles. *Id.*, at 60a, 65a. The property included three metal storage sheds and a one-room shack made of wood and plywood. *Id.*, at 60a. Mendez had built the shack, and he and Garcia had lived inside for about 10 months. *Id.*, at 61a. The shack had a single doorway covered by a blue blanket. *Ibid.* Amid the debris on the ground, an electrical cord ran into the shack, and an air conditioner was mounted on the side. *Id.*, at 62a. A gym storage locker and clothes and other possessions were nearby. *Id.*, at 61a. Mendez kept a BB rifle in the shack for use on rats and other pests. *Id.*, at 62a. The BB gun "closely resembled a small caliber rifle." *Ibid.*

Deputies Conley and Pederson first checked the three metal sheds and found no one inside. *Id.*, at 65a. They then approached the door of the shack. *Id.*, at 66a. Unbeknownst to the officers, Mendez and Garcia were in the shack and were napping on a futon. *Id.*, at 67a. The deputies did not have a search warrant and did not knock and announce their presence. *Id.*, at 66a. When Deputy Conley opened the wooden door and pulled back the blanket, Mendez thought it was Hughes and rose from the bed, picking up the BB gun so he could stand up and place it on the floor. *Id.*, at 68a. As a result, when the deputies entered, he was holding the BB gun, and it was "point[ing] somewhat south towards Deputy Conley." *Id.*, at 69a. Deputy Conley yelled, "Gun!" and the deputies immediately opened fire, discharg-

ing a total of 15 rounds. *Id.*, at 69a–70a. Mendez and Garcia "were shot multiple times and suffered severe injuries," and Mendez's right leg was later amputated below the knee. *Id.*, at 70a. O'Dell was not in the shack or anywhere on the property. *Ibid.*

B

Mendez and his wife (respondents here) filed suit under Rev. Stat. § 1979, 42 U. S. C. § 1983, against petitioners, the County of Los Angeles and Deputies Conley and Pederson. As relevant here, they pressed three Fourth Amendment claims. First, they claimed that the deputies executed an unreasonable search by entering the shack without a warrant (the "warrantless entry claim"); second, they asserted that the deputies performed an unreasonable search because they failed to announce their presence before entering the shack (the "knock-and-announce claim"); and third, they claimed that the deputies effected an unreasonable seizure by deploying excessive force in opening fire after entering the shack (the "excessive force claim").

After a bench trial, the District Court ruled largely in favor of respondents. App. to Pet. for Cert. 135a–136a. The court found Deputy Conley liable on the warrantless entry claim, and the court also found both deputies liable on the knock-and-announce claim. But the court awarded nominal damages for these violations because "the act of pointing the BB gun" was a superseding cause "as far as damage [from the shooting was] concerned." App. 238.

The District Court then addressed respondents' excessive force claim. App. to Pet. for Cert. 105a–127a. The court began by evaluating whether the deputies used excessive force under *Graham* v. *Connor*, 490 U. S. 386 (1989). The court held that, under *Graham*, the deputies' use of force was reasonable "given their belief that a man was holding a firearm rifle threatening their lives." App. to Pet. for Cert. 108a. But the court did not end its excessive force analysis at this point. Instead, the court turned to the Ninth Cir-

cuit's provocation rule, which holds that "an officer's otherwise reasonable (and lawful) defensive use of force is unreasonable as a matter of law, if (1) the officer intentionally or recklessly provoked a violent response, and (2) that provocation is an independent constitutional violation." *Id.*, at 111a. Based on this rule, the District Court held the deputies liable for excessive force and awarded respondents around $4 million in damages. *Id.*, at 135a–136a.

The Court of Appeals affirmed in part and reversed in part. 815 F. 3d 1178 (CA9 2016). Contrary to the District Court, the Court of Appeals held that the officers were entitled to qualified immunity on the knock-and-announce claim. *Id.*, at 1191–1193. But the court concluded that the warrantless entry of the shack violated clearly established law and was attributable to both deputies. *Id.*, at 1191, 1195. Finally, and most important for present purposes, the court affirmed the application of the provocation rule. The Court of Appeals did not disagree with the conclusion that the shooting was reasonable under *Graham*; instead, like the District Court, the Court of Appeals applied the provocation rule and held the deputies liable for the use of force on the theory that they had intentionally and recklessly brought about the shooting by entering the shack without a warrant in violation of clearly established law. 815 F. 3d, at 1193.

The Court of Appeals also adopted an alternative rationale for its judgment. It held that "basic notions of proximate cause" would support liability even without the provocation rule because it was "reasonably foreseeable" that the officers would meet an armed homeowner when they "barged into the shack unannounced." *Id.*, at 1194–1195.

We granted certiorari. 580 U. S. 1017 (2016).

II

The Ninth Circuit's provocation rule permits an excessive force claim under the Fourth Amendment "where an officer intentionally or recklessly provokes a violent confrontation,

if the provocation is an independent Fourth Amendment violation." *Billington* v. *Smith*, 292 F. 3d 1177, 1189 (CA9 2002). The rule comes into play after a forceful seizure has been judged to be reasonable under *Graham*. Once a court has made that determination, the rule instructs the court to ask whether the law enforcement officer violated the Fourth Amendment in some other way in the course of events leading up to the seizure. If so, that separate Fourth Amendment violation may "render the officer's otherwise *reasonable* defensive use of force *unreasonable* as a matter of law." 292 F. 3d, at 1190–1191.

The provocation rule, which has been "sharply questioned" outside the Ninth Circuit, *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, 615, n. 4 (2015), is incompatible with our excessive force jurisprudence. The rule's fundamental flaw is that it uses another constitutional violation to manufacture an excessive force claim where one would not otherwise exist.

The Fourth Amendment prohibits "unreasonable searches and seizures." "[R]easonableness is always the touchstone of Fourth Amendment analysis," *Birchfield* v. *North Dakota*, 579 U. S. 438, 477 (2016), and reasonableness is generally assessed by carefully weighing "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Tennessee* v. *Garner*, 471 U. S. 1, 8 (1985) (internal quotation marks omitted).

Our case law sets forth a settled and exclusive framework for analyzing whether the force used in making a seizure complies with the Fourth Amendment. See *Graham*, 490 U. S., at 395. As in other areas of our Fourth Amendment jurisprudence, "[d]etermining whether the force used to effect a particular seizure is 'reasonable'" requires balancing of the individual's Fourth Amendment interests against the relevant government interests. *Id.*, at 396. The operative question in excessive force cases is "whether the totality of

the circumstances justifie[s] a particular sort of search or seizure." *Garner*, *supra*, at 8–9.

The reasonableness of the use of force is evaluated under an "objective" inquiry that pays "careful attention to the facts and circumstances of each particular case." *Graham*, 490 U. S., at 396. And "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Ibid.* "Excessive force claims . . . are evaluated for objective reasonableness based upon the information the officers had when the conduct occurred." *Saucier* v. *Katz*, 533 U. S. 194, 207 (2001). That inquiry is dispositive: When an officer carries out a seizure that is reasonable, taking into account all relevant circumstances, there is no valid excessive force claim.

The basic problem with the provocation rule is that it fails to stop there. Instead, the rule provides a novel and unsupported path to liability in cases in which the use of force was reasonable. Specifically, it instructs courts to look back in time to see if there was a *different* Fourth Amendment violation that is somehow tied to the eventual use of force. That distinct violation, rather than the forceful seizure itself, may then serve as the foundation of the plaintiff's excessive force claim. *Billington*, *supra*, at 1190 ("The basis of liability for the subsequent use of force is the initial constitutional violation . . . ").

This approach mistakenly conflates distinct Fourth Amendment claims. Contrary to this approach, the objective reasonableness analysis must be conducted separately for each search or seizure that is alleged to be unconstitutional. An excessive force claim is a claim that a law enforcement officer carried out an unreasonable seizure through a use of force that was not justified under the relevant circumstances. It is not a claim that an officer used reasonable force after committing a distinct Fourth Amendment violation such as an unreasonable entry.

By conflating excessive force claims with other Fourth Amendment claims, the provocation rule permits excessive force claims that cannot succeed on their own terms. That is precisely how the rule operated in this case. The District Court found (and the Ninth Circuit did not dispute) that the use of force by the deputies was reasonable under *Graham*. However, respondents were still able to recover damages because the deputies committed a separate constitutional violation (the warrantless entry into the shack) that in some sense set the table for the use of force. That is wrong. *The* framework for analyzing excessive force claims is set out in *Graham*. If there is no excessive force claim under *Graham*, there is no excessive force claim at all. To the extent that a plaintiff has other Fourth Amendment claims, they should be analyzed separately.*

The Ninth Circuit's efforts to cabin the provocation rule only undermine it further. The Ninth Circuit appears to recognize that it would be going entirely too far to suggest that *any* Fourth Amendment violation that is connected to a reasonable use of force should create a valid excessive force claim. See, *e. g.*, *Beier* v. *Lewiston*, 354 F. 3d 1058, 1064 (CA9 2004) ("Because the excessive force and false arrest factual inquiries are distinct, establishing a lack of probable

*Respondents do not attempt to defend the provocation rule. Instead, they argue that the judgment below should be affirmed under *Graham* itself. *Graham* commands that an officer's use of force be assessed for reasonableness under the "totality of the circumstances." 490 U. S., at 396 (internal quotation marks omitted). On respondents' view, that means taking into account unreasonable police conduct prior to the use of force that foreseeably created the need to use it. Brief for Respondents 42–43. We did not grant certiorari on that question, and the decision below did not address it. Accordingly, we decline to address it here. See, *e. g.*, *McLane Co.* v. *EEOC*, *ante*, at 85 ("[W]e are a court of review, not of first view" (internal quotation marks omitted)). All we hold today is that *once* a use of force is deemed reasonable under *Graham*, it may not be found unreasonable by reference to some separate constitutional violation. Any argument regarding the District Court's application of *Graham* in this case should be addressed to the Ninth Circuit on remand.

cause to make an arrest does not establish an excessive force claim, and vice-versa"). Instead, that court has endeavored to limit the rule to only those distinct Fourth Amendment violations that in some sense "provoked" the need to use force. The concept of provocation, in turn, has been defined using a two-prong test. First, the separate constitutional violation must "creat[e] a situation which led to" the use of force; second, the separate constitutional violation must be committed recklessly or intentionally. 815 F. 3d, at 1193 (internal quotation marks omitted).

Neither of these limitations solves the fundamental problem of the provocation rule: namely, that it is an unwarranted and illogical expansion of *Graham*. But in addition, each of the limitations creates problems of its own. First, the rule includes a vague causal standard. It applies when a prior constitutional violation "created a situation which led to" the use of force. The rule does not incorporate the familiar proximate cause standard. Indeed, it is not clear what causal standard is being applied. Second, while the reasonableness of a search or seizure is almost always based on objective factors, see *Whren* v. *United States*, 517 U. S. 806, 814 (1996), the provocation rule looks to the subjective intent of the officers who carried out the seizure. As noted, under the Ninth Circuit's rule, a prior Fourth Amendment violation may be held to have provoked a later, reasonable use of force only if the prior violation was intentional or reckless.

The provocation rule may be motivated by the notion that it is important to hold law enforcement officers liable for the foreseeable consequences of all of their constitutional torts. See *Billington*, 292 F. 3d, at 1190 ("[I]f an officer's provocative actions are objectively unreasonable under the Fourth Amendment, . . . liability is established, and the question becomes . . . what harms the constitutional violation proximately caused"). However, there is no need to distort the excessive force inquiry in order to accomplish this objective. To the contrary, both parties accept the principle that plain-

tiffs can—subject to qualified immunity—generally recover damages that are proximately caused by any Fourth Amendment violation. See, *e. g.*, *Heck* v. *Humphrey*, 512 U. S. 477, 483 (1994) (§ 1983 "creates a species of tort liability" informed by tort principles regarding "damages and the prerequisites for their recovery" (internal quotation marks omitted)); *Memphis Community School Dist.* v. *Stachura*, 477 U. S. 299, 306 (1986) ("[W]hen § 1983 plaintiffs seek damages for violations of constitutional rights, the level of damages is ordinarily determined according to principles derived from the common law of torts"). Thus, there is no need to dress up every Fourth Amendment claim as an excessive force claim. For example, if the plaintiffs in this case cannot recover on their excessive force claim, that will not foreclose recovery for injuries proximately caused *by the warrantless entry*. The harm proximately caused by these two torts may overlap, but the two claims should not be confused.

III

The Court of Appeals also held that "even without relying on [the] provocation theory, the deputies are liable for the shooting under basic notions of proximate cause." 815 F. 3d, at 1194. In other words, the court apparently concluded that the shooting was proximately caused by the deputies' warrantless entry of the shack. Proper analysis of this proximate cause question required consideration of the "foreseeability or the scope of the risk created by the predicate conduct," and required the court to conclude that there was "some direct relation between the injury asserted and the injurious conduct alleged." *Paroline* v. *United States*, 572 U. S. 434, 444–445 (2014) (internal quotation marks omitted).

Unfortunately, the Court of Appeals' proximate cause analysis appears to have been tainted by the same errors that cause us to reject the provocation rule. The court reasoned that when officers make a "startling entry" by "barg[ing] into" a home "unannounced," it is reasonably fore-

seeable that violence may result. 815 F. 3d, at 1194–1195 (internal quotation marks omitted). But this appears to focus solely on the risks foreseeably associated with the failure to knock and announce, which could not serve as the basis for liability since the Court of Appeals concluded that the officers had qualified immunity on that claim. By contrast, the Court of Appeals did not identify the foreseeable risks associated with the *relevant* constitutional violation (the warrantless entry); nor did it explain how, on these facts, respondents' injuries were proximately caused by the warrantless entry. In other words, the Court of Appeals' proximate cause analysis, like the provocation rule, conflated distinct Fourth Amendment claims and required only a murky causal link between the warrantless entry and the injuries attributed to it. On remand, the court should revisit the question whether proximate cause permits respondents to recover damages for their shooting injuries based on the deputies' failure to secure a warrant at the outset. See *Bank of America Corp.* v. *Miami*, *ante*, at 203 (declining to "draw the precise boundaries of proximate cause" in the first instance). The arguments made on this point by the parties and by the United States as *amicus* provide a useful starting point for this inquiry. See Brief for Petitioners 42–56; Brief for Respondents 20–31, 51–59; Reply Brief 17–24; Brief for United States as *Amicus Curiae* 26–32.

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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 GORSUCH took no part in the consideration or decision of this case.

Syllabus

TOWN OF CHESTER, NEW YORK *v.* LAROE ESTATES, INC.

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

No. 16–605. Argued April 17, 2017—Decided June 5, 2017

Land developer Steven Sherman paid $2.7 million to purchase land in the town of Chester (Town) for a housing subdivision. He also sought the Town's approval of his development plan. About a decade later, he filed this suit in New York state court, claiming that the Town had obstructed his plans for the subdivision, forcing him to spend around $5.5 million to comply with its demands and driving him to the brink of personal bankruptcy. Sherman asserted, among other claims, a regulatory takings claim under the Fifth and Fourteenth Amendments. The Town removed the case to a Federal District Court, which dismissed the takings claim as unripe. The Second Circuit reversed that determination and remanded for the case to go forward. On remand, real estate development company Laroe Estates, Inc. (respondent here), filed a motion to intervene of right under Federal Rule of Civil Procedure 24(a)(2), which requires a court to permit intervention by a litigant that "claims an interest related to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Laroe alleged that it had paid Sherman more than $2.5 million in relation to the development project and the subject property, that its resulting equitable interest in the property would be impaired if it could not intervene, and that Sherman would not adequately represent its interest. Laroe filed, *inter alia*, an intervenor's complaint asserting a regulatory takings claim that was substantively identical to Sherman's and seeking a judgment awarding Laroe compensation for the taking of Laroe's interest in the property at issue. The District Court denied Laroe's motion to intervene, concluding that its equitable interest did not confer standing. The Second Circuit reversed, holding that an intervenor of right is not required to meet Article III's standing requirements.

Held:

1. A litigant seeking to intervene as of right under Rule 24(a)(2) must meet the requirements of Article III standing if the intervenor wishes to pursue relief not requested by a plaintiff. To establish Article III standing, a plaintiff seeking compensatory relief 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." *Spokeo, Inc.* v. *Robins*, 578 U. S. 330, 338. The "plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Davis* v. *Federal Election Comm'n*, 554 U. S. 724, 734 (internal quotation marks omitted). The same principle applies when there are multiple plaintiffs: At least one plaintiff must have standing to seek each form of relief requested in the complaint. That principle also applies to intervenors of right: For all relief sought, there must be a litigant with standing, whether that litigant joins the lawsuit as a plaintiff, a coplaintiff, or an intervenor of right. Thus, at the least, an intervenor of right must demonstrate Article III standing when it seeks additional relief beyond that requested by the plaintiff. That includes cases in which both the plaintiff and the intervenor seek separate money judgments in their own names. Pp. 438–440.

2. The Court of Appeals is to address on remand the question whether Laroe seeks different relief than Sherman. If Laroe wants only a money judgment of its own running directly against the Town, then it seeks damages different from those sought by Sherman and must establish its own Article III standing in order to intervene. The record is unclear on that point, and the Court of Appeals did not resolve that ambiguity. Pp. 440–442.

828 F. 3d 60, vacated and remanded.

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

Neal Kumar Katyal argued the cause for petitioner. With him on the briefs were *Colleen E. Roh Sinzdak*, *Brian S. Sokoloff*, and *Steven C. Stern*.

Sarah E. Harrington argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Deputy Solicitor General Kneedler*, *Deputy Solicitor General Stewart*, *H. Thomas Byron III*, and *Caroline D. Lopez*.

Shay Dvoretzky argued the cause for respondent. With him on the brief were *Emily J. Kennedy* and *Joseph J. Haspel*.*

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*Briefs of *amici curiae* urging reversal were filed for the National Association of Counties et al. by *Sarah M. Shalf*, *Lisa Soronen*, and *Charles W. Thompson, Jr.*; for Aaron-Andrew P. Bruhl by *Tillman J. Breckenridge*,

JUSTICE ALITO delivered the opinion of the Court.

Must a litigant possess Article III standing in order to intervene of right under Federal Rule of Civil Procedure 24(a)(2)? The parties do not dispute—and we hold—that such an intervenor must meet the requirements of Article III if the intervenor wishes to pursue relief not requested by a plaintiff. In the present case, it is unclear whether the intervenor seeks different relief, and the Court of Appeals did not resolve this threshold issue. Accordingly, we vacate the judgment and remand for that court to determine whether the intervenor seeks such additional relief.

I

In 2001, land developer Steven Sherman paid $2.7 million to purchase nearly 400 acres of land in the town of Chester, New York (Town). Sherman planned to build a housing subdivision called MareBrook, complete with 385 housing units, a golf course, an onsite restaurant, and other amenities. Sherman applied for approval of his plan and thus began a "journey through the Town's ever-changing labyrinth of red tape." *Sherman* v. *Chester*, 752 F. 3d 554, 557 (CA2 2014).

In 2012, Sherman filed this suit against the Town in New York state court. The suit concerned "the decade's worth of red tape put in place" by the Town and its regulatory bodies. *Id.*, at 558. According to Sherman, the Town obstructed his plans for the subdivision and forced him to spend around $5.5 million to comply with the Town's demands. *Id.*, at 558, 560. All of this, Sherman claimed, left him financially exhausted and on the brink of personal bank-

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Mr. Bruhl, pro se, and *Patricia E. Roberts*; and for Nancy Sherman by *Michael D. Diederich, Jr.*

Briefs of *amici curiae* urging affirmance were filed for the American Forest Resource Council et al. by *Scott Horngren* and *Caroline Lobdell*; for the Constitutional Accountability Center et al. by *Elizabeth B. Wydra, Brianne J. Gorod,* and *Dana Berliner*; and for the National Association of Home Builders et al. by *Amy C. Chai* and *Thomas J. Ward.*

ruptcy. *Id.*, at 560. Sherman brought nine federal- and state-law claims against the Town, including a regulatory takings claim under the Fifth and Fourteenth Amendments. See App. 98–122. The Town removed the case to a Federal District Court, which dismissed Sherman's takings claim as unripe. Opinion and Order in No. 1:12–cv–00647 (SDNY), Dkt. 14, p. 25. The Court of Appeals for the Second Circuit reversed the ripeness determination and remanded for the case to go forward. *Chester*, *supra*, at 557.[1]

On remand, real estate development company Laroe Estates, Inc. (the respondent here), filed a motion to intervene of right under Federal Rule of Civil Procedure 24(a)(2). This Rule requires a court to permit intervention by a litigant that "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Laroe alleged that in 2003 it had entered into an agreement with Sherman regarding the MareBrook property. Under this agreement, Laroe was to make $6 million in payments to Sherman, secured by a mortgage on all of the development, and Sherman was to sell Laroe parcels of land within the proposed subdivision when the MareBrook plan was approved. However, Laroe reserved the right to terminate the entire agreement if Sherman was unable to obtain Town approval for a sufficient number of lots. While this agreement was in place and Sherman continued his futile quest for regulatory approval, Laroe paid Sherman more than $2.5 million.

In 2013, TD Bank commenced a foreclosure proceeding on Sherman's property. In an effort to save the deal, Laroe and Sherman entered into a new agreement. That agreement provided that the purchase price of the property would be the $2.5 million that Laroe had already advanced Sher-

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[1] Sherman died in 2013, and his estate replaced him as the plaintiff. App. to Pet. for Cert. 21a, n. 2.

man plus any amount Sherman had to pay to settle with TD Bank. Once the Town approved the plan, Laroe was required to transfer a certain number of lots back to Sherman. In addition to imposing this transfer obligation, the agreement deemed Laroe to have paid for the land in full. Laroe was also given the authority to settle the debt Sherman owed TD Bank and to terminate the agreement if the settlement failed. The settlement did fail, and TD Bank took over the property. But Laroe never terminated its agreement with Sherman.

In support of its motion to intervene, Laroe argued that, under New York law, it is "the equitable owner of the Real Property" at issue in Sherman's suit. App. 131, 135–139. Laroe asserted that its status as equitable owner gave it an interest in the MareBrook property; that its interest would be impaired if it could not intervene; and that Sherman "ha[d] his own agenda" and consequently could not adequately represent Laroe's interest. *Id.*, at 143–145. Along with its other intervention-related pleadings, Laroe filed an intervenor's complaint asserting a regulatory takings claim that was substantively identical to Sherman's. Laroe's complaint sought, among other things, a "judgment against [the Town] awarding [Laroe] damages," namely, "compensation for the taking of Laroe's interest in the subject real property." *Id.*, at 162.

The District Court denied Laroe's motion to intervene on the ground that Laroe lacked standing to bring a takings claim "based on its status as contract vendee to the property." App. to Pet. for Cert. 57a. The District Court interpreted Second Circuit precedent—specifically, *United States Olympic Comm.* v. *Intelicense Corp., S. A.*, 737 F. 2d 263, 268 (1984)—to mean that Laroe's equitable interest did not confer standing. App. to Pet. for Cert. 55a–56a.[2]

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[2] We assume for the sake of argument only that Laroe does not have Article III standing. If resolution of this question becomes necessary on remand, the Court of Appeals will be required to determine whether the District Court's decision was correct.

The Court of Appeals reversed. 828 F. 3d 60, 62 (CA2 2016). Acknowledging a division among the Courts of Appeals on whether an intervenor of right must meet the requirements of Article III, the Second Circuit sided with the courts that have held that Article III standing is not required. *Id.*, at 64–65.

We granted certiorari. 580 U. S. 1089 (2017).

II

Article III of the Constitution limits the exercise of the judicial power to "Cases" and "Controversies." §2, cl. 1. This fundamental limitation preserves the "tripartite structure" of our Federal Government, prevents the Federal Judiciary from "intrud[ing] upon the powers given to the other branches," and "confines the federal courts to a properly judicial role." *Spokeo, Inc.* v. *Robins*, 578 U. S. 330, 337, 338 (2016). "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 341 (2006).

"Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy." *Spokeo*, *supra*, at 338. "The law of Article III standing, which is built on separation-of-powers principles, 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). Our standing doctrine accomplishes this by requiring plaintiffs to "alleg[e] such a personal stake in the outcome of the controversy as to . . . justify [the] exercise of the court's remedial powers on [their] behalf." *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 38 (1976) (internal quotation marks omitted). To establish Article III standing, the plaintiff seeking compensatory relief 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."

Spokeo, *supra*, at 338. "Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III limitation." *Simon*, *supra*, at 38.

Our standing decisions make clear that "'standing is not dispensed in gross.'" *Davis* v. *Federal Election Comm'n*, 554 U. S. 724, 734 (2008) (quoting *Lewis* v. *Casey*, 518 U. S. 343, 358, n. 6 (1996); alteration omitted). To the contrary, "a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Davis*, *supra*, at 734 (internal quotation marks omitted); see, *e. g.*, *DaimlerChrysler*, *supra*, at 352 ("[A] plaintiff must demonstrate standing separately for each form of relief sought"); *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 185 (2000) (same); *Los Angeles* v. *Lyons*, 461 U. S. 95, 105–106, and n. 7 (1983) (a plaintiff who has standing to seek damages must also demonstrate standing to pursue injunctive relief). The same principle applies when there are multiple plaintiffs. At least one plaintiff must have standing to seek each form of relief requested in the complaint. Both of the parties accept this simple rule.[3]

The same principle applies to intervenors of right. Although the context is different, the rule is the same: For all relief sought, there must be a litigant with standing, whether that litigant joins the lawsuit as a plaintiff, a coplaintiff, or an intervenor of right. Thus, at the least, an intervenor of right must demonstrate Article III standing when it seeks additional relief beyond that which the plaintiff requests. This result follows ineluctably from our Article III case law, so it is not surprising that both parties accept it (as does the United States as *amicus curiae*). See Brief for Petitioner

[3] See Brief for Petitioner 23 ("If different parties raising a single issue seek different relief, then standing must be shown for each one"); Brief for Respondent 15 ("[A] case or controversy as to one claim does not extend the judicial power to *different* claims or forms of relief").

13 (arguing that an intervenor must always demonstrate standing); Brief for Respondent 28 ("[A]n intervenor who . . . seeks relief beyond that requested by a party with standing must satisfy Article III"); Brief for United States as *Amicus Curiae* 16 (An intervenor must demonstrate its own standing if it "seek[s] damages" or "injunctive relief that is broader than or different from the relief sought by the original plaintiff(s)").

In sum, an intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing. That includes cases in which both the plaintiff and the intervenor seek separate money judgments in their own names. Cf. *General Building Contractors Assn., Inc.* v. *Pennsylvania*, 458 U. S. 375, 402–403, n. 22 (1982) (declining to address the State's standing "until [it] obtains relief different from that sought by plaintiffs whose standing has not been questioned").

That principle dictates the disposition of this case. It is unclear whether Laroe seeks the same relief as Sherman or instead seeks different relief, such as a money judgment against the Town in Laroe's own name. Laroe's complaint—the best evidence of the relief Laroe seeks—requests a judgment awarding damages *to Laroe*. App. 162. Unsurprisingly, Sherman requests something different: specifically, compensation for the taking of *his* interest in the property. *Id.*, at 122. In other words, as Laroe's counsel conceded at oral argument, the complaint plainly seeks separate monetary relief for Laroe directly against the Town. Tr. of Oral Arg. 43–44. And, as Laroe's counsel conceded further, if Laroe *is* "seeking additional damages in [its] own name," "at that point, an Article III inquiry would be required." *Id.*, at 47.

To be sure, at some points during argument in the Court of Appeals, Laroe made statements that arguably indicated that Laroe is not seeking damages different from those sought by Sherman. In particular, Laroe's counsel stated

that he was "not saying that Sherman and [Laroe's] damages are not the same damages," and insisted that there is "exactly one fund, and the town doesn't have to do anything except turn over the fund." Tr. 16, 33; see also Reply Brief in No. 15–1086 (CA2), p. 12 (similar). At other points, however, the same counsel made statements pointing in the opposite direction. When asked directly whether "there would be separate awards to you and to the Sherman estate" if Sherman's suit was successful, Laroe's counsel admitted that he "ha[d] never contemplated how [damages] ge[t] allocated at the end of the day" and suggested bifurcated proceedings so that once liability was settled, Laroe and Sherman could "duke it out" over damages if necessary. Tr. 32–35. And in its Court of Appeals briefing, Laroe argued that it—not Sherman—would be entitled to most of the damages from the takings claim, flagging the allocation issue as one that the District Court would have to resolve. Brief for Appellant in No. 15–1086 (CA2), p. 32 ("[T]he trier of fact will have to determine the relative allocation of rights over the fund . . . . Specifically, what is the value of Sherman's bare legal title as compared to Laroe's equitable title in the subject property"); Reply Brief in No. 15–1086, at 15 ("[M]ost, if not all of the benefits" of this litigation "will accrue [to] Laroe"); see also 828 F. 3d, at 70 (noting that Sherman and Laroe "may disagree about . . . the issue of damages were they to prevail"). Taken together, these representations at best leave it ambiguous whether Laroe is seeking damages for itself or is simply seeking the same damages sought by Sherman.[4]

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[4] Before this Court, Laroe's counsel represented that Laroe is not seeking damages of its own and is seeking only to maximize Sherman's recovery. Tr. of Oral Arg. 43–44. But in light of the ambiguous record and the lack of a reasoned conclusion on this question from the Court of Appeals, we are not inclined to resolve it in the first instance. *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005) ("[W]e are a court of review, not of first view").

Unfortunately, the Court of Appeals did not resolve this ambiguity. In fact, the section of its opinion concerning standing did not discuss whether Laroe sought different relief than Sherman. *Id.*, at 64–66. Elsewhere, in a different context, the court did acknowledge Laroe's statement that it sought "essentially the same" damages as Sherman. *Id.*, at 66. But the court also found that "it is unclear from the record whether Laroe believes the Town is directly liable to Sherman or Laroe for the taking." *Ibid.*

This confusion needs to be dispelled. If Laroe wants only a money judgment of its own running directly against the Town, then it seeks damages different from those sought by Sherman and must establish its own Article III standing in order to intervene. We leave it to the Court of Appeals to address this question on remand.

* * *

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.

Syllabus

HONEYCUTT *v.* UNITED STATES

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

No. 16–142. Argued March 29, 2017—Decided June 5, 2017

Terry Honeycutt managed sales and inventory for a Tennessee hardware store owned by his brother, Tony Honeycutt. After they were indicted for federal drug crimes including conspiracy to distribute a product used in methamphetamine production, the Government sought judgments against each brother in the amount of $269,751.98 pursuant to the Comprehensive Forfeiture Act of 1984, which mandates forfeiture of "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of" certain drug crimes, 21 U. S. C. § 853(a)(1). Tony pleaded guilty and agreed to forfeit $200,000. Terry went to trial and was convicted. Despite conceding that Terry had no controlling interest in the store and did not stand to benefit personally from the sales of the product, the Government asked the District Court to hold him jointly and severally liable for the profits from the illegal sales and sought a judgment of $69,751.98, the outstanding conspiracy profits. The District Court declined to enter a forfeiture judgment against Terry, reasoning that he was a salaried employee who had not received any profits from the sales. The Sixth Circuit reversed, holding that the brothers, as co-conspirators, were jointly and severally liable for any conspiracy proceeds.

Held: Because forfeiture pursuant to § 853(a)(1) is limited to property the defendant himself actually acquired as the result of the crime, that provision does not permit forfeiture with regard to Terry Honeycutt, who had no ownership interest in his brother's store and did not personally benefit from the illegal sales. Pp. 447–454.

(a) Section 853(a) limits forfeiture to property flowing from, § 853(a)(1), or used in, § 853(a)(2), the crime itself—providing the first clue that the statute does not countenance joint and several liability, which would require forfeiture of untainted property. It also defines forfeitable property solely in terms of personal possession or use. Section 853(a)(1), the provision at issue, limits forfeiture to property the defendant "obtained, directly or indirectly, as the result of" the crime. Neither the dictionary definition nor the common usage of the word "obtain" supports the conclusion that an individual "obtains" property that was acquired by someone else. And the adverbs "directly" and

"indirectly" refer to how a defendant obtains the property; they do not negate the requirement that he obtain it at all. Sections 853(a)(2) and 853(a)(3) are in accord with this reading. Pp. 448–450.

(b) Joint and several liability is also contrary to several other provisions of § 853. Section 853(c), which applies to property "described in subsection (a)," applies to tainted property only. See *Luis* v. *United States*, 578 U. S. 5, 15. Section 853(e)(1) permits pretrial asset freezes to preserve the availability of property forfeitable under subsection (a), provided there is probable cause to think that a defendant has committed an offense triggering forfeiture and "the property at issue has the requisite connection to that crime." *Kaley* v. *United States*, 571 U. S. 320, 324. Section 853(d) establishes a "rebuttable presumption" that property is subject to forfeiture only if the Government proves that the defendant acquired the property "during the period of the violation" and "there was no likely source for" the property but the crime. These provisions reinforce the statute's application to tainted property acquired by the defendant and are thus incompatible with joint and several liability. Joint and several liability would also render futile § 853(p)—the sole provision of § 853 that permits the Government to confiscate property untainted by the crime. Pp. 450–452.

(c) The plain text and structure of § 853 leave no doubt that Congress did not, as the Government claims, incorporate the principle that conspirators are legally responsible for each other's foreseeable actions in furtherance of their common plan. See *Pinkerton* v. *United States*, 328 U. S. 640. Congress provided just one way for the Government to recoup substitute property when the tainted property itself is unavailable—the procedures outlined in § 853(p). And as is clear from its text and structure, § 853 maintains traditional *in rem* forfeiture's focus on tainted property unless one of § 853(p)'s preconditions exists. Pp. 452–454.

816 F. 3d 362, reversed.

SOTOMAYOR, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.

Adam G. Unikowsky argued the cause for petitioner. With him on the briefs were *Christopher Townley*, *David A. Strauss*, and *Sarah M. Konsky*.

Brian H. Fletcher argued the cause for the United States. With him on the briefs were *Acting Solicitor General Fran-*

cisco, *Acting Assistant Attorney General Blanco*, *Deputy Solicitor General Dreeben*, and *James I. Pearce*.*

JUSTICE SOTOMAYOR delivered the opinion of the Court.

A federal statute—21 U. S. C. § 853—mandates forfeiture of "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of" certain drug crimes. This case concerns how § 853 operates when two or more defendants act as part of a conspiracy. Specifically, the issue is whether, under § 853, a defendant may be held jointly and severally liable for property that his co-conspirator derived from the crime but that the defendant himself did not acquire. The Court holds that such liability is inconsistent with the statute's text and structure.

I

Terry Michael Honeycutt managed sales and inventory for a Tennessee hardware store owned by his brother, Tony Honeycutt. After observing several "'edgy looking folks'" purchasing an iodine-based water-purification product known as Polar Pure, Terry Honeycutt contacted the Chattanooga Police Department to inquire whether the iodine crystals in the product could be used to manufacture methamphetamine. App. to Pet. for Cert. 2a. An officer confirmed that individuals were using Polar Pure for this purpose and advised Honeycutt to cease selling it if the sales made Honeycutt "'uncomfortable.'" *Ibid.* Notwithstanding the officer's advice, the store continued to sell large quantities of Polar Pure. Although each bottle of Polar Pure contained enough iodine to purify 500 gallons of water, and despite the fact that most people have no legitimate use for the product

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Daniel S. Volchok, David M. Lehn, Daniel Winik, and *David Oscar Markus* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

in large quantities, the brothers sold as many as 12 bottles in a single transaction to a single customer. Over a 3-year period, the store grossed roughly $400,000 from the sale of more than 20,000 bottles of Polar Pure.

Unsurprisingly, these sales prompted an investigation by the federal Drug Enforcement Administration along with state and local law enforcement. Authorities executed a search warrant at the store in November 2010 and seized its entire inventory of Polar Pure—more than 300 bottles. A federal grand jury indicted the Honeycutt brothers for various federal crimes relating to their sale of iodine while knowing or having reason to believe it would be used to manufacture methamphetamine. Pursuant to the Comprehensive Forfeiture Act of 1984, § 303, 98 Stat. 2045, 21 U. S. C. § 853(a)(1), which mandates forfeiture of "any proceeds the person obtained, directly or indirectly, as the result of" drug distribution, the Government sought forfeiture money judgments against each brother in the amount of $269,751.98, which represented the hardware store's profits from the sale of Polar Pure. Tony Honeycutt pleaded guilty and agreed to forfeit $200,000. Terry went to trial. A jury acquitted Terry Honeycutt of 3 charges but found him guilty of the remaining 11, including conspiring to and knowingly distributing iodine in violation of §§ 841(c)(2), 843(a)(6), and 846.

The District Court sentenced Terry Honeycutt to 60 months in prison. Despite conceding that Terry had no "controlling interest in the store" and "did not stand to benefit personally," the Government insisted that the District Court "hold [him] jointly liable for the profit from the illegal sales." App. to Pet. for Cert. 60a–61a. The Government thus sought a money judgment of $69,751.98, the amount of the conspiracy profits outstanding after Tony Honeycutt's forfeiture payment. The District Court declined to enter a forfeiture judgment, reasoning that Honeycutt was a salaried employee who had not personally received any profits from the iodine sales.

The Court of Appeals for the Sixth Circuit reversed. As co-conspirators, the court held, the brothers are "'jointly and severally liable for any proceeds of the conspiracy.'" 816 F. 3d 362, 380 (2016). The court therefore concluded that each brother bore full responsibility for the entire forfeiture judgment. *Ibid.*

The Court granted certiorari to resolve disagreement among the Courts of Appeals regarding whether joint and several liability applies under § 853.[1] 580 U. S. 1028 (2016).

II

Criminal forfeiture statutes empower the Government to confiscate property derived from or used to facilitate criminal activity. Such statutes serve important governmental interests such as "separating a criminal from his ill-gotten gains," "returning property, in full, to those wrongfully deprived or defrauded of it," and "lessen[ing] the economic power" of criminal enterprises. *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617, 629–630 (1989). The statute at issue here—§ 853—mandates forfeiture with respect to persons convicted of certain serious drug crimes. The question presented is whether § 853 embraces joint and several liability for forfeiture judgments.

A creature of tort law, joint and several liability "applies when there has been a judgment against multiple defendants." *McDermott, Inc.* v. *AmClyde*, 511 U. S. 202, 220–221 (1994). If two or more defendants jointly cause harm, each defendant is held liable for the entire amount of the harm; provided, however, that the plaintiff recover only once for

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[1] Compare *United States* v. *Van Nguyen*, 602 F. 3d 886, 904 (CA8 2010) (applying joint and several liability to forfeiture under § 853); *United States* v. *Pitt*, 193 F. 3d 751, 765 (CA3 1999) (same); *United States* v. *McHan*, 101 F. 3d 1027 (CA4 1996) (same); and *United States* v. *Benevento*, 836 F. 2d 129, 130 (CA2 1988) (*per curiam*) (same), with *United States* v. *Cano-Flores*, 796 F. 3d 83, 91 (CADC 2015) (declining to apply joint and several liability under § 853).

the full amount. See Restatement (Second) of Torts § 875 (1977). Application of that principle in the forfeiture context when two or more defendants conspire to violate the law would require that each defendant be held liable for a forfeiture judgment based not only on property that he used in or acquired because of the crime, but also on property obtained by his co-conspirator.

An example is instructive. Suppose a farmer masterminds a scheme to grow, harvest, and distribute marijuana on local college campuses. The mastermind recruits a college student to deliver packages and pays the student $300 each month from the distribution proceeds for his services. In one year, the mastermind earns $3 million. The student, meanwhile, earns $3,600. If joint and several liability applied, the student would face a forfeiture judgment for the entire amount of the conspiracy's proceeds: $3 million. The student would be bound by that judgment even though he never personally acquired any proceeds beyond the $3,600. This case requires determination whether this form of liability is permitted under § 853(a)(1). The Court holds that it is not.

A

Forfeiture under § 853 applies to "any person" convicted of certain serious drug crimes. Section 853(a) limits the statute's reach by defining the property subject to forfeiture in three separate provisions. An understanding of how these three provisions work to limit the operation of the statute is helpful to resolving the question in this case. First, the provision at issue here, § 853(a)(1), limits forfeiture to "property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of" the crime. Second, § 853(a)(2) restricts forfeiture to "property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of," the crime. Finally, § 853(a)(3) applies to persons "convicted of engaging in a continuing criminal enterprise"—a form of conspiracy—and requires

forfeiture of "property described in paragraph (1) or (2)" as well as "any of [the defendant's] interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise." These provisions, by their terms, limit forfeiture under § 853 to tainted property; that is, property flowing from (§ 853(a)(1)), or used in (§ 853(a)(2)), the crime itself. The limitations of § 853(a) thus provide the first clue that the statute does not countenance joint and several liability, which, by its nature, would require forfeiture of untainted property.

Recall, for example, the college student from the earlier hypothetical. The $3,600 he received for his part in the marijuana distribution scheme clearly falls within § 853(a)(1): It is property he "obtained . . . as the result of" the crime. But if he were held jointly and severally liable for the proceeds of the entire conspiracy, he would owe the Government $3 million. Of the $3 million, $2,996,400 would have no connection whatsoever to the student's participation in the crime and would have to be paid from the student's untainted assets. Joint and several liability would thus represent a departure from § 853(a)'s restriction of forfeiture to tainted property.

In addition to limiting forfeiture to tainted property, § 853(a) defines forfeitable property solely in terms of personal possession or use. This is most clear in the specific text of § 853(a)(1)—the provision under which the Government sought forfeiture in this case. Section 853(a)(1) limits forfeiture to property the defendant "obtained . . . as the result of" the crime. At the time Congress enacted § 853(a)(1), the verb "obtain" was defined as "to come into possession of" or to "get or acquire." Random House Dictionary of the English Language 995 (1966); see also 7 Oxford English Dictionary 37 (1933) (defining "obtain" as "[t]o come into the possession or enjoyment of (something) by one's own effort, or by request; to procure or gain, as the result of purpose and effort"). That definition persists today. See

Black's Law Dictionary 1247 (10th ed. 2014) (defining "obtain" as "[t]o bring into one's own possession; to procure, esp. through effort"); cf. *Sekhar* v. *United States*, 570 U. S. 729, 734 (2013) ("Obtaining property requires ' . . . the acquisition of property' "). Neither the dictionary definition nor the common usage of the word "obtain" supports the conclusion that an individual "obtains" property that was acquired by someone else. Yet joint and several liability would mean just that: The college student would be presumed to have "obtained" the $3 million that the mastermind acquired.

Section 853(a)(1) further provides that the forfeitable property may be "obtained, directly or indirectly." The adverbs "directly" and "indirectly" modify—but do not erase—the verb "obtain." In other words, these adverbs refer to how a defendant obtains the property; they do not negate the requirement that he obtain it at all. For instance, the marijuana mastermind might receive payments directly from drug purchasers, or he might arrange to have drug purchasers pay an intermediary such as the college student. In all instances, he ultimately "obtains" the property—whether "directly or indirectly."

The other provisions of § 853(a) are in accord with the limitation of forfeiture to property the defendant himself obtained. Section 853(a)(2) mandates forfeiture of property used to facilitate the crime but limits forfeiture to "the person's property." Similarly, § 853(a)(3) requires forfeiture of property related to continuing criminal enterprises, but contrary to joint and several liability principles, requires the defendant to forfeit only "his interest in" the enterprise.

Section 853(a)'s limitation of forfeiture to tainted property acquired or used by the defendant, together with the plain text of § 853(a)(1), foreclose joint and several liability for coconspirators.

B

Joint and several liability is not only contrary to § 853(a), it is—for the same reasons—contrary to several other provi-

sions of § 853. Two provisions expressly incorporate the § 853(a) limitations. First, § 853(c) provides that "[a]ll right, title, and interest in property described in subsection (a)"—*e. g.*, tainted property obtained as the result of or used to facilitate the crime—"vests in the United States upon the commission of the act giving rise to forfeiture." Consistent with its text, the Court has previously acknowledged that § 853(c) applies to tainted property only. See *Luis* v. *United States*, 578 U. S. 5, 15 (2016).

Second, § 853(e)(1) authorizes pretrial freezes "to preserve the availability of property described in subsection (a) . . . for forfeiture." Pretrial restraints on forfeitable property are permitted only when the Government proves, at a hearing, that (1) the defendant has committed an offense triggering forfeiture, and (2) "the property at issue has the requisite connection to that crime." *Kaley* v. *United States*, 571 U. S. 320, 324 (2014); see also *id.*, at 336, n. 11 ("[F]orfeiture applies only to specific assets").

Another provision, § 853(d), does not reference subsection (a) but incorporates its requirements on its own terms. Section 835(d) establishes a "rebuttable presumption" that property is subject to forfeiture only if the Government proves that "such property was acquired by [the defendant] during the period of the violation" and that "there was no likely source for such property other than" the crime. Contrary to all of these provisions, joint and several liability would mandate forfeiture of untainted property that the defendant did not acquire as a result of the crime.

It would also render futile one other provision of the statute. Section 853(p)—the sole provision of § 853 that permits the Government to confiscate property untainted by the crime—lays to rest any doubt that the statute permits joint and several liability. That provision governs forfeiture of "substitute property" and applies "if any property described in subsection (a), as a result of any act or omission of the defendant," either:

> "(A) cannot be located upon the exercise of due diligence;
>
> "(B) has been transferred or sold to, or deposited with, a third party;
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> "(C) has been placed beyond the jurisdiction of the court;
>
> "(D) has been substantially diminished in value; or
>
> "(E) has been commingled with other property which cannot be divided without difficulty." § 853(p)(1).

Only if the Government can prove that one of these five conditions was caused by the defendant may it seize "any other property of the defendant, up to the value of" the tainted property—rather than the tainted property itself. § 853(p)(2). This provision begins from the premise that the defendant once possessed tainted property as "described in subsection (a)," and provides a means for the Government to recoup the value of the property if it has been dissipated or otherwise disposed of by "any act or omission of the defendant." § 853(p)(1).

Section 853(p)(1) demonstrates that Congress contemplated situations where the tainted property itself would fall outside the Government's reach. To remedy that situation, Congress did not authorize the Government to confiscate substitute property from other defendants or co-conspirators; it authorized the Government to confiscate assets only from the defendant who initially acquired the property and who bears responsibility for its dissipation. Permitting the Government to force other co-conspirators to turn over untainted substitute property would allow the Government to circumvent Congress' carefully constructed statutory scheme, which permits forfeiture of substitute property only when the requirements of §§ 853(p) and (a) are satisfied. There is no basis to read such an end run into the statute.

III

Against all of this, the Government asserts the "bedrock principle of conspiracy liability" under which "conspirators

are legally responsible for each other's foreseeable actions in furtherance of their common plan." Brief for United States 9; see also *Pinkerton* v. *United States*, 328 U. S. 640 (1946). Congress, according to the Government, must be presumed to have legislated against the background principles of conspiracy liability, and thus, "when the traceable proceeds of a conspiracy are unavailable, [§]853 renders conspirators jointly and severally liable for the amount of the proceeds foreseeably obtained by the conspiracy." Brief for United States 10. Not so.

The plain text and structure of § 853 leave no doubt that Congress did not incorporate those background principles. Congress provided just one way for the Government to recoup substitute property when the tainted property itself is unavailable—the procedures outlined in § 853(p). And, for all the Government makes of the background principles of conspiracy liability, it fails to fully engage with the most important background principles underlying § 853: those of forfeiture.

Traditionally, forfeiture was an action against the tainted property itself and thus proceeded *in rem*; that is, proceedings in which "[t]he thing [was] primarily considered as the offender, or rather the offence [was] attached primarily to the thing." *The Palmyra*, 12 Wheat. 1, 14 (1827). The forfeiture "proceeding *in rem* st[ood] independent of, and wholly unaffected by any criminal proceeding *in personam*" against the defendant. *Id.*, at 15. Congress altered this distinction in enacting § 853 by effectively merging the *in rem* forfeiture proceeding with the *in personam* criminal proceeding and by expanding forfeiture to include not just the "thing" but "property . . . derived from . . . any proceeds" of the crime. § 853(a)(1). But as is clear from its text and structure, § 853 maintains traditional *in rem* forfeiture's focus on tainted property unless one of the preconditions of § 853(p) exists. For those who find it relevant, the legislative history confirms as much: Congress altered the traditional system in order to "improv[e] the procedures applica-

ble in forfeiture cases." S. Rep. No. 98–225, p. 192 (1983). By adopting an *in personam* aspect to criminal forfeiture, and providing for substitute-asset forfeiture, Congress made it easier for the Government to hold the defendant who acquired the tainted property responsible. Congress did not, however, enact any "significant expansion of the scope of property subject to forfeiture." *Ibid.*[2]

IV

Forfeiture pursuant to § 853(a)(1) is limited to property the defendant himself actually acquired as the result of the crime. In this case, the Government has conceded that Terry Honeycutt had no ownership interest in his brother's store and did not personally benefit from the Polar Pure sales. App. to Pet. for Cert. 60a. The District Court agreed. *Id.*, at 40a. Because Honeycutt never obtained tainted property as a result of the crime, § 853 does not require any forfeiture.

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

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

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[2] Section 853(*o*) directs that "[t]he provisions of [§ 853] shall be liberally construed to effectuate its remedial purposes." The Government points to this as license to read joint and several liability into the statute. But the Court cannot construe a statute in a way that negates its plain text, and here, Congress expressly limited forfeiture to tainted property that the defendant obtained. As explained above, that limitation is incompatible with joint and several liability.

Syllabus

KOKESH *v.* SECURITIES AND EXCHANGE COMMISSION

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

No. 16–529. Argued April 18, 2017—Decided June 5, 2017

The Securities and Exchange Commission (SEC or Commission) possesses authority to investigate violations of federal securities laws and to commence enforcement actions in federal district court if its investigations uncover evidence of wrongdoing. Initially, the Commission's statutory authority in enforcement actions was limited to seeking an injunction barring future violations. Beginning in the 1970's, federal district courts, at the request of the Commission, began ordering disgorgement in SEC enforcement proceedings. Although Congress has since authorized the Commission to seek monetary civil penalties, the Commission has continued to seek disgorgement. This Court has held that 28 U. S. C. § 2462, which establishes a 5-year limitations period for "an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture," applies when the Commission seeks monetary civil penalties. See *Gabelli* v. *SEC*, 568 U. S. 442, 454.

In 2009, the Commission brought an enforcement action, alleging that petitioner Charles Kokesh violated various securities laws by concealing the misappropriation of $34.9 million from four business-development companies from 1995 to 2009. The Commission sought monetary civil penalties, disgorgement, and an injunction barring Kokesh from future violations. After a jury found that Kokesh's actions violated several securities laws, the District Court determined that § 2462's 5-year limitations period applied to the monetary civil penalties. With respect to the $34.9 million disgorgement judgment, however, the court concluded that § 2462 did not apply because disgorgement is not a "penalty" within the meaning of the statute. The Tenth Circuit affirmed, holding that disgorgement was neither a penalty nor a forfeiture.

Held: Because SEC disgorgement operates as a penalty under § 2462, any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued. Pp. 461–467.

(a) The definition of "penalty" as a "punishment, whether corporal or pecuniary, imposed and enforced by the State, for a crime or offen[s]e against its laws," *Huntington* v. *Attrill*, 146 U. S. 657, 667, gives rise to two principles. First, whether a sanction represents a penalty turns in part on "whether the wrong sought to be redressed is a wrong to the

public, or a wrong to the individual." *Id.*, at 668. Second, a pecuniary sanction operates as a penalty if it is sought "for the purpose of punishment, and to deter others from offending in like manner" rather than to compensate victims. *Ibid.* This Court has applied these principles in construing the term "penalty," holding, *e. g.*, that a statute providing a compensatory remedy for a private wrong did not impose a "penalty," *Brady* v. *Daly*, 175 U. S. 148, 154. Pp. 461–463.

(b) The application of these principles here readily demonstrates that SEC disgorgement constitutes a penalty within the meaning of § 2462. First, SEC disgorgement is imposed by the courts as a consequence for violating public laws, *i. e.*, a violation committed against the United States rather than an aggrieved individual. Second, SEC disgorgement is imposed for punitive purposes. Sanctions imposed for the purpose of deterring infractions of public laws are inherently punitive because "deterrence [is] not [a] legitimate nonpunitive governmental objectiv[e]." *Bell* v. *Wolfish*, 441 U. S. 520, 539, n. 20. Finally, SEC disgorgement is often not compensatory. Disgorged profits are paid to the district courts, which have discretion to determine how the money will be distributed. They may distribute the funds to victims, but no statute commands them to do so. When an individual is made to pay a noncompensatory sanction to the Government as a consequence of a legal violation, the payment operates as a penalty. See *Porter* v. *Warner Holding Co.*, 328 U. S. 395, 402. Pp. 463–465.

(c) The Government responds that SEC disgorgement is not punitive but a remedial sanction that operates to restore the status quo. It is not clear, however, that disgorgement simply returns the defendant to the place he would have occupied had he not broken the law. It sometimes exceeds the profits gained as a result of the violation. And, as demonstrated here, SEC disgorgement may be ordered without consideration of a defendant's expenses that reduced the amount of illegal profit. In such cases, disgorgement does not simply restore the status quo; it leaves the defendant worse off and is therefore punitive. Although disgorgement may serve compensatory goals in some cases, "sanctions frequently serve more than one purpose." *Austin* v. *United States*, 509 U. S. 602, 610. Because they "go beyond compensation, are intended to punish, and label defendants wrongdoers" as a consequence of violating public laws, *Gabelli*, 568 U. S., at 451–452, disgorgement orders represent a penalty and fall within § 2462's 5-year limitations period. Pp. 465–467.

834 F. 3d 1158, reversed.

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

Adam G. Unikowsky argued the cause for petitioner. With him on the briefs were *Clinton W. Marrs*, *David A. Strauss*, and *Sarah M. Konsky.*

Elaine J. Goldenberg argued the cause for respondent. With her on the brief were *Acting Solicitor General Wall*, *Deputy Solicitor General Stewart*, *Sanket J. Bulsara*, *Michael A. Conley*, *Jacob H. Stillman*, *Daniel Staroselsky*, and *Sarah R. Prins.**

JUSTICE SOTOMAYOR delivered the opinion of the Court.

A 5-year statute of limitations applies to any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise." 28 U. S. C. § 2462. This case presents the question whether § 2462 applies to claims for disgorgement imposed as a sanction for violating a federal securities law. The Court holds that it does. Disgorgement in the securities-enforcement context is a "penalty" within the meaning of § 2462, and so disgorgement actions must be commenced within five years of the date the claim accrues.

I

A

After rampant abuses in the securities industry led to the 1929 stock market crash and the Great Depression, Congress

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*Briefs of *amici curiae* urging reversal were filed for the American Investment Counsel by *Lewis J. Liman*; for Americans for Forfeiture Reform by *Mahesha P. Subbaraman*; for the Cato Institute by *Mark A. Perry*, *Thaya Brook Knight*, *Ilya Shapiro*, and *Gabriel K. Gillett*; for the Chamber of Commerce of the United States of America et al. by *Kate Comerford Todd*, *Stacy Linden*, *Peter Tolsdorf*, and *Matthew T. Martens*; for the Securities Industry and Financial Markets Association by *Michael J. Dell*, *Kevin M. Carroll*, *Alan R. Friedman*, and *Arielle Warshall Katz*; for the Washington Legal Foundation by *Richard A. Samp*; for Mark Cuban by *Stephen A. Best*, *Alex Lipman*, *Justin S. Weddle*, and *Ashley L. Baynham*; and for Donald R. Miller, Jr., in his capacity as the Independent Executor of the Will and Estate of Charles J. Wyly, Jr., by *Derek L. Shaffer*, *Kathleen M. Sullivan*, and *Ellyde R. Thompson.*

enacted a series of laws to ensure that "the highest ethical standards prevail in every facet of the securities industry."[1] *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U. S. 180, 186–187 (1963) (internal quotation marks omitted). The second in the series—the Securities Exchange Act of 1934—established the Securities and Exchange Commission (SEC or Commission) to enforce federal securities laws. Congress granted the Commission power to prescribe " 'rules and regulations . . . as necessary or appropriate in the public interest or for the protection of investors.' " *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S. 723, 728 (1975). In addition to rulemaking, Congress vested the Commission with "broad authority to conduct investigations into possible violations of the federal securities laws." *SEC* v. *Jerry T. O'Brien, Inc.*, 467 U. S. 735, 741 (1984). If an investigation uncovers evidence of wrongdoing, the Commission may initiate enforcement actions in federal district court.

Initially, the only statutory remedy available to the SEC in an enforcement action was an injunction barring future violations of securities laws. See 1 T. Hazen, Law of Securities Regulation § 1:37 (rev. 7th ed. 2016). In the absence of statutory authorization for monetary remedies, the Commission urged courts to order disgorgement as an exercise of their "inherent equity power to grant relief ancillary to an injunction." *SEC* v. *Texas Gulf Sulphur Co.*, 312 F. Supp. 77, 91 (SDNY 1970), aff'd in part and rev'd in part, 446 F. 2d 1301 (CA2 1971). Generally, disgorgement is a form of

[1] Each of these statutes—the Securities Act of 1933, 15 U. S. C. § 77a *et seq.*; the Securities Exchange Act of 1934, 15 U. S. C. § 78a *et seq.*; the Public Utility Holding Company Act of 1935, 15 U. S. C. § 79 *et seq.*; the Trust Indenture Act of 1939, 15 U. S. C. § 77aaa *et seq.*; the Investment Company Act of 1940, 15 U. S. C. § 80a–1 *et seq.*; and the Investment Advisers Act of 1940, 15 U. S. C. § 80b–1 *et seq.*—serves the "fundamental purpose" of "substitut[ing] a philosophy of full disclosure for the philosophy of *caveat emptor* and thus . . . achiev[ing] a high standard of business ethics in the securities industry." *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U. S. 180, 186 (1963).

"[r]estitution measured by the defendant's wrongful gain." Restatement (Third) of Restitution and Unjust Enrichment § 51, Comment *a*, p. 204 (2010) (Restatement (Third)). Disgorgement requires that the defendant give up "those gains . . . properly attributable to the defendant's interference with the claimant's legally protected rights." *Ibid.* Beginning in the 1970's, courts ordered disgorgement in SEC enforcement proceedings in order to "deprive . . . defendants of their profits in order to remove any monetary reward for violating" securities laws and to "protect the investing public by providing an effective deterrent to future violations." *Texas Gulf*, 312 F. Supp., at 92.

In 1990, as part of the Securities Enforcement Remedies and Penny Stock Reform Act, Congress authorized the Commission to seek monetary civil penalties. 104 Stat. 932, codified at 15 U. S. C. § 77t(d). The Act left the Commission with a full panoply of enforcement tools: It may promulgate rules, investigate violations of those rules and the securities laws generally, and seek monetary penalties and injunctive relief for those violations. In the years since the Act, however, the Commission has continued its practice of seeking disgorgement in enforcement proceedings.

This Court has already held that the 5-year statute of limitations set forth in 28 U. S. C. § 2462 applies when the Commission seeks statutory monetary penalties. See *Gabelli* v. *SEC*, 568 U. S. 442, 454 (2013). The question here is whether § 2462, which applies to any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise," also applies when the SEC seeks disgorgement.

B

Charles Kokesh owned two investment-adviser firms that provided investment advice to business-development companies. In late 2009, the Commission commenced an enforcement action in Federal District Court alleging that between 1995 and 2009, Kokesh, through his firms, misappropriated

$34.9 million from four of those development companies. The Commission further alleged that, in order to conceal the misappropriation, Kokesh caused the filing of false and misleading SEC reports and proxy statements. The Commission sought civil monetary penalties, disgorgement, and an injunction barring Kokesh from violating securities laws in the future.

After a 5-day trial, a jury found that Kokesh's actions violated the Investment Company Act of 1940, 15 U. S. C. § 80a–36; the Investment Advisers Act of 1940, 15 U. S. C. §§ 80b–5, 80b–6; and the Securities Exchange Act of 1934, 15 U. S. C. §§ 78m, 78n. The District Court then turned to the task of imposing penalties sought by the Commission. As to the civil monetary penalties, the District Court determined that § 2462's 5-year limitations period precluded any penalties for misappropriation occurring prior to October 27, 2004—that is, five years prior to the date the Commission filed the complaint. App. to Pet. for Cert. 26a. The court ordered Kokesh to pay a civil penalty of $2,354,593, which represented "the amount of funds that [Kokesh] himself received during the limitations period." *Id.*, at 31a–32a. Regarding the Commission's request for a $34.9 million disgorgement judgment—$29.9 million of which resulted from violations outside the limitations period—the court agreed with the Commission that because disgorgement is not a "penalty" within the meaning of § 2462, no limitations period applied. The court therefore entered a disgorgement judgment in the amount of $34.9 million and ordered Kokesh to pay an additional $18.1 million in prejudgment interest.

The Court of Appeals for the Tenth Circuit affirmed. 834 F. 3d 1158 (2016). It agreed with the District Court that disgorgement is not a penalty, and further found that disgorgement is not a forfeiture. *Id.*, at 1164–1167. The court thus concluded that the statute of limitations in § 2462 does not apply to SEC disgorgement claims.

This Court granted certiorari, 580 U. S. 1089 (2017), to resolve disagreement among the Circuits over whether dis-

gorgement claims in SEC proceedings are subject to the 5-year limitations period of § 2462.[2]

II

Statutes of limitations "se[t] a fixed date when exposure to the specified Government enforcement efforts en[d]." *Gabelli*, 568 U. S., at 448. Such limits are "'vital to the welfare of society'" and rest on the principle that "'even wrongdoers are entitled to assume that their sins may be forgotten.'" *Id.*, at 449. The statute of limitations at issue here—28 U. S. C. § 2462—finds its roots in a law enacted nearly two centuries ago. 568 U. S., at 445. In its current form, § 2462 establishes a 5-year limitations period for "an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture." This limitations period applies here if SEC disgorgement qualifies as either a fine, penalty, or forfeiture. We hold that SEC disgorgement constitutes a penalty.[3]

A

A "penalty" is a "punishment, whether corporal or pecuniary, imposed and enforced by the State, for a crime or offen[s]e against its laws." *Huntington* v. *Attrill*, 146 U. S. 657, 667 (1892). This definition gives rise to two principles. First, whether a sanction represents a penalty turns in part on "whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual." *Id.*, at 668. Al-

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[2] Compare *SEC* v. *Graham*, 823 F. 3d 1357, 1363 (CA11 2016) (holding that § 2462 applies to SEC disgorgement claims), with *Riordan* v. *SEC*, 627 F. 3d 1230, 1234 (CADC 2010) (holding that § 2462 does not apply to SEC disgorgement claims).

[3] Nothing in this opinion should be interpreted as an opinion on whether courts possess authority to order disgorgement in SEC enforcement proceedings or on whether courts have properly applied disgorgement principles in this context. The sole question presented in this case is whether disgorgement, as applied in SEC enforcement actions, is subject to § 2462's limitations period.

though statutes creating private causes of action against wrongdoers may appear—or even be labeled—penal, in many cases "neither the liability imposed nor the remedy given is strictly penal." *Id.*, at 667. This is because "[p]enal laws, strictly and properly, are those imposing punishment for an offense committed against the State." *Ibid.* Second, a pecuniary sanction operates as a penalty only if it is sought "for the purpose of punishment, and to deter others from offending in like manner"—as opposed to compensating a victim for his loss. *Id.*, at 668.

The Court has applied these principles in construing the term "penalty." In *Brady* v. *Daly*, 175 U. S. 148 (1899), for example, a playwright sued a defendant in Federal Circuit Court under a statute providing that copyright infringers "'shall be liable for damages . . . not less than one hundred dollars for the first [act of infringement], and fifty dollars for every subsequent performance, as to the court shall appear to be just.'" *Id.*, at 153. The defendant argued that the Circuit Court lacked jurisdiction on the ground that a separate statute vested district courts with exclusive jurisdiction over actions "to recover a penalty." *Id.*, at 152. To determine whether the statutory damages represented a penalty, this Court noted first that the statute provided "for a recovery of damages for an act which violates the rights of the plaintiff, and gives the right of action solely to him" rather than the public generally, and second, that "the whole recovery is given to the proprietor, and the statute does not provide for a recovery by any other person." *Id.*, at 154, 156. By providing a compensatory remedy for a private wrong, the Court held, the statute did not impose a "penalty." *Id.*, at 154.

Similarly, in construing the statutory ancestor of § 2462, the Court utilized the same principles. In *Meeker* v. *Lehigh Valley R. Co.*, 236 U. S. 412, 421–422 (1915), the Interstate Commerce Commission, a now-defunct federal agency charged with regulating railroads, ordered a railroad com-

pany to refund and pay damages to a shipping company for excessive shipping rates. The railroad company argued that the action was barred by Rev. Stat. § 1047, Comp. Stat. 1913, § 1712 (now 28 U. S. C. § 2462), which imposed a 5-year limitations period upon any "'suit or prosecution for a penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States.'" 236 U. S., at 423. The Court rejected that argument, reasoning that "the words 'penalty or forfeiture' in [the statute] refer to something imposed in a punitive way for an infraction of a public law." *Ibid.* A penalty, the Court held, does "not include a liability imposed [solely] for the purpose of redressing a private injury." *Ibid.* Because the liability imposed was compensatory and paid entirely to a private plaintiff, it was not a "penalty" within the meaning of the statute of limitations. *Ibid.*; see also *Gabelli*, 568 U. S., at 451–452 ("[P]enalties" in the context of § 2462 "go beyond compensation, are intended to punish, and label defendants wrongdoers").

B

Application of the foregoing principles readily demonstrates that SEC disgorgement constitutes a penalty within the meaning of § 2462.

First, SEC disgorgement is imposed by the courts as a consequence for violating what we described in *Meeker* as public laws. The violation for which the remedy is sought is committed against the United States rather than an aggrieved individual—this is why, for example, a securities-enforcement action may proceed even if victims do not support or are not parties to the prosecution. As the Government concedes, "[w]hen the SEC seeks disgorgement, it acts in the public interest, to remedy harm to the public at large, rather than standing in the shoes of particular injured parties." Brief for United States 22. Courts agree. See, *e. g.*, *SEC* v. *Rind*, 991 F. 2d 1486, 1491 (CA9 1993) ("[D]isgorgement actions further the Commission's public policy mission

of protecting investors and safeguarding the integrity of the markets"); *SEC* v. *Teo*, 746 F. 3d 90, 102 (CA3 2014) ("[T]he SEC pursues [disgorgement] 'independent of the claims of individual investors' " in order to " 'promot[e] economic and social policies' ").

Second, SEC disgorgement is imposed for punitive purposes. In *Texas Gulf*—one of the first cases requiring disgorgement in SEC proceedings—the court emphasized the need "to deprive the defendants of their profits in order to . . . protect the investing public by providing an effective deterrent to future violations." 312 F. Supp., at 92. In the years since, it has become clear that deterrence is not simply an incidental effect of disgorgement. Rather, courts have consistently held that "[t]he primary purpose of disgorgement orders is to deter violations of the securities laws by depriving violators of their ill-gotten gains." *SEC* v. *Fischbach Corp.*, 133 F. 3d 170, 175 (CA2 1997); see also *SEC* v. *First Jersey Securities, Inc.*, 101 F. 3d 1450, 1474 (CA2 1996) ("The primary purpose of disgorgement as a remedy for violation of the securities laws is to deprive violators of their ill-gotten gains, thereby effectuating the deterrence objectives of those laws"); *Rind*, 991 F. 2d, at 1491 (" 'The deterrent effect of [an SEC] enforcement action would be greatly undermined if securities law violators were not required to disgorge illicit profits' "). Sanctions imposed for the purpose of deterring infractions of public laws are inherently punitive because "deterrence [is] not [a] legitimate nonpunitive governmental objectiv[e]." *Bell* v. *Wolfish*, 441 U. S. 520, 539, n. 20 (1979); see also *United States* v. *Bajakajian*, 524 U. S. 321, 329 (1998) ("Deterrence . . . has traditionally been viewed as a goal of punishment").

Finally, in many cases, SEC disgorgement is not compensatory. As courts and the Government have employed the remedy, disgorged profits are paid to the district court, and it is "within the court's discretion to determine how and to whom the money will be distributed." *Fischbach Corp.*, 133

F. 3d, at 175. Courts have required disgorgement "regardless of whether the disgorged funds will be paid to such investors as restitution." *Id.*, at 176; see *id.*, at 175 ("Although disgorged funds may often go to compensate securities fraud victims for their losses, such compensation is a distinctly secondary goal"). Some disgorged funds are paid to victims; other funds are dispersed to the United States Treasury. See, *e. g.*, *id.*, at 171 (affirming distribution of disgorged funds to Treasury where "no party before the court was entitled to the funds and . . . the persons who might have equitable claims were too dispersed for feasible identification and payment"); *SEC* v. *Lund*, 570 F. Supp. 1397, 1404–1405 (CD Cal. 1983) (ordering disgorgement and directing trustee to disperse funds to victims if "feasible" and to disperse any remaining money to the Treasury). Even though district courts may distribute the funds to the victims, they have not identified any statutory command that they do so. When an individual is made to pay a noncompensatory sanction to the Government as a consequence of a legal violation, the payment operates as a penalty. See *Porter* v. *Warner Holding Co.*, 328 U. S. 395, 402 (1946) (distinguishing between restitution paid to an aggrieved party and penalties paid to the Government).

SEC disgorgement thus bears all the hallmarks of a penalty: It is imposed as a consequence of violating a public law and it is intended to deter, not to compensate. The 5-year statute of limitations in § 2462 therefore applies when the SEC seeks disgorgement.

C

The Government's primary response to all of this is that SEC disgorgement is not punitive but "remedial" in that it "lessen[s] the effects of a violation" by "'restor[ing] the status quo.'" Brief for Respondent 17. As an initial matter, it is not clear that disgorgement, as courts have applied it in the SEC enforcement context, simply returns the defendant to the place he would have occupied had he not broken

the law. SEC disgorgement sometimes exceeds the profits gained as a result of the violation. Thus, for example, "an insider trader may be ordered to disgorge not only the unlawful gains that accrue to the wrongdoer directly, but also the benefit that accrues to third parties whose gains can be attributed to the wrongdoer's conduct." *SEC* v. *Contorinis*, 743 F. 3d 296, 302 (CA2 2014). Individuals who illegally provide confidential trading information have been forced to disgorge profits gained by individuals who received and traded based on that information—even though they never received any profits. *Ibid.*; see also *SEC* v. *Warde*, 151 F. 3d 42, 49 (CA2 1998) ("A tippee's gains are attributable to the tipper, regardless whether benefit accrues to the tipper"); *SEC* v. *Clark*, 915 F. 2d 439, 454 (CA9 1990) ("It is well settled that a tipper can be required to disgorge his tippees' profits"). And, as demonstrated by this case, SEC disgorgement sometimes is ordered without consideration of a defendant's expenses that reduced the amount of illegal profit. App. to Pet. for Cert. 43a; see Restatement (Third) § 51, Comment *h*, at 216 ("As a general rule, the defendant is entitled to a deduction for all marginal costs incurred in producing the revenues that are subject to disgorgement. Denial of an otherwise appropriate deduction, by making the defendant liable in excess of net gains, results in a punitive sanction that the law of restitution normally attempts to avoid"). In such cases, disgorgement does not simply restore the status quo; it leaves the defendant worse off. The justification for this practice given by the court below demonstrates that disgorgement in this context is a punitive, rather than a remedial, sanction: Disgorgement, that court explained, is intended not only to "prevent the wrongdoer's unjust enrichment" but also "to deter others' violations of the securities laws." App. to Pet. for Cert. 43a.

True, disgorgement serves compensatory goals in some cases; however, we have emphasized "the fact that sanctions frequently serve more than one purpose." *Austin* v. *United*

States, 509 U. S. 602, 610 (1993). "'A civil sanction that cannot fairly be said *solely* to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term.'" *Id.*, at 621; cf. *Bajakajian*, 524 U. S., at 331, n. 6 ("[A] modern statutory forfeiture is a 'fine' for Eighth Amendment purposes if it constitutes punishment even in part"). Because disgorgement orders "go beyond compensation, are intended to punish, and label defendants wrongdoers" as a consequence of violating public laws, *Gabelli*, 568 U. S., at 451–452, they represent a penalty and thus fall within the 5-year statute of limitations of § 2462.

III

Disgorgement, as it is applied in SEC enforcement proceedings, operates as a penalty under § 2462. Accordingly, any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued.

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

It is so ordered.

Syllabus

ADVOCATE HEALTH CARE NETWORK ET AL. *v.* STAPLETON ET AL.

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

No. 16–74. Argued March 27, 2017—Decided June 5, 2017*

The Employee Retirement Income Security Act of 1974 (ERISA) generally obligates private employers offering pension plans to adhere to an array of rules designed to ensure plan solvency and protect plan participants. "[C]hurch plan[s]," however, are exempt from those regulations. 29 U. S. C. § 1003(b)(2). From the beginning, ERISA has defined a "church plan" as "a plan established and maintained . . . for its employees . . . by a church." § 1002(33)(A). Congress then amended the statute to expand that definition, adding the provision whose effect is at issue here: "A plan established and maintained for its employees . . . by a church . . . includes a plan maintained by an organization . . . the principal purpose . . . of which is the administration or funding of [such] plan . . . for the employees of a church . . . , if such organization is controlled by or associated with a church." § 1002(33)(C)(i). (This opinion refers to the organizations described in that provision as "principal-purpose organizations.")

Petitioners, who identify themselves as three church-affiliated nonprofits that run hospitals and other healthcare facilities (collectively, hospitals), offer their employees defined-benefit pension plans. Those plans were established by the hospitals themselves, and are managed by internal employee-benefits committees. Respondents, current and former hospital employees, filed class actions alleging that the hospitals' pension plans do not fall within ERISA's church-plan exemption because they were not established by a church. The District Courts, agreeing with the employees, held that a plan must be established by a church to qualify as a church plan. The Courts of Appeals affirmed.

Held: A plan maintained by a principal-purpose organization qualifies as a "church plan," regardless of who established it. Pp. 474–484.

(a) The term "church plan" initially "mean[t]" only "a plan established and maintained . . . by a church." But subparagraph (C)(i) provides

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*Together with No. 16–86, *Saint Peter's Healthcare System et al.* v. *Kaplan*, on certiorari to the United States Court of Appeals for the Third Circuit, and No. 16–258, *Dignity Health et al.* v. *Rollins*, on certiorari to the United States Court of Appeals for the Ninth Circuit.

that the original definitional phrase will now "include" another—"a plan maintained by [a principal-purpose] organization." That use of the word "include" is not literal, but tells readers that a *different* type of plan should receive the same treatment (*i. e.*, an exemption) as the type described in the old definition. In other words, because Congress deemed the category of plans "established and maintained by a church" to "include" plans "maintained by" principal-purpose organizations, those plans—and *all* those plans—are exempt from ERISA's requirements.

Had Congress wanted, as the employees contend, to alter only the maintenance requirement, it could have provided in subparagraph (C)(i) that "a plan maintained by a church includes a plan maintained by" a principal-purpose organization—removing "established and" from the first part of the sentence. But Congress did not adopt that ready alternative. Instead, it added language whose most natural reading is to enable a plan "maintained" by a principal-purpose organization to substitute for a plan both "established" and "maintained" by a church. And as a corollary to that point, the employees' construction runs aground on the so-called surplusage canon—the presumption that each word Congress uses is there for a reason. The employees read subparagraph (C)(i) as if it were missing the two words "established and." This Court, however, "give[s] effect, if possible, to every clause and word of a statute." *Williams* v. *Taylor*, 529 U. S. 362, 404. Pp. 474–481.

(b) Both parties' accounts of Congress's purpose in enacting subparagraph (C)(i) tend to confirm this Court's reading that plans maintained by principal-purpose organizations are eligible for the church-plan exemption, whatever their origins. According to the hospitals, Congress wanted to ensure that churches and church-affiliated organizations received comparable treatment under ERISA. If that is so, this Court's construction of the text fits Congress's objective to a T, as a church-establishment requirement would necessarily disfavor plans created by church affiliates. The employees, by contrast, claim that subparagraph (C)(i)'s main goal was to bring within the church-plan exemption plans managed by local pension boards—organizations often used by congregational denominations—so as to ensure parity between congregational and hierarchical churches. But that account cuts against, not in favor of, their position. Keeping the church-establishment requirement would have prevented some plans run by pension boards—the very entities the employees say Congress most wanted to benefit—from qualifying as "church plans" under ERISA. Pp. 481–484.

No. 16–74, 817 F. 3d 517; No. 16–86, 810 F. 3d 175; and No. 16–258, 830 F. 3d 900, reversed.

Syllabus

KAGAN, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the cases. SOTOMAYOR, J., filed a concurring opinion, *post*, p. 484.

Lisa S. Blatt argued the cause for petitioners. With her on the briefs were *Elisabeth S. Theodore*, *Amy L. Blaisdell*, *Daniel J. Schwartz*, *Heather M. Mehta*, *Barry S. Landsberg*, *Harvey L. Rochman*, and *Jeffrey J. Greenbaum*.

Deputy Solicitor General Stewart argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Deputy Solicitor General Kneedler*, *Acting Assistant Attorney General Branda*, *Brian H. Fletcher*, *Mark B. Stern*, *Alisa B. Klein*, and *Nicolas Y. Riley*.

James A. Feldman argued the cause for respondents. With him on the brief were *Karen L. Handorf*, *Michelle C. Yau*, *Julie G. Reiser*, *Mary J. Bortscheller*, *Lynn Lincoln Sarko*, *Matthew Gerend*, *Laura R. Gerber*, *Ron Kilgard*, and *Laurie Ashton*.*

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*Briefs of *amici curiae* urging reversal were filed for Alliance Defending Freedom et al. by *Shay Dvoretzky*, *Emily J. Kennedy*, *Kristen Waggoner*, *David Cortman*, *Erik Stanley*, *Jordan Lorence*, and *Thomas Brejcha*; for the American Center for Law and Justice by *Jay Alan Sekulow*, *Stuart J. Roth*, *Colby M. May*, and *Walter M. Weber*; for the Becket Fund for Religious Liberty by *Eric Rassbach*; for the Catholic Health Association of the United States by *Mark E. Chopko*, *Marissa Parker*, *Brandon Riley*, and *Lisa J. Gilden*; for Church Alliance by *Laurence A. Hansen*, *Hugh S. Balsam*, and *G. Daniel Miller*; for the General Conference of Seventh-Day Adventists by *Gene C. Schaerr*, *S. Kyle Duncan*, *Stephen S. Schwartz*, and *Todd R. McFarland*; for the Illinois Conference of the United Church of Christ et al. by *Bradley J. Andreozzi*; for Saint Elizabeth Medical Center, Inc., by *Richard G. Meyer*, *Mark D. Guilfoyle*, and *Mark R. Hervey*; and for the United States Conference of Catholic Bishops et al. by *Paul D. Clement*, *Erin E. Murphy*, *Robert M. Bernstein*, *Anthony R. Picarello, Jr.*, *Jeffrey Hunter Moon*, *Michael F. Moses*, and *Hillary E. Byrnes*.

Briefs of *amici curiae* urging affirmance were filed for AARP et al. by *William Alvarado Rivera* and *Mary Ellen Signorille*; for Americans

JUSTICE KAGAN delivered the opinion of the Court.

The Employee Retirement Income Security Act of 1974 (ERISA) exempts "church plan[s]" from its otherwise-comprehensive regulation of employee benefit plans. 88 Stat. 840, as amended, 29 U. S. C. § 1003(b)(2). Under the statute, certain plans for the employees of churches or church-affiliated nonprofits count as "church plans" even though not actually administered by a church. See § 1002(33)(C)(i). The question presented here is whether a church must have originally *established* such a plan for it to so qualify. ERISA, we hold, does not impose that requirement.

I

Petitioners identify themselves as three church-affiliated nonprofits that run hospitals and other healthcare facilities (collectively, hospitals).[1] They offer defined-benefit pension

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United for Separation of Church and State et al. by *Richard B. Katskee*, *Bradley Girard*, *Elliott M. Mincberg*, *Diane Laviolette*, *David Cole*, *Daniel Mach*, *Louise Melling*, and *Brigitte Amiri*; for the National Employment Lawyers Association by *Brian Wolfman* and *Wyatt G. Sassman*; and for the Pension Rights Center by *Karen W. Ferguson*.

Briefs of *amici curiae* were filed for the Christian Legal Society et al. by *Kimberlee Wood Colby*, *Frederick Claybrook, Jr.*, *Carl H. Esbeck*, and *Steven W. Fitschen*; for the Council for Christian Colleges & Universities et al. by *Helgi C. Walker*, *Robert E. Dunn*, and *Hiram S. Sasser III*; and for Daniel I. Halperin by *Marc I. Machiz* and *Mr. Halperin*, *pro se*.

[1] The parties disputed the hospitals' church ties in the courts below, see n. 2, *infra*, but we assume for purposes of this decision that the facts are as the hospitals describe them. On those facts: Advocate Health Care Network operates 12 hospitals and some 250 other healthcare facilities in Illinois, and is associated with the Evangelical Lutheran Church in America and the United Church of Christ. Saint Peter's Healthcare System runs a teaching hospital and several other medical facilities in New Jersey, and is both owned and controlled by a Roman Catholic diocese there. And Dignity Health runs an extensive network of community hospitals throughout the country, and maintains ties to the Catholic religious orders that initially sponsored some of its facilities.

plans to their employees. Those plans were established by the hospitals themselves—not by a church—and are managed by internal employee-benefits committees.

ERISA generally obligates private employers offering pension plans to adhere to an array of rules designed to ensure plan solvency and protect plan participants. See generally *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 651 (1995) (cataloging ERISA's "reporting and disclosure mandates," "participation and vesting requirements," and "funding standards"). But in enacting the statute, Congress made an important exception. "[C]hurch plan[s]" have never had to comply with ERISA's requirements. § 1003(b)(2).

The statutory definition of "church plan" came in two distinct phases. From the beginning, ERISA provided that "[t]he term 'church plan' means a plan established and maintained . . . for its employees . . . by a church or by a convention or association of churches." § 1002(33)(A). Then, in 1980, Congress amended the statute to expand that definition by deeming additional plans to fall within it. The amendment specified that for purposes of the church-plan definition, an "employee of a church" would include an employee of a church-affiliated organization (like the hospitals here). § 1002(33)(C)(ii)(II). And it added the provision whose effect is at issue in these cases:

> "A plan established and maintained for its employees . . . by a church or by a convention or association of churches includes a plan maintained by an organization . . . the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches." § 1002(33)(C)(i).

That is a mouthful, for lawyers and non-lawyers alike; to digest it more easily, note that everything after the word "organization" in the third line is just a (long-winded) description of a particular kind of church-associated entity—which this opinion will call a "principal-purpose organization." The main job of such an entity, as the statute explains, is to fund or manage a benefit plan for the employees of churches or (per the 1980 amendment's other part) of church affiliates.

The three federal agencies responsible for administering ERISA have long read those provisions, when taken together, to exempt plans like the hospitals' from the statute's mandates. (The relevant agencies are the Internal Revenue Service, Department of Labor, and Pension Benefit Guaranty Corporation.) The original definitional provision—§ 1002(33)(A), or paragraph (A) for short—defines a "church plan" as one "established and maintained . . . by a church"—not by a church-affiliated nonprofit. But according to the agencies, the later (block-quoted) provision—§ 1002(33)(C)(i), or just subparagraph (C)(i)—expands that definition to include any plan maintained by a principal-purpose organization, regardless of whether a church initially established the plan. And, the agencies believe, the internal benefits committee of a church-affiliated nonprofit counts as such an organization. See, *e. g.,* IRS General Counsel Memorandum No. 39007 (Nov. 2, 1982), App. 636–637. That interpretation has appeared in hundreds of private letter rulings and opinion letters issued since 1982, including several provided to the hospitals here. See App. 57–69, 379–386, 668–715.

The three cases before us are part of a recent wave of litigation challenging the agencies' view. Respondents, current and former employees of the hospitals, filed class actions alleging that their employers' pension plans do not fall within ERISA's church-plan exemption (and thus must satisfy the statute's requirements). That is so, the employees claim, because those plans were not established by a church—and ERISA, even as amended, demands that all

"church plans" have such an origin. According to the employees, the addition of subparagraph (C)(i) allowed principal-purpose organizations to *maintain* such plans in lieu of churches; but that provision kept as-is paragraph (A)'s insistence that churches themselves *establish* "church plans." See *id.*, at 265–268, 435–437, 783–785. The District Courts handling the cases agreed with the employees' position, and therefore held that the hospitals' plans must comply with ERISA.[2]

The Courts of Appeals for the Third, Seventh, and Ninth Circuits affirmed those decisions. The Third Circuit ruled first, concluding that ERISA's "plain text" requires that a pension plan be established by a church to qualify for the church-plan exemption. *Kaplan* v. *Saint Peter's Healthcare System*, 810 F. 3d 175, 177 (2015). In the court's view, paragraph (A) set out "two requirements" for the exemption—"establishment and maintenance"—and "only the latter is expanded by the use of 'includes' " in subparagraph (C)(i). *Id.*, at 181. The Seventh and Ninth Circuits relied on similar reasoning to decide in the employees' favor. See *Stapleton* v. *Advocate Health Care Network*, 817 F. 3d 517, 523 (CA7 2016); *Rollins* v. *Dignity Health*, 830 F. 3d 900, 906 (CA9 2016).

In light of the importance of the issue, this Court granted certiorari. 580 U. S. 1017 (2016).

II

The dispute in these cases about what counts as a "church plan" hinges on the combined meaning of paragraph (A) and

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[2] The employees alternatively argued in the District Courts that the hospitals' pension plans are not "church plans" because the hospitals do not have the needed association with a church and because, even if they do, their internal benefits committees do not count as principal-purpose organizations. See App. 267–269, 437–438, 785–786. Those issues are not before us, and nothing we say in this opinion expresses a view of how they should be resolved.

subparagraph (C)(i). Interpretive purists may refer back as needed to the provisions as quoted above. See *supra*, at 472. But for those who prefer their statutes in (comparatively) user-friendly form, those provisions go as follows:

> Under paragraph (A), a "'church plan' means a plan established and maintained . . . by a church."
>
> Under subparagraph (C)(i), "[a] plan established and maintained . . . by a church . . . includes a plan maintained by [a principal-purpose] organization."[3]

The parties agree that under those provisions, a "church plan" need not be maintained by a church; it may instead be maintained by a principal-purpose organization. But the parties differ as to whether a plan maintained by that kind of organization must still have been established by a church to qualify for the church-plan exemption. The hospitals say no: The effect of subparagraph (C)(i) was to bring within the church-plan definition all pension plans maintained by a principal-purpose organization, regardless of who first established them. The employees say yes: Subparagraph (C)(i) altered only the requirement that a pension plan be maintained by a church, while leaving intact the church-establishment condition. We conclude that the hospitals have the better of the argument.

Start, as we always do, with the statutory language—here, a new definitional phrase piggy-backing on the one already existing. The term "church plan," as just stated, initially "mean[t]" only "a plan established and maintained . . . by a church." But subparagraph (C)(i) provides that the original

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[3] Again, we use the term "principal-purpose organization" as shorthand for the entity described in subparagraph (C)(i): a church-associated organization whose chief purpose or function is to fund or administer a benefits plan for the employees of either a church or a church-affiliated nonprofit. See *supra*, at 472–473. And again, the scope of that term—and whether it comprehends the hospitals' internal benefits committees—is not at issue here. See n. 2, *supra*.

definitional phrase will now "include" another—"a plan maintained by [a principal-purpose] organization." That use of the word "include" is not literal—any more than when Congress says something like "a State 'includes' Puerto Rico and the District of Columbia." See, *e. g.*, 29 U. S. C. § 1002(10).[4] Rather, it tells readers that a *different* type of plan should receive the same treatment (*i. e.*, an exemption) as the type described in the old definition. And those newly favored plans, once again, are simply those "maintained by a principal-purpose organization"—irrespective of their origins. In effect, Congress provided that the new phrase can stand in for the old one as follows: "The term 'church plan' means ~~a plan established and maintained by a church~~ [a plan maintained by a principal-purpose organization]." The church-establishment condition thus drops out of the picture.

Consider the same point in the form of a simple logic problem, with paragraph (A) and subparagraph (C)(i) as its first two steps:

> Premise 1: A plan established and maintained by a church is an exempt church plan.
>
> Premise 2: A plan established and maintained by a church includes a plan maintained by a principal-purpose organization.
>
> Deduction: A plan maintained by a principal-purpose organization is an exempt church plan.

Or, as one court put the point without any of the ERISA terminology: "[I]f A is exempt, and A includes C, then C is also exempt." *Overall* v. *Ascension*, 23 F. Supp. 3d 816, 828 (ED Mich. 2014). Just so. Because Congress deemed the category of plans "established and maintained by a church"

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[4] Or any more than when Congress, in the same 1980 amendment to ERISA, provided that an "employee of a church" was to "include[ ]" an employee of a church-affiliated organization. § 1002(33)(C)(ii); see *supra*, at 472.

to "include" plans "maintained by" principal-purpose organizations, those plans—and *all* those plans—are exempt from ERISA's requirements.

Had Congress wanted, as the employees contend, to alter only the maintenance requirement, it had an easy way to do so—differing by only two words from the language it chose, but with an altogether different meaning. Suppose Congress had provided that "a plan maintained by a church includes a plan maintained by" a principal-purpose organization, leaving out the words "established and" from the first part of the sentence. That amendment would have accomplished exactly what the employees argue Congress intended: The language, that is, would have enabled a principal-purpose organization to take on the maintenance of a "church plan," but left untouched the requirement that a church establish the plan in the first place. But Congress did not adopt that ready alternative. Instead, it added language whose most natural reading is to enable a plan "maintained" by a principal-purpose organization to substitute for a plan both "established" and "maintained" by a church. That drafting decision indicates that Congress did not in fact want what the employees claim. See, *e. g.*, *Lozano* v. *Montoya Alvarez*, 572 U. S. 1, 16 (2014) (When legislators did not adopt "obvious alternative" language, "the natural implication is that they did not intend" the alternative).

A corollary to this point is that the employees' construction runs aground on the so-called surplusage canon—the presumption that each word Congress uses is there for a reason. See generally A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 174–179 (2012). As just explained, the employees urge us to read subparagraph (C)(i) as if it were missing the two words "established and." The employees themselves do not contest that point: They offer no account of what function that language would serve on their proposed interpretation. See Brief for Respondents 34–35. In essence, the employees ask us to treat those

words as stray marks on a page—notations that Congress regrettably made but did not really intend. Our practice, however, is to "give effect, if possible, to every clause and word of a statute." *Williams* v. *Taylor*, 529 U. S. 362, 404 (2000) (internal quotation marks omitted). And here, that means construing the words "established and" in subparagraph (C)(i) as removing, for plans run by principal-purpose organizations, paragraph (A)'s church-establishment condition.

The employees' primary argument to the contrary takes the form of a supposed interpretive principle: "[I]f a definition or rule has two criteria, and a further provision expressly modifies only one of them, that provision is understood to affect only the criterion it expands or modifies." Brief for Respondents 22. Applied here, the employees explain, that principle requires us to read subparagraph (C)(i) as "modify[ing] only the criterion" in paragraph (A) that "it expressly expands ('maintained'), while leaving the other criterion ('established') unchanged." *Id.*, at 14. The employees cite no precedent or other authority to back up their proposed rule of construction, but they offer a thought-provoking hypothetical to demonstrate its good sense. *Id.*, at 22. Imagine, they say, that a statute provides free insurance to a "person who is disabled and a veteran," and an amendment then states that "a person who is disabled and a veteran includes a person who served in the National Guard." *Ibid.* (quoting 810 F. 3d, at 181). Would a non-disabled member of the National Guard be entitled to the insurance benefit? Surely not, the employees answer: All of us would understand the "includes" provision to expand (or clarify) only the meaning of "veteran"—leaving unchanged the requirement of a disability. And the same goes here, the employees claim.

But one good example does not a general rule make. Consider a variant of the employees' hypothetical: A statute offers free insurance to a "person who enlisted and served in

the active Armed Forces," with a later amendment providing that "a person who enlisted and served in the active Armed Forces includes a person who served in the National Guard." Would a person who served in the National Guard be ineligible for benefits unless she had also enlisted in the active Armed Forces—say, the regular Army or Navy? Of course not.[5] Two hypotheticals with similar grammatical constructions, two different results. In the employees' example, the mind rebels against reading the statute literally, in line with the logical and canonical principles described above. In the variant, by contrast, the statute's literal meaning and its most natural meaning cohere: Satisfaction of the amendment's single eligibility criterion—service in the National Guard—is indeed enough. What might account for that divergence? And what does such an explanation suggest for ERISA?

Two features of the employees' hypothetical, when taken in combination, make it effective. First, the criteria there—veteran-status and disability—are relatively distinct from one another. (Compare enlistment and service, which address similar matters and tend to travel in tandem, the one

[5] You might ask yourself, on reading this hypothetical statute, why Congress would not have made the removal of both original conditions clearer still by stating that the original provision "includes a person who *enlisted and* served in the National Guard." We won't go down the rabbit hole of further expounding on a fictional statute, but we can answer a parallel question for subparagraph (C)(i). Suppose Congress had stated that "[a] plan established and maintained . . . by a church . . . includes a plan *established and* maintained by [a principal-purpose] organization." That language would have left out of the "church plan" definition pension plans originally established by churches, but subsequently maintained by principal-purpose organizations. And everyone agrees—the employees no less than the hospitals—that Congress wanted to treat those plans as "church plans." (The dispute is only as to plans that principal-purpose organizations both establish and maintain.) See *supra*, at 475; Brief for Petitioners 25–26; Brief for Respondents 14, 35; Brief for United States as *Amicus Curiae* 24. So Congress could not have taken such a drafting tack to eliminate the necessity of church establishment.

preceding the other.) The more independent the specified variables, the more likely that they were designed to have standalone relevance. Second and yet more crucial, the employees' example trades on our background understanding that a given interpretation is simply implausible—that it could not possibly have been what Congress wanted. Congress, we feel sure, would not have intended *all* National Guardsmen to get a benefit that is otherwise reserved for disabled veterans. (Compare that to our sense of whether Congress would have meant to hinge benefits to Guardsmen on their enlistment in a different service.) That sense of inconceivability does most of the work in the employees' example, urging readers to discard usual rules of interpreting text because they will lead to a "must be wrong" outcome.

But subparagraph (C)(i) possesses neither of those characteristics. For starters, the criteria at issue—establishment and maintenance—are not unrelated. The former serves as a necessary precondition of the latter, and both describe an aspect of an entity's involvement with a benefit plan. Indeed, for various purposes, ERISA treats the terms "establish" and "maintain" interchangeably. See, *e. g.*, § 1002(16)(B) (defining the "sponsor" of a plan as the organization that "establishe[s] or maintain[s]" the plan). So an amendment altering the one requirement could naturally alter the other too. What's more, nothing we know about the way ERISA is designed to operate makes that an utterly untenable result. Whereas the disability condition is central to the statutory scheme in the employees' hypothetical, the church-establishment condition, taken on its own, has limited functional significance. Establishment of a plan, after all, is a one-time, historical event; it is the entity *maintaining* the plan that has the primary ongoing responsibility (and potential liability) to plan participants. See Brief for United States as *Amicus Curiae* 31; *Rose* v. *Long Island R. R. Pension Plan*, 828 F. 2d 910, 920 (CA2 1987), cert. denied, 485 U. S. 936 (1988) ("[T]he status of the entity which

currently maintains a particular pension plan bears more relation to Congress' goals in enacting ERISA and its various exemptions[ ] than does the status of the entity which established the plan"). So removing the establishment condition for plans run by principal-purpose organizations has none of the contextual implausibility—the "Congress could not possibly have meant that" quality—on which the employees' example principally rides.

To the contrary, everything we can tell from extrastatutory sources about Congress's purpose in enacting subparagraph (C)(i) supports our reading of its text. We say "everything we can tell" because in fact we cannot tell all that much. The legislative materials in these cases consist almost wholly of excerpts from committee hearings and scattered floor statements by individual lawmakers—the sort of stuff we have called "among the least illuminating forms of legislative history." *NLRB* v. *SW General, Inc.*, 580 U. S. 288, 307 (2017). And even those lowly sources speak at best indirectly to the precise question here: None, that is, comments in so many words on whether subparagraph (C)(i) altered paragraph (A)'s church-establishment condition. Still, both the hospitals and the employees have constructed narratives from those bits and pieces about Congress's goals in amending paragraph (A). And our review of their accounts—the employees' nearly as much as the hospitals'—tends to confirm our conviction that plans maintained by principal-purpose organizations are eligible for ERISA's "church plan" exemption, whatever their origins.

According to the hospitals, Congress wanted to eliminate any distinction between churches and church-affiliated organizations under ERISA. See Brief for Petitioners 18, 33–35. The impetus behind the 1980 amendment, they claim, was an IRS decision holding that pension plans established by orders of Catholic Sisters (to benefit their hospitals' employees) did not qualify as "church plans" because the orders were not "carrying out [the Church's] religious functions."

IRS General Counsel Memorandum No. 37266, 1977 WL 46200, *5 (Sept. 22, 1977). Many religious groups protested that ruling, criticizing the IRS for "attempting to define what is and what is not [a] 'church' and how the mission of the church is to be carried out." 125 Cong. Rec. 10054 (1979) (letter to Sen. Talmadge from the Lutheran Church–Missouri Synod); see *id.*, at 10054–10058 (similar letters). And that anger, the hospitals maintain, was what prompted ERISA's amendment: Congress, they say, designed the new provision to ensure that, however categorized, all groups associated with church activities would receive comparable treatment. See Brief for Petitioners 35.

If that is so, our construction of the text fits Congress's objective to a T. A church-establishment requirement necessarily puts the IRS in the business of deciding just what a church is and is not—for example (as in the IRS's ruling about the Sisters), whether a particular Catholic religious order should count as one. And that requirement, by definition, disfavors plans created by church affiliates, as compared to those established by (whatever the IRS has decided are) churches. It thus makes key to the "church plan" exemption the very line that, on the hospitals' account, Congress intended to erase.

The employees tell a different story about the origins of subparagraph (C)(i)—focusing on the pension boards that congregational denominations often used. See Brief for Respondents 14, 38–42; see also Brief for United States as *Amicus Curiae* 19–22. In line with their non-hierarchical nature, those denominations typically relied on separately incorporated local boards—rather than entities integrated into a national church structure—to administer benefits for their ministers and lay workers. According to the employees, subparagraph (C)(i)'s main goal was to bring those local pension boards within the church-plan exemption, so as to ensure that congregational and hierarchical churches would receive the same treatment. In support of their view, the

employees cite several floor statements in which the amendment's sponsors addressed that objective. See Brief for Respondents 38. Senator Talmadge, for example, stated that under the amendment, a "plan or program funded or administered through a pension board . . . will be considered a church plan." 124 Cong. Rec. 16523 (1978); see also *id.*, at 12107 (remarks of Rep. Conable).

But that account of subparagraph (C)(i)'s primary purpose cuts against, not in favor of, the employees' position. See Brief for United States as *Amicus Curiae* 21 (accepting the employees' narrative, but arguing that it buttresses the opposite conclusion). That is because, as hearing testimony disclosed, plans run by church-affiliated pension boards came in different varieties: Some were created by church congregations, but others were established by the boards themselves. See, *e. g.*, Hearings on S. 1090 et al. before the Subcommittee on Private Pension Plans and Employee Fringe Benefits of the Senate Committee on Finance, 96th Cong., 1st Sess., 400–401, 415–417 (1979). And still others were sufficiently old that their provenance could have become the subject of dispute. See *id.*, at 411; 125 Cong. Rec. 10052 (remarks of Sen. Talmadge) ("The average age of a church plan is at least 40 years"). So keeping the church-establishment requirement would have prevented some plans run by pension boards—the very entities the employees say Congress most wanted to benefit—from qualifying as "church plans" under ERISA. No argument the employees have offered here supports that goal-defying (much less that text-defying) statutory construction.

III

ERISA provides (1) that a "church plan" means a "plan established and maintained . . . by a church" and (2) that a "plan established and maintained . . . by a church" is to "include[ ] a plan maintained by" a principal-purpose organization. Under the best reading of the statute, a plan main-

tained by a principal-purpose organization therefore qualifies as a "church plan," regardless of who established it. We accordingly reverse the judgments of the Courts of Appeals.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of these cases.

JUSTICE SOTOMAYOR, concurring.

The Employee Retirement Income Security Act of 1974 (ERISA) protects employees by ensuring "'that if a worker has been promised a defined pension benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—he will actually receive it.'" *Lockheed Corp.* v. *Spink*, 517 U. S. 882, 887 (1996). Any decision interpreting the provisions governing which employers are subject to ERISA is ultimately a decision about which employees receive this assurance. Today, by holding that ERISA's exemption for "church plan[s]," 29 U. S. C. § 1003(b)(2), covers plans neither established nor maintained by a church, the Court holds that scores of employees—who work for organizations that look and operate much like secular businesses—potentially might be denied ERISA's protections. In fact, it was the failure of unregulated "church plans" that spurred cases such as these. See, *e. g.*, Brief for Respondents 7–8 (collecting cases and press reports of church plan failures).

I join the Court's opinion because I am persuaded that it correctly interprets the relevant statutory text. But I am nonetheless troubled by the outcome of these cases. As the majority acknowledges, *ante*, at 481, the available legislative history does not clearly endorse this result. That silence gives me pause: The decision to exempt plans neither established nor maintained by a church could have the kind of broad effect that is usually thoroughly debated during the legislative process and thus recorded in the legislative rec-

ord. And to the extent that Congress acted to exempt plans established by orders of Catholic Sisters, see *ibid.*, it is not at all clear that Congress would take the same action today with respect to some of the largest health-care providers in the country. Despite their relationship to churches, organizations such as petitioners operate for-profit subsidiaries, see Dignity Health and Subordinate Corporations, Consolidated Financial Statements as of and for Years Ended June 30, 2016 and 2015 and Independent Auditors' Report, p. 50, https://emma.msrb.org/ES823341-ES646022-ES1041174.pdf (as last visited June 1, 2017); employ thousands of employees, App. 774; App. to Pet. for Cert. in No. 16–74, pp. 5a, 31a; earn billions of dollars in revenue, *ibid.*; and compete in the secular market with companies that must bear the cost of complying with ERISA. These organizations thus bear little resemblance to those Congress considered when enacting the 1980 amendment to the church plan definition. This current reality might prompt Congress to take a different path.

In the end, I agree with the majority that the statutory text compels today's result. Other provisions also impact the scope of the "church plan" exemption. Those provisions—including the provisions governing which organizations qualify as principal purpose organizations permitted to establish and maintain "church plans," see, *e. g.*, *ante*, at 475, n. 3—need also be construed in line with their text and with a view toward effecting ERISA's broad remedial purposes.

Per Curiam

NORTH CAROLINA ET AL. *v.* COVINGTON ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

No. 16–1023. Decided June 5, 2017

In 2016, the U. S. District Court for the Middle District of North Carolina held that the State's 2011 redistricting plan contained unconstitutional racial gerrymanders. The court ordered that the General Assembly redraw the map before future elections, that special elections be held to replace existing legislators, and that state constitutional provisions requiring prospective legislators to meet certain residency requirements be suspended. In doing so, the court stated that the cost of special elections "pale in comparison to the injury caused by allowing citizens to continue to be represented by legislators elected pursuant to a racial gerrymander." App. to Juris. Statement 200.

Held: The District Court failed to meaningfully weigh any equitable considerations. A district court must undertake an "equitable weighing process" to select a fitting remedy for legal violations that it has identified in redistricting cases, *NAACP* v. *Hampton County Election Comm'n*, 470 U. S. 166, 183, n. 36, taking account of "'what is necessary, what is fair, and what is workable,'" *New York* v. *Cathedral Academy*, 434 U. S. 125, 129. Among the matters a court would generally be expected to consider in balancing the interests at stake when determining whether special elections are an appropriate remedy for a racial gerrymander are the severity and nature of the particular constitutional violation, the extent to the likely disruption to the ordinary processes of governance if early elections are imposed, and the need to act with proper judicial restraint when intruding on state sovereignty. Rather than undertaking such an analysis in this case, the District Court addressed the balance of equities in only the most cursory fashion.

Jurisdiction noted; vacated and remanded.

PER CURIAM.

The North Carolina General Assembly redrew state legislative districts in 2011 to account for population changes revealed by the 2010 census. In May 2015, several registered North Carolina voters (here called plaintiffs) brought this action in the U. S. District Court for the Middle District of North Carolina, alleging that 28 majority-black districts in

the new plan were unconstitutional racial gerrymanders. The District Court ruled for the plaintiffs in August 2016, holding that race was the predominant factor in the design of each challenged district, and that in none was that use of race "supported by a strong basis in evidence and narrowly tailored to comply with [the Voting Rights Act]." 316 F. R. D. 117, 176 (MDNC 2016).* The court declined to require changes in time for the then-impending November 2016 election, but ordered the General Assembly to redraw the map before North Carolina holds any future elections for that body. See App. to Juris. Statement 148–149.

Three weeks after the November 2016 election, the District Court ordered additional relief. In addition to setting a March 2017 deadline for the General Assembly's drawing of new districts, the court ordered that "[t]he term of any legislator elected in 2016" from a district later modified by that remedial plan "shall be shortened to one year" (rather than the regular two). *Id.*, at 203. Those legislators would then be replaced by new ones, to be chosen in court-ordered special elections in the fall of 2017. The legislators elected in those special elections, too, were then to "serve a one year term." *Id.*, at 204. Finally, in order to make this regime workable, the court also suspended provisions of the North Carolina Constitution requiring prospective legislators to reside within a district for one year before they may be elected to represent it. See *id.*, at 203 (citing N. C. Const., Art. II, §§ 6–7). To explain why these measures were warranted, the court stated: "While special elections have costs, those costs pale in comparison to the injury caused by allowing citizens to continue to be represented by legislators elected pursuant to a racial gerrymander." App. to Juris. Statement 200.

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*By separate order, we have summarily affirmed the District Court's ruling on the merits of the plaintiffs' racial-gerrymandering claims. See No. 16–649, *post,* p. 1015.

North Carolina appealed the District Court's remedial order to this Court, and we granted a stay pending appeal. See 580 U. S. 1088 (2017). The State now contends that "the remedial order should be vacated for the simple reason that the district court failed to meaningfully weigh any equitable considerations." Juris. Statement 22. We share that assessment and now vacate the order.

Relief in redistricting cases is "'fashioned in the light of well-known principles of equity.'" *Reynolds* v. *Sims*, 377 U. S. 533, 585 (1964). A district court therefore must undertake an "equitable weighing process" to select a fitting remedy for the legal violations it has identified, *NAACP* v. *Hampton County Election Comm'n*, 470 U. S. 166, 183, n. 36 (1985), taking account of "'what is necessary, what is fair, and what is workable,'" *New York* v. *Cathedral Academy*, 434 U. S. 125, 129 (1977). And in the context of deciding whether to truncate existing legislators' terms and order a special election, there is much for a court to weigh. Although this Court has never addressed whether or when a special election may be a proper remedy for a racial gerrymander, obvious considerations include the severity and nature of the particular constitutional violation, the extent of the likely disruption to the ordinary processes of governance if early elections are imposed, and the need to act with proper judicial restraint when intruding on state sovereignty. We do not suggest anything about the relative weight of these factors (or others), but they are among the matters a court would generally be expected to consider in its "balancing of the individual and collective interests" at stake. *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.*, 402 U. S. 1, 16 (1971).

Rather than undertaking such an analysis in this case, the District Court addressed the balance of equities in only the most cursory fashion. As noted above, the court simply announced that "[w]hile special elections have costs," those unspecified costs "pale in comparison" to the prospect that

citizens will be "represented by legislators elected pursuant to a racial gerrymander." App. to Juris. Statement 200. That minimal reasoning would appear to justify a special election in *every* racial-gerrymandering case—a result clearly at odds with our demand for careful case-specific analysis. For that reason, we cannot have confidence that the court adequately grappled with the interests on both sides of the remedial question before us. And because the District Court's discretion "was barely exercised here," its order provides no meaningful basis for even deferential review. *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U. S. 7, 27 (2008).

For these reasons, we vacate the District Court's remedial order and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Reporter's Note

The next page is purposely numbered 901. The numbers between 489 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 19, 2017

MARCH 29, 2017

Miscellaneous Order

No. 145, Orig. DELAWARE *v.* PENNSYLVANIA ET AL.; and

No. 146, Orig. ARKANSAS ET AL. *v.* DELAWARE. It is ordered that the Honorable Pierre N. Leval, of New York, N. Y., is appointed Special Master in these cases with authority to fix the time and conditions for the filing of additional pleadings, to direct subsequent proceedings, to summon witnesses, to issue subpoenas, and to take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit reports as he may deem appropriate. The cost of printing his reports, and all other proper expenses, including travel expenses, shall be submitted to the Court. [For earlier order herein, see, *e. g.*, 580 U. S. 1027.]

MARCH 30, 2017

Dismissal Under Rule 46

No. 15–488. ORTIZ, AS NEXT FRIEND AND PARENT OF I. O., A MINOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 786 F. 3d 817.

APRIL 3, 2017

Certiorari Granted—Vacated and Remanded

No. 15–1455. ROWELL, DBA BEAUMONT GREENERY, ET AL. *v.* PETTIJOHN, COMMISSIONER OF THE TEXAS OFFICE OF CONSUMER CREDIT COMMISSIONER. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Expressions Hair Design* v. *Schneiderman*, *ante*, p. 37. Reported below: 816 F. 3d 73.

No. 15–7974. HENDERSON *v.* DAVIS, 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, judgment vacated, and case remanded for further consideration in light of *Moore* v. *Texas*, *ante*, p. 1. Reported below: 791 F. 3d 567.

No. 16–6032. AKEL *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 *Mathis* v. *United States*, 579 U. S. 500 (2016). JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 16–6445. MARTINEZ *v.* DAVIS, 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, judgment vacated, and case remanded for further consideration in light of *Moore* v. *Texas*, *ante*, p. 1. Reported below: 653 Fed. Appx. 308.

No. 16–6550. ROBINSON *v.* UNITED STATES. C. A. 4th 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 *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016). Reported below: 653 Fed. Appx. 779.

Certiorari Dismissed

No. 16–7739. CAISON *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. Reported below: 203 So. 3d 167.

No. 16–8142. KNOX *v.* SESSIONS, ATTORNEY GENERAL, ET AL. C. A. 10th 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*).

Miscellaneous Orders

No. D–2944. In re Disbarment of Summers. Disbarment entered. [For earlier order herein, see 580 U. S. 1028.]

No. D–2947. In re Disbarment of Hudgens. Disbarment entered. [For earlier order herein, see 580 U. S. 1110.]

No. 16M105. In re Wright;

No. 16M107. Lewis *v.* Ryan, Director, Arizona Department of Corrections, et al.; and

No. 16M109. Thompson *v.* Speer, Acting Secretary of the Army. Motions for leave to proceed as veterans denied.

No. 16M106. Johnson *v.* Cook et al.; and

No. 16M108. Hamilton *v.* Hawaii. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 142, Orig. Florida *v.* Georgia. Motion of the Special Master for allowance of fees and disbursements granted, and the Special Master is awarded a total of $50,933.89, for the period January 1 through February 28, 2017, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 580 U. S. 1195.]

No. 16–299. National Association of Manufacturers *v.* Department of Defense et al. C. A. 6th Cir. [Certiorari granted, 580 U. S. 1088.] Motion of federal respondents to hold briefing schedule in abeyance denied.

No. 16–405. BNSF Railway Co. *v.* Tyrrell, Special Administrator for the Estate of Tyrrell, Deceased, et al. Sup. Ct. Mont. [Certiorari granted, 580 U. S. 1089.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 16–466. Bristol-Myers Squibb Co. *v.* Superior Court of California, San Francisco County, et al. Sup. Ct. Cal. [Certiorari granted, 580 U. S. 1097.] Motion of MoneyMutual LLP for leave to file brief as *amicus curiae* out of time granted.

No. 16–658. Hamer *v.* Neighborhood Housing Services of Chicago et al. C. A. 7th Cir. [Certiorari granted, 580 U. S. 1159.] Motion of petitioner to dispense with printing joint appendix granted.

No. 16–8273. In re Bartok. Petition for writ of habeas corpus denied.

No. 16–7703. In re Scheckel. Petition for writ of mandamus denied.

Certiorari Granted

No. 16–499. Jesner et al. *v.* Arab Bank, PLC. C. A. 2d Cir. Certiorari granted. Reported below: 808 F. 3d 144.

No. 16–6795. Ayestas, aka Zelaya Corea *v.* Davis, 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 limited to Question 2 presented by the petition. Reported below: 817 F. 3d 888.

Certiorari Denied

No. 15–1482. Bondi, Attorney General of Florida *v.* Dana's Railroad Supply et al. C. A. 11th Cir. Certiorari denied. Reported below: 807 F. 3d 1235.

No. 15–7073. Chase *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 171 So. 3d 463.

No. 16–577. Shelton *v.* McQuiggin, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 311.

No. 16–643. Estate of Reat et al. *v.* Rodriguez. C. A. 10th Cir. Certiorari denied. Reported below: 824 F. 3d 960.

No. 16–679. McFadden *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 3d 217.

No. 16–683. Jankovic, aka Zepter *v.* International Crisis Group et al. C. A. D. C. Cir. Certiorari denied. Reported below: 822 F. 3d 576.

No. 16–684. PLIVA, Inc., et al. *v.* Kohles et al. Sup. Ct. N. J. Certiorari denied. Reported below: 226 N. J. 315, 142 A. 3d 725.

No. 16–828. Gardner, New Hampshire Secretary of State *v.* Rideout et al. C. A. 1st Cir. Certiorari denied. Reported below: 838 F. 3d 65.

No. 16–924. Baumgart *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 16–927. Hess *v.* Board of Trustees of Southern Illinois University et al. C. A. 7th Cir. Certiorari denied. Reported below: 839 F. 3d 668.

No. 16–930. Meitzner *v.* Young et al. C. A. 6th Cir. Certiorari denied.

No. 16–931. Woods, Warden *v.* Holbrook. C. A. 6th Cir. Certiorari denied. Reported below: 833 F. 3d 612.

No. 16–933. Templeton *v.* New Mexico. Ct. App. N. M. Certiorari denied.

No. 16–934. Coulter *v.* Jamsan Hotel Management, Inc., et al. C. A. 1st Cir. Certiorari denied.

No. 16–936. Clyde Armory Inc. *v.* FN Herstal SA. C. A. 11th Cir. Certiorari denied. Reported below: 838 F. 3d 1071.

No. 16–939. Sparks *v.* Countrywide Home Loans, Inc., et al. C. A. 6th Cir. Certiorari denied.

No. 16–944. Mays *v.* Missouri. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 501 S. W. 3d 484.

No. 16–949. Manning *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 418 S. C. 38, 791 S. E. 2d 148.

No. 16–962. Grooms, Administratrix of the Estate of Grooms, Deceased *v.* Hunter Holmes McGuire Veterans Administration Medical Center et al. C. A. 4th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 27.

No. 16–989. Kashamu *v.* Department of Justice et al. C. A. 7th Cir. Certiorari denied. Reported below: 846 F. 3d 934.

No. 16–997. Carroll *v.* Vinnell Ababia, LLC. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 483.

No. 16–1002. Parker *v.* Crete Carrier Corp. C. A. 8th Cir. Certiorari denied. Reported below: 839 F. 3d 717.

No. 16–1024. Bout, aka Bulakin, aka Butt, aka Aminov, aka Budd *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 666 Fed. Appx. 34.

No. 16–1025. HOLLE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 240 Ariz. 300, 379 P. 3d 197.

No. 16–1026. KOWALSKI *v.* COOK COUNTY SHERIFF'S POLICE DEPARTMENT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 784.

No. 16–1035. KEEFE *v.* ADAMS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 840 F. 3d 523.

No. 16–1049. TOLLIVER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 854.

No. 16–1059. KOZIARA *v.* BNSF RAILWAY CO. C. A. 7th Cir. Certiorari denied. Reported below: 840 F. 3d 873.

No. 16–6444. LEDFORD *v.* SELLERS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 3d 600.

No. 16–6569. LOVETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 230.

No. 16–7104. GOSYLN *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 16–7269. BILLER *v.* TRIPLETT ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 16–7337. CRUICKSHANK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 837 F. 3d 1182.

No. 16–7592. WHITE ET UX. *v.* ATTORNEY GRIEVANCE COMMISSION OF MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 500 Mich. 884, 886 N. W. 2d 429.

No. 16–7676. TRAMMEL *v.* BANKS, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–7677. DIXON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 138 App. Div. 3d 1016, 29 N. Y. S. 3d 554.

No. 16–7679. WILLIAMS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–7693. FOX *v.* JOHNSON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 832 F. 3d 978.

No. 16–7698. MADDEN *v.* MADDEN ET AL. C. A. 10th Cir. Certiorari denied.

No. 16–7699. KING *v.* WYOMING ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 387.

No. 16–7705. RODRIGUEZ *v.* FILSON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–7706. REYNOLDS *v.* MUSIER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 47.

No. 16–7709. DAMJANOVIC *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–7713. PENDER *v.* MORRIS DUFFY ALONSO & FALEY, LLP. Ct. App. N. Y. Certiorari denied. Reported below: 26 N. Y. 3d 1137, 47 N. E. 3d 780.

No. 16–7719. NAWLS ET AL. *v.* SHAKOPEE MDEWAKANTON SIOUX GAMING ENTERPRISE—MYSTIC LAKE CASINO. C. A. 8th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 331.

No. 16–7722. CAREY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–7727. PABLO VAZQUEZ *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7734. RUNNINGEAGLE *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 825 F. 3d 970.

No. 16–7736. REESE *v.* LARSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7740. DOMINQUEZ *v.* SCHNEIDERMAN ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–7741. TAYLOR *v.* PFISTER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–7744. JACKSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 1 Cal. 5th 269, 376 P. 3d 528.

No. 16–7749. WACHT *v.* BRAUN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–7750. WILLIAMS *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 207.

No. 16–7751. UHLRY *v.* BLADES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7753. MELOT *v.* ROBERSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 570.

No. 16–7754. SUEING *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7757. TOLIVER *v.* CITY OF BUFFALO, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–7759. CHUNESTUDY *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 16–7760. CARAWAY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–7765. SMITH *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–7768. WRIGHT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 292 Va. 386, 789 S. E. 2d 611.

No. 16–7770. ARACENA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7783. HILL ET UX. *v.* DITECH FINANCIAL, LLC, ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied.

No. 16–7784. RUSSELL *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7785. GREENE *v.* CITY OF LOS ANGELES, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 16–7786. FEIT *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–7814. ELLIS *v.* CITY OF PITTSBURGH, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 656 Fed. Appx. 606.

No. 16–7815. MITCHELL *v.* GASTELO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7820. RAINEY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 203 So. 3d 172.

No. 16–7822. SAUSEDA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 140134, 50 N. E. 3d 723.

No. 16–7864. FUNES *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–7865. GOFORTH *v.* KANE, ACTING DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 270.

No. 16–7875. JONES *v.* BROWN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 579.

No. 16–7890. CARDONA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7909. KELLY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 154 A. 3d 852.

No. 16–7940. LOCKE *v.* TICE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7952. FRAZIER *v.* ENLOE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 843 F. 3d 258.

No. 16–7956. FLATHERS *v.* NORTHAMPTON HOUSING AUTHORITY. C. A. 1st Cir. Certiorari denied.

No. 16–7976. LOWE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 664 Fed. Appx. 38.

No. 16–8005. MCKEE *v.* CITY OF GREENSBORO, NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 45.

No. 16–8016. DANIEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 845.

No. 16–8036. ABDULHADI *v.* SMITH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–8044. SCHMIDT *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 205 So. 3d 616.

No. 16–8082. JOHNSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 130060–U.

No. 16–8086. DAVENPORT *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 150 A. 3d 274.

No. 16–8109. REIS-CAMPOS *v.* BITER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 832 F. 3d 968.

No. 16–8114. WHEELER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8116. JENKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–8136. REEVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 833.

No. 16–8147. REED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 70.

No. 16–8151. SHRADER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 494.

No. 16–8156. SANTIAGO-BECERRILL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–8159. LYLES *v.* DUNLAP, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 16.

No. 16–8162. WAINWRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8163. WILRIDGE *v.* GONZALEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 494.

No. 16–8165. WELLS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–8168. Olmos Munoz *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 713.

No. 16–8171. Alcaraz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 482.

No. 16–8173. Williams *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 451.

No. 16–8179. Young *v.* United States et al. C. A. 11th Cir. Certiorari denied.

No. 16–8185. Johnson, aka Hibbert *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 659 Fed. Appx. 674.

No. 16–572. Citizens Against Reservation Shopping et al. *v.* Zinke, Secretary of the Interior, et al. C. A. D. C. Cir. Motion of California State Association of Counties et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 830 F. 3d 552.

No. 16–6280. Cooper *v.* O'Brien, Warden. C. A. 4th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition. Reported below: 639 Fed. Appx. 196.

No. 16–7390. Bahel *v.* United States. C. A. 2d Cir. Certiorari denied. Justice Sotomayor took no part in the consideration or decision of this petition.

Rehearing Denied

No. 16–842. Walsh *v.* Shulkin, Secretary of Veterans Affairs, 580 U. S. 1119;

No. 16–854. McKinney *v.* Kelly, Secretary of Homeland Security, 580 U. S. 1172;

No. 16–6399. Sekendur *v.* United States ex rel. McCandliss, 580 U. S. 1059;

No. 16–6510. Barnett *v.* Florida, 580 U. S. 1061;

No. 16–6890. In re Caldwell et al., 580 U. S. 1098;

No. 16–6915. Johnson *v.* Michigan et al., 580 U. S. 1102;

No. 16–6986. Brennan *v.* United States, 580 U. S. 1079; and

No. 16–7362. Bradley *v.* Sabree et al., 580 U. S. 1134. Petitions for rehearing denied.

April 5, 2017

Dismissal Under Rule 46

No. 16–8167. In re Richardson. Petition for writ of mandamus dismissed under this Court's Rule 46.

April 13, 2017*

Miscellaneous Orders

No. 15–1039. Sandoz Inc. *v.* Amgen Inc. et al.; and
No. 15–1195. Amgen Inc. et al. *v.* Sandoz Inc. C. A. Fed. Cir. [Certiorari granted, 580 U. S. 1089.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 16–240. Weaver *v.* Massachusetts. Sup. Jud. Ct. Mass. [Certiorari granted, 580 U. S. 1088.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 16–466. Bristol-Myers Squibb Co. *v.* Superior Court of California, San Francisco County, et al. Sup. Ct. Cal. [Certiorari granted, 580 U. S. 1097.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 16–6219. Davila *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. [Certiorari granted, 580 U. S. 1090.] Motion of Nevada et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

April 17, 2017*

Certiorari Granted—Vacated and Remanded

No. 16–5441. Edmond *v.* United States; and
No. 16–5461. Harper *v.* United States. C. A. 6th Cir. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Dean* v. *United States*, *ante*, p. 62. Reported below: 815 F. 3d 1032.

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*Justice Gorsuch took no part in the consideration or decision of the orders announced on this date.

No. 16–7535. LEWIS *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 the position asserted by the Acting Solicitor General in his memorandum for the United States filed March 15, 2017.

Certiorari Dismissed

No. 16–7780. LORDMASTER, FKA GOLDADER *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Va. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 16–7905. PARKER *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. 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. 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. 16–7912. KNOX *v.* COURT OF CRIMINAL APPEALS OF OKLAHOMA ET AL. Sup. Ct. Okla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 16–7915. JACKMAN *v.* 5751 UNIT TEAM FORT DIX ET AL. 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. 16–8020. ABREU ACEVES *v.* CALIFORNIA. 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*). Reported below: 672 Fed. Appx. 683.

Miscellaneous Orders

No. D–2957. IN RE DISCIPLINE OF MCMULLEN. Sean P. McMullen, of Kensington, Md., 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–2958. IN RE DISCIPLINE OF WHITE. Quenton I. White, of Nashville, Tenn., 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–2959. IN RE DISCIPLINE OF SAFAVIAN. David H. Safavian, of Alexandria, Va., 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–2960. IN RE DISCIPLINE OF SKELOS. Dean George Skelos, of Rockville Centre, 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–2961. IN RE DISCIPLINE OF CONSTANTOPES. Alex Constantopes, of Jackson Heights, 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–2962. IN RE DISCIPLINE OF WALKER. James Gordon Walker, of Bloomington, 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–2963. IN RE DISCIPLINE OF LOCKLAIR. John Wesley Locklair III, of Myrtle Beach, S. C., 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–2964. IN RE DISCIPLINE OF SAXON. Sean Gardner Saxon, of Arvada, Colo., 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–2965. IN RE DISCIPLINE OF MEI. Howard Teng-Hao Mei, of Bethesda, Md., 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–2966. IN RE DISCIPLINE OF HARTKE. Wayne Richard Hartke, of Reston, Va., 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–2967. IN RE SEPTOWSKI. Charles D. Septowski, of St. Louis, Mo., 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–2968. IN RE DISCIPLINE OF VEGA. Jose W. Vega, of Houston, Tex., 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. 16M110. WEICHERT *v.* VILLAGE OF PARISH, NEW YORK, ET AL. Motion for leave to proceed as a veteran denied.

No. 16M111. WILLIAMS *v.* UNITED STATES;

No. 16M112. JOHNSON *v.* LUCENT TECHNOLOGIES INC.;

No. 16M114. COHEN *v.* NEW YORK CITY POLICE DEPARTMENT, HQ COUNTER TERRORISM;

No. 16M115. MALONE *v.* SECURITAS SECURITY SERVICES USA, INC., ET AL.; and

No. 16M117. MILLINGTON *v.* GEICO ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M113. WYATT *v.* GILMARTIN ET AL. Motion for leave to file petition for writ of certiorari under seal granted.

No. 16M116. R. M. *v.* COMMITTEE ON CHARACTER AND FITNESS. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 16–6943. VILLA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [580 U. S. 1108] denied.

No. 16–7022. NOBLE *v.* VAUGHN, WARDEN, ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [580 U. S. 1112] denied.

No. 16–7157. NOBLE *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [580 U. S. 1112] denied. JUSTICE ALITO took no part in the consideration or decision of this motion.*

No. 16–7372. IN RE NOBLE. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [580 U. S. 1158] denied. JUSTICE ALITO took no part in the consideration or decision of this motion.*

No. 16–7537. HAMILTON *v.* BIRD ET AL.;
No. 16–7538. HAMILTON *v.* BIRD ET AL.; and
No. 16–7539. HAMILTON *v.* BIRD ET AL. C. A. 10th Cir. Motions of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [580 U. S. 1193] denied.

No. 16–7790. LAN *v.* COMCAST CORP., LLC. Ct. App. Cal., 1st App. Dist., Div. 5;
No. 16–7900. IN RE LAGERSTROM;
No. 16–7950. SANTIAGO *v.* LABOR AND INDUSTRY REVIEW COMMISSION ET AL. Ct. App. Wis.; and
No. 16–8119. DIGIORGIO *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 11th Cir.† Motions of petitioners for leave to

*See also note, *supra*, p. 912.

†[REPORTER'S NOTE: This order was vacated on June 5, 2017. *Post*, p. 1025.]

proceed *in forma pauperis* denied. Petitioners are allowed until May 8, 2017, 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. 16–8314. In re Clayborne;
No. 16–8376. In re Timmerman; and
No. 16–8474. In re Clay. Petitions for writs of habeas corpus denied.

No. 16–990. In re Lozman; and
No. 16–7929. In re Rogers. Petitions for writs of mandamus denied.

Certiorari Denied

No. 15–8942. Lee *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 792 F. 3d 1021.

No. 16–612. Langbord et al. *v.* Department of the Treasury et al. C. A. 3d Cir. Certiorari denied. Reported below: 832 F. 3d 170.

No. 16–672. Paso Robles Unified School District *v.* Timothy O. et al. C. A. 9th Cir. Certiorari denied. Reported below: 822 F. 3d 1105.

No. 16–676. Carter et al. *v.* Petties. C. A. 7th Cir. Certiorari denied. Reported below: 836 F. 3d 722.

No. 16–721. West Virginia ex rel. Morrisey *v.* Department of Health and Human Services. C. A. D. C. Cir. Certiorari denied. Reported below: 827 F. 3d 81.

No. 16–729. Buehler *v.* Austin Police Department et al. C. A. 5th Cir. Certiorari denied. Reported below: 824 F. 3d 548.

No. 16–733. Sanchez de Lozada Sanchez Bustamante et al. *v.* Rojas Mamani et al. C. A. 11th Cir. Certiorari denied. Reported below: 825 F. 3d 1304.

No. 16–780. Schoenefeld *v.* Schneiderman, Attorney General of New York, et al. C. A. 2d Cir. Certiorari denied. Reported below: 821 F. 3d 273.

No. 16–805. Lewis et al. *v.* Vasquez. C. A. 10th Cir. Certiorari denied. Reported below: 834 F. 3d 1132.

No. 16–812. CASTRO ET AL. *v.* DEPARTMENT OF HOMELAND SECURITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 835 F. 3d 422.

No. 16–841. INTERNATIONAL PAPER CO. ET AL. *v.* KLEEN PRODUCTS LLC ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 831 F. 3d 919.

No. 16–850. ENERGY CONVERSION DEVICES LIQUIDATION TRUST *v.* TRINA SOLAR LTD. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 833 F. 3d 680.

No. 16–875. ALLIED INDUSTRIAL DEVELOPMENT CORP. *v.* SURFACE TRANSPORTATION BOARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 835 F. 3d 548.

No. 16–957. SILVERTHORNE *v.* YEAMAN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 354.

No. 16–973. CROCHET *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2016–1123 (La. 9/23/16), 200 So. 3d 370.

No. 16–974. MOTEALLEH *v.* CALIFORNIA DEPARTMENT OF TRANSPORTATION. C. A. 9th Cir. Certiorari denied.

No. 16–979. BENTON *v.* SHELDON. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 946.

No. 16–981. FLINT *v.* NOBLE ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–985. T. H. MCELVAIN OIL & GAS L. P. ET AL. *v.* GROUP I: BENSON-MONTIN-GREER DRILLING CORP., INC., ET AL. Sup. Ct. N. M. Certiorari denied. Reported below: 2017–NMSC–004, 388 P. 3d 240.

No. 16–986. OCHADLEUS ET AL. *v.* CITY OF DETROIT, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 838 F. 3d 792.

No. 16–993. SANMARTIN PRADO *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 448 Md. 664, 141 A. 3d 99.

No. 16–1008. CHEUNG YIN SUN ET AL. *v.* MASHANTUCKET PEQUOT GAMING ENTERPRISE, DBA FOXWOODS RESORT CASINO,

ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 663 Fed. Appx. 57.

No. 16–1019. THOMAS *v.* SESSIONS, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied. Reported below: 828 F. 3d 11.

No. 16–1031. PPW ROYALTY TRUST DATED SEPTEMBER 27, 1989, BY AND THROUGH PETRIE, ITS TRUSTEE, ET AL. *v.* BARTON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 841 F. 3d 746.

No. 16–1032. COLE *v.* BOARD OF TRUSTEES OF NORTHERN ILLINOIS UNIVERSITY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 838 F. 3d 888.

No. 16–1033. CHATMAN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–1047. AFFINITY LABS OF TEXAS, LLC *v.* AMAZON.COM, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 838 F. 3d 1266.

No. 16–1066. MICHEL *v.* MCCONNELL, UNITED STATES SENATOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 664 Fed. Appx. 10.

No. 16–1079. BORMUTH *v.* GRAND RIVER ENVIRONMENTAL ACTION TEAM ET AL. Ct. App. Mich. Certiorari denied.

No. 16–1086. ZELTSER *v.* LITTLE REST TWELVE, INC. C. A. 11th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 887.

No. 16–1109. CONCATEN, INC. *v.* AMERITRAK FLEET SOLUTIONS, LLC, DBA AMERITRAK. C. A. Fed. Cir. Certiorari denied. Reported below: 669 Fed. Appx. 571.

No. 16–1129. HALAJIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 629.

No. 16–6342. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 78.

No. 16–6388. KELLY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 258.

No. 16–6397. HANF *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 182 So. 3d 704.

No. 16–6513. KNOX *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 956.

No. 16–6861. STRONG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 826 F. 3d 1109.

No. 16–6923. MILLER *v.* ZATECKY, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 820 F. 3d 275.

No. 16–7008. PEREZ *v.* FURNIA ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–7069. ADKINS *v.* WHOLE FOODS MARKET GROUP, INC. C. A. 4th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 977.

No. 16–7084. BRUCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 580.

No. 16–7101. RITCHIE *v.* NEAL, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 16–7239. MOORE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–7278. MUA ET AL. *v.* CALIFORNIA CASUALTY INDEMNITY EXCHANGE. Cir. Ct. Montgomery County, Md. Certiorari denied.

No. 16–7281. UPADHYAY *v.* AETNA LIFE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 569.

No. 16–7325. SOLIZ *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 16–7386. CHANG *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 149 A. 3d 242.

No. 16–7406. REARICK *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 417 S. C. 391, 790 S. E. 2d 192.

No. 16–7488. MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 437.

No. 16–7500. ROSS-VARNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–7737. LANGSTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 787.

No. 16–7800. MCARDLE *v.* OFFICE OF DISCIPLINARY COUNSEL. Sup. Ct. Pa. Certiorari denied.

No. 16–7801. PETERSON *v.* HVM LLC ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7804. MAYBERRY *v.* SOMMERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7809. JORDAN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 202 So. 3d 429.

No. 16–7811. WADE *v.* BURTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7812. CASTANEDA *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 16–7821. SMITH *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 16–7830. CHAPMAN *v.* ENTERPRISE RENT-A-CAR CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 40.

No. 16–7833. SIMMONS *v.* LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS. Ct. App. La., 1st Cir. Certiorari denied.

No. 16–7836. KLAUZINSKI *v.* FUKUDA ET AL. C. A. 1st Cir. Certiorari denied.

No. 16–7837. JACKSON *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 149 Ohio St. 3d 55, 2016-Ohio-5488, 73 N. E. 3d 414.

No. 16–7838. DURAN *v.* MURRY ET AL. C. A. 5th Cir. Certiorari denied.

No. 16–7839. POIZNER *v.* FRAUENHEIM, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–7841. HAWKINS *v.* COUNTY OF LOS ANGELES, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 16–7846. YOKLEY *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7849. CELESTINE *v.* NIEVES. C. A. 5th Cir. Certiorari denied.

No. 16–7853. ANDERSON *v.* CAHLANDER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 224.

No. 16–7862. HESTER *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–7877. DUNAHUE *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–7879. CARLISLE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 131144, 35 N. E. 3d 649.

No. 16–7880. RAMIREZ *v.* BAUSCH & LOMB, INC. C. A. 11th Cir. Certiorari denied.

No. 16–7882. BROWN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–7884. GOODRICH *v.* GOODRICH ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 299 Ga. XXI, 792 S. E. 2d 664.

No. 16–7887. SEAGER *v.* WRIGLEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 16–7888. BOWEN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–7899. DARBY *v.* CHOHAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 355.

No. 16–7901. BENFORD *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 16–7904. OZENNE *v.* CHASE MANHATTAN BANK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 841 F. 3d 810.

No. 16–7907. JIMMY CHIP E. *v.* BUSCEMI ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 219.

No. 16–7908. AYER *v.* ZENK, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 16–7911. DIXSON *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 16–7914. JOHNSON *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–7917. COOPER *v.* VAROUXIS, EXECUTRIX AND TRUSTEE OF THE THEODORE VAROUXIS ESTATE AND TRUST, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 188.

No. 16–7926. SIMMONS *v.* PERRY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7927. CLOY *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7931. STULTZ *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7934. SAITTA *v.* TUCSON UNITED SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 463.

No. 16–7937. MCFARLAND *v.* MACLAREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7939. JONES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–7941. LINDSAY *v.* CASTELLOE. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 112.

No. 16–7947. BARAHONA *v.* MADDEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7966. NELSON *v.* MV TRANSPORTATION, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 652 Fed. Appx. 47.

No. 16–7979. LEON *v.* SPEARMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7987. LANDIS *v.* BUNCOMBE COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied.

No. 16–7998. MORGAN *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS. C. A. 8th Cir. Certiorari denied.

No. 16–8011. ARTERBERRY *v.* LIZARRAGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–8015. MARSHALL *v.* FOSTER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–8050. MCKELTON *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 148 Ohio St. 3d 261, 2016-Ohio-5735, 70 N. E. 3d 508.

No. 16–8064. ADOLFO BUSTAMANTE *v.* LIZARRAGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–8067. ELIZONDO *v.* BAUMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 674 Fed. Appx. 561.

No. 16–8069. PICKENS *v.* PERRITT, SUPERINTENDENT, LUMBERTON CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 214.

No. 16–8077. MCNAMARA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 606, 377 P. 3d 106.

No. 16–8079. ZANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 80.

No. 16–8089. WILLIAMS *v.* BOWERSOX, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 16–8091. WINSTON *v.* AIR FORCE REVIEW BOARDS AGENCY. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 88.

No. 16–8097. CAMPBELL *v.* NEW YORK CITY TRANSIT AUTHORITY. C. A. 2d Cir. Certiorari denied. Reported below: 662 Fed. Appx. 57.

No. 16–8102. BEATTY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–8105. ERVIN *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 238 W. Va. 77, 792 S. E. 2d 309.

No. 16–8107. SHEPPARD *v.* MEDEIROS, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied.

No. 16–8144. DUNLAP *v.* HORTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8157. DOE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 842 F. 3d 1117.

No. 16–8175. WILLIAMS *v.* PFISTER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–8183. SANTIAGO-BORRERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–8193. CALVETTI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 836 F. 3d 654.

No. 16–8195. BARNES *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 16–8198. STROMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 600.

No. 16–8201. FOLSOM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 495.

No. 16–8202. GREEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 674 Fed. Appx. 756.

No. 16–8205. PITTS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 655 Fed. Appx. 78.

No. 16–8211. FRANKLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 345.

No. 16–8214. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 391.

No. 16–8219. COLBERT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 828 F. 3d 718.

No. 16–8222. CABALLERO, AKA PENABAEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 672 Fed. Appx. 72.

No. 16–8225. LEE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 834 F. 145 and 660 Fed. Appx. 8.

No. 16–8227. BOTELLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 422.

No. 16–8228. BEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8232. HEBERT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 753.

No. 16–8234. NELSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 665.

No. 16–8242. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 272.

No. 16–8249. VASQUEZ-HERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 834 F. 3d 852.

No. 16–8252. CONROY *v.* WALTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–8253. CONRAD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–8254. MILLS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 843 F. 3d 210.

No. 16–8256. MEEKS *v.* MCCLINTOCK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–8258. ABRAR *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 400.

No. 16–8263. GUTIERREZ VELASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–8274. JORDAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 768.

No. 16–8275. MARTINEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–8276. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 310.

No. 16–8278. MCCAW *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 578.

No. 16–8280. OWENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 859.

No. 16–8283. IHEME *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 16–8286. MAJOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8287. GAMBOA *v.* KRUEGER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 654.

No. 16–8289. HERMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 848 F. 3d 55.

No. 16–8290. DONGARRA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–8293. ASKIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–8299. HICKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 135.

No. 16–8303. APICELLI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 839 F. 3d 75.

No. 16–8305. LEE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 308.

No. 16–8307. Novak *v.* United States. C. A. D. C. Cir. Certiorari denied.

No. 16–8309. Bich Quyen Nguyen *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 537.

No. 16–8312. St. Claire *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 831 F. 3d 1039.

No. 16–8313. Afolabi *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 16–8321. Thornton *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 300.

No. 16–8329. Moreno-Ruiz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 250.

No. 16–8331. Bortis *v.* Arnold, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 754.

No. 16–8334. Muratella *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 843 F. 3d 780.

No. 16–8340. Cheever *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 718.

No. 16–8343. Stevens *v.* Shartle, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–8344. Hedrick *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 485.

No. 16–8346. McLean *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 16–8349. Holt *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 777 F. 3d 1234.

No. 16–8350. Cruz-Romero *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 848 F. 3d 399.

No. 16–8351. Allmon *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 16–8356. Gutierrez-Vilvazo *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 666 Fed. Appx. 657.

No. 16–8359. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 911.

No. 16–8360. GUTIERREZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 653 Fed. Appx. 107.

No. 16–8361. FAIL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8368. ROCHA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 628.

No. 16–8370. RIOS RODRIGUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–8377. TAYLOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 843 F. 3d 1215.

No. 16–8380. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 108.

No. 16–8385. REYES-BOSQUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–8387. DAVIS *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 163.

No. 16–8389. MATTHEWS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 672 Fed. Appx. 8.

No. 16–8391. CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 298.

No. 16–8392. ALEXANDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 809 F. 3d 1029.

No. 16–8393. AGODIO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 130.

No. 16–8394. LAWRENCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–8400. MANUEL ESCOBAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 677 Fed. Appx. 407.

No. 16–8401. BOLZE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–8402. RHODES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 275.

No. 16–8407. FORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 147.

No. 16–8414. KMET *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 667 Fed. Appx. 357.

No. 16–8417. MEDRANO-CAMARILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 239.

No. 16–8424. CHARLTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 431.

No. 16–8426. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 65.

No. 16–8429. SMITH *v.* ARCHULETA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 422.

No. 16–543. MICKELSON ET AL. *v.* COUNTY OF RAMSEY, MINNESOTA, ET AL. C. A. 8th Cir. Motion of Professor Alexes Harris for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 823 F. 3d 918.

No. 16–708. ROZUM ET AL. *v.* COLON. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 649 Fed. Appx. 259.

No. 16–811. GILMORE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. *v.* BROWN, AKA LAMBERT. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 834 F. 3d 506.

No. 16–840. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* WASHINGTON. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 833 F. 3d 1087.

No. 16–1046. AFFINITY LABS OF TEXAS, LLC *v.* DIRECTV, LLC, ET AL. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.* Reported below: 838 F. 3d 1253.

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*See also note, *supra*, p. 912.

No. 16–7906. Lewis *v.* Nissan North America, Inc., et al. C. A. 2d Cir. Certiorari denied. Justice Sotomayor took no part in the consideration or decision of this petition.*

No. 16–8047. Sneed *v.* Burriss, Judge, Circuit Court of Kentucky, Bullitt County, et al. Sup. Ct. Ky. Motion of National Association for Public Defense et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 500 S. W. 3d 791.

No. 16–8277. Barner *v.* United States. C. A. 3d Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.* Reported below: 656 Fed. Appx. 600.

No. 16–8418. Toilolo *v.* United States. C. A. 9th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 666 Fed. Appx. 618.

Rehearing Denied

No. 16–656. Reed *v.* Louisiana, 580 U. S. 1166;
No. 16–680. Perkins *v.* Texas, 580 U. S. 1115;
No. 16–735. United States ex rel. Lee et al. *v.* Ernst & Young LLP et al., 580 U. S. 1116;
No. 16–737. Ellis *v.* Texas et al., 580 U. S. 1116;
No. 16–752. Newkirk *v.* CVS Caremark Corp. et al., 580 U. S. 1117;
No. 16–763. Ke Kailani Development LLC et al. *v.* Ke Kailani Partners, LLC, et al., 580 U. S. 1117;
No. 16–769. French *v.* New Hampshire Insurance Co., 580 U. S. 1117;
No. 16–779. Marzett *v.* Texas, 580 U. S. 1118;
No. 16–782. Sangster *v.* Hall et al., 580 U. S. 1118;
No. 16–793. Rouse *v.* II–VI Inc. et al., 580 U. S. 1160;
No. 16–968. Meidinger *v.* Commissioner of Internal Revenue, 580 U. S. 1173;
No. 16–6684. Griffin *v.* Keith, Warden, 580 U. S. 1067;
No. 16–6844. Mack *v.* Huston et al., 580 U. S. 1094;
No. 16–6905. Davis *v.* United States, 580 U. S. 1077;

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*See also note, *supra*, p. 912.

No. 16–6906. Burgess *v.* United States, 580 U. S. 1077;
No. 16–6957. Rodriguez *v.* Texas, 580 U. S. 1122;
No. 16–7000. An Thai Tu *v.* Leith et al., 580 U. S. 1122;
No. 16–7028. Satterfield *v.* Beneficial Financial I Inc. et al., 580 U. S. 1123;
No. 16–7035. Brackett *v.* Idaho, 580 U. S. 1123;
No. 16–7039. Pierre *v.* United States, 580 U. S. 1080;
No. 16–7093. Jimena *v.* Sai Ho Wong et al., 580 U. S. 1125;
No. 16–7121. Rancel *v.* Colvin, Acting Commissioner of Social Security, 580 U. S. 1125;
No. 16–7150. Barati *v.* Florida et al., 580 U. S. 1126;
No. 16–7165. Stephens *v.* Jerejian, Judge, Superior Court of New Jersey, Bergen County, et al., 580 U. S. 1127;
No. 16–7211. Creel *v.* Mississippi, 580 U. S. 1129;
No. 16–7292. Dziedzic *v.* State University of New York at Oswego et al., 580 U. S. 1131;
No. 16–7322. Lintz *v.* Brennan, Postmaster General, et al., 580 U. S. 1133;
No. 16–7400. Taylor *v.* District of Columbia Department of Employment Services et al., 580 U. S. 1174;
No. 16–7466. Hazelquist *v.* Klewin et al., 580 U. S. 1190;
No. 16–7494. Torrence *v.* Comcast Corp., 580 U. S. 1138;
No. 16–7506. Skvarla *v.* United States, 580 U. S. 1138; and
No. 16–7648. Walker *v.* Arkansas Department of Correction et al., 580 U. S. 1141. Petitions for rehearing denied.

April 18, 2017

Miscellaneous Order

No. 16A987. Arkansas *v.* Davis. Application to vacate stay of execution of sentence of death entered by the Arkansas Supreme Court on April 17, 2017, presented to Justice Alito, and by him referred to the Court, denied.

April 19, 2017

Dismissal Under Rule 46

No. 16–956. Pemex-Exploracion y Produccion *v.* Corporacion Mexicana de Mantenimiento Integral, S. de R. L. de C. V. C. A. 2d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 832 F. 3d 92.

April 20, 2017

Miscellaneous Orders

No. 16A986 (16–6496). Johnson et al. *v.* Kelley, Director, Arkansas Department of Correction, et al. Sup. Ct. Ark. Application for stay of execution of sentences of death, presented to Justice Alito, and by him referred to the Court, denied. Justice Breyer, Justice Sotomayor, and Justice Kagan would grant the application for stay of execution.

Justice Breyer, dissenting.

I dissent from the denial of the application for a stay of execution for the reasons set out in *McGehee* v. *Hutchinson*, *infra*, p. 934.

No. 16A1013. Lee *v.* Arkansas. Application for stay of execution of sentence of death, presented to Justice Alito, and by him referred to the Court, denied. The order heretofore entered by Justice Alito is vacated.

No. 16A1016. Lee *v.* Arkansas. Application for stay of execution of sentence of death, presented to Justice Alito, and by him referred to the Court, denied.

No. 16A1017. Lee *v.* Jegley et al. Application for stay of execution of sentence of death, presented to Justice Alito, and by him referred to the Court, denied.

No. 16A1018. Lee *v.* Kelley, Director, Arkansas Department of Correction. Application for stay of execution of sentence of death, presented to Justice Alito, and by him referred to the Court, denied.

Certiorari Denied

No. 16–8770 (16A1003). McGehee et al. *v.* Hutchinson, Governor of Arkansas, et al. C. A. 8th Cir. Application for stay of execution of sentences of death, presented to Justice Alito, and by him referred to the Court, denied. Certiorari denied. Justice Ginsburg and Justice Sotomayor would grant the application for stay of execution and the petition for writ of certiorari. Justice Breyer and Justice Kagan would grant the application for stay of execution. Reported below: 854 F. 3d 488.

JUSTICE BREYER, dissenting from denial of application for stay of execution.

Arkansas set out to execute eight people over the course of 11 days. Why these eight? Why now? The apparent reason has nothing to do with the heinousness of their crimes or with the presence (or absence) of mitigating behavior. It has nothing to do with their mental state. It has nothing to do with the need for speedy punishment. Four have been on death row for over 20 years. All have been housed in solitary confinement for at least 10 years. Apparently the reason the State decided to proceed with these eight executions is that the "use by" date of the State's execution drug is about to expire. See 854 F. 3d 488, 503 (CA8 2017) (Kelly, J., dissenting) (case below); see also Brief in Opposition to Application for Stay of Executions and Certiorari 11 and Exh. 1. In my view, that factor, when considered as a determining factor separating those who live from those who die, is close to random.

I have previously noted the arbitrariness with which executions are carried out in this country. See *Glossip* v. *Gross*, 576 U. S. 863, 908–909 (2015) (BREYER, J., dissenting). And I have pointed out how the arbitrary nature of the death penalty system, as presently administered, runs contrary to the very purpose of a "rule of law." *Id.*, at 915. The cases now before us reinforce that point.

The ever changing state of affairs with respect to these individuals further cautions against a rush to judgment. A Federal District Court preliminarily enjoined the State's execution protocol; the Eighth Circuit vacated the injunction. The Arkansas Supreme Court has stayed the executions of three of these men based on their individual circumstances. A Federal District Court has stayed one more. An Arkansas Circuit Court temporarily enjoined the State from using one of the necessary drugs; the Arkansas Supreme Court stayed that injunction. These individuals have now come before this Court with a variety of claims. One involves a Circuit split concerning when an alternative method of execution qualifies as available. See, *e. g.*, *post* p. 935 (SOTOMAYOR, J., dissenting). Another asks whether the State's compressed execution schedule constitutes cruel and unusual punishment. I would grant a stay so that the Court can sort out these various cases and claims. I would also grant the petition as to the compressed execution schedule. It presents one aspect

of whether the death penalty is consistent with the Constitution. See U. S. Const., Amdt. 8.

JUSTICE SOTOMAYOR, dissenting.

After a 4-day evidentiary hearing at which 17 witnesses testified and volumes of evidence were introduced, the District Court issued an exhaustive 101-page opinion enjoining petitioners' executions. The court found that Arkansas' current lethal-injection protocol posed a substantial risk of severe pain and that petitioners had identified available alternative methods of execution. The Eighth Circuit reversed these findings in a six-page opinion.

As Judge Kelly noted persuasively in dissent, the Eighth Circuit erred at both steps of the analysis required by *Glossip* v. *Gross*, 576 U. S. 863 (2015). First, it failed to defer to the District Court's extensive factual findings and instead substituted its own. See *id.*, at 881 (a district court's findings of fact regarding risk of pain are "review[ed] . . . under the deferential 'clear error' standard"). The Court of Appeals thus erroneously swept aside the District Court's well-supported finding that midazolam creates a substantial risk of severe pain. Second, it imposed a restrictive view of what qualifies as an "available" alternative under *Glossip*.

I continue to harbor significant doubts about the wisdom of imposing the perverse requirement that inmates offer alternative methods for their own executions. *Id.*, at 969–977 (SOTOMAYOR, J., dissenting); see also *Arthur* v. *Dunn*, 580 U. S. 1141 (2017) (SOTOMAYOR, J., dissenting from denial of certiorari). But given the life-or-death consequences, the Court, having imposed this requirement, should provide clarification and guidance when the Circuits are divided as to its meaning. Compare App. to Pet. for Cert. 4a–7a with *Arthur* v. *Commissioner, Ala. Dept. of Corrections*, 840 F. 3d 1268, 1299–1304 (CA11 2016).

I dissent from the Court's refusal to do so.

No. 16–8787 (16A1006). MCGEHEE ET AL. *v.* HUTCHINSON, GOVERNOR OF ARKANSAS, ET AL. C. A. 8th Cir. Application for stay of execution of sentences of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied.

JUSTICE BREYER, dissenting.

I dissent from the denial of certiorari for the reasons set out in *McGehee* v. *Hutchinson*, *supra*, p. 934.

No. 16–8788 (16A1012). LEE ET AL. *v.* HUTCHINSON, GOVERNOR OF ARKANSAS, ET AL. C. A. 8th Cir. Application for stay of execution of sentences of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied. Reported below: 854 F. 3d 978.

APRIL 24, 2017*

Certiorari Dismissed

No. 16–8172. CRAIN *v.* NEVADA PAROLE AND PROBATION 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. 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. 16–8333. AJAMIAN *v.* DOMINGUEZ 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.

Miscellaneous Orders

No. 16A611. BURNS *v.* UNITED STATES. Application to file petition for writ of certiorari in excess of the page limitation, addressed to JUSTICE THOMAS and referred to the Court, denied.

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*JUSTICE GORSUCH took no part in the consideration or decision of the orders announced on this date, with the exception of No. 16A1028, *Jones* v. *Kelley, Director, Arkansas Department of Correction, et al.*, *infra*, p. 937; No. 16M120, *Ziober* v. *BLB Resources, Inc.*, *infra*, p. 937; No. 16–504, *Bell* v. *Blue Cross and Blue Shield of Oklahoma et al.*, *infra*, p. 938; No. 16–515, *Salazar-Limon* v. *City of Houston, Texas, et al.*, *infra*, p. 946; No. 16–602, *Arthur* v. *Dunn, Commissioner, Alabama Department of Corrections, et al.*, *infra*, p. 957; No. 16–881, *Needham* v. *Lewis, as Personal Representative of Lewis, Deceased*, *infra*, p. 938; No. 16–912, *Kobold* v. *Aetna Life Insurance Co.*, *infra*, p. 939; No. 16–6496, *Johnson et al.* v. *Kelley, Director, Arkansas Department of Correction, et al.*, *infra*, p. 957; No. 16–8071, *Smith* v. *Ryan, Director, Arizona Department of Corrections, et al.*, *infra*, p. 954; No. 16–8814 (16A1027), *Jones* v. *Arkansas*, *infra*, p. 956; No. 16–8815 (16A1029), *Williams* v. *Kelley, Director, Arkansas Department of Correction, et al.*, *infra*, p. 956; and No. 16–8816 (16A1030), *Williams* v. *Kelley, Director, Arkansas Department of Correction, et al.*, *infra*, p. 956.

No. 16A917. TARTT *v.* MAGNA HEALTH SYSTEMS ET AL. C. A. 7th Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. 16A1028. JONES *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied.

JUSTICE SOTOMAYOR, dissenting.

I dissent for the reasons set out in *McGehee* v. *Hutchinson*, *ante*, p. 935 (SOTOMAYOR, J., dissenting).

No. 16M118. GREEN *v.* DOMESTIC RELATIONS SECTION, COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, MARYLAND; and No. 16M121. CLAYBORNE *v.* EICKHOLT ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M119. CASSINELLI *v.* CASSINELLI. Motion for leave to proceed as a veteran denied.

No. 16M120. ZIOBER *v.* BLB RESOURCES, INC. Motion for leave to proceed as a veteran granted.

No. 16–731. CAROLINAS ELECTRICAL WORKERS RETIREMENT PLAN ET AL. *v.* ZENITH AMERICAN SOLUTIONS, INC., 580 U. S. 1116. Motion of respondent for attorney's fees and costs denied.

No. 16–7188. LORDMASTER, FKA GOLDADER *v.* SUSSEX II STATE PRISON ET AL. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [580 U. S. 1109] denied.

No. 16–7512. ELLIS *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [580 U. S. 1193] denied.

No. 16–8540. IN RE KORNHARDT;
No. 16–8556. IN RE RAY;
No. 16–8557. IN RE SELDEN;
No. 16–8577. IN RE PEEL; and

No. 16–8587. In re Thomas-Bey. Petitions for writs of habeas corpus denied.

No. 16–1080. In re Barton;
No. 16–7960. In re Marie et ux.;
No. 16–7993. In re Makdessi; and
No. 16–8431. In re Shah. Petitions for writs of mandamus denied.

Certiorari Denied

No. 15–9784. Zong *v.* Merrill Lynch, Pierce, Fenner & Smith Inc. C. A. 3d Cir. Certiorari denied. Reported below: 632 Fed. Appx. 692.

No. 16–504. Bell *v.* Blue Cross and Blue Shield of Oklahoma et al. C. A. 8th Cir. Certiorari denied. Reported below: 823 F. 3d 1198.

No. 16–629. American Civil Liberties Union et al. *v.* Central Intelligence Agency et al. C. A. D. C. Cir. Certiorari denied. Reported below: 823 F. 3d 655.

No. 16–636. Walker *v.* Texas. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 489 S. W. 3d 1.

No. 16–764. General Motors LLC *v.* Elliott et al. C. A. 2d Cir. Certiorari denied. Reported below: 829 F. 3d 135.

No. 16–775. Montana *v.* Werlich, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 829 F. 3d 775.

No. 16–832. Alabama Democratic Conference et al. *v.* Marshall, Attorney General of Alabama, et al. C. A. 11th Cir. Certiorari denied. Reported below: 838 F. 3d 1057.

No. 16–857. Garner *v.* Colorado. Ct. App. Colo. Certiorari denied. Reported below: 381 P. 3d 320.

No. 16–881. Needham *v.* Lewis, as Personal Representative of Lewis, Deceased. C. A. 6th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 339.

No. 16–888. Farha *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 832 F. 3d 1259.

No. 16–889. SINCLAIR *v.* LAUDERDALE COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 429.

No. 16–912. KOBOLD *v.* AETNA LIFE INSURANCE CO. Ct. App. Ariz. Certiorari denied. Reported below: 239 Ariz. 259, 370 P. 3d 128.

No. 16–943. ONYX PROPERTIES, LLC, ET AL. *v.* BOARD OF COUNTY COMMISSIONERS OF ELBERT COUNTY. C. A. 10th Cir. Certiorari denied. Reported below: 838 F. 3d 1039.

No. 16–972. CHESAPEAKE ENERGY CORP. *v.* BANK OF NEW YORK MELLON TRUST CO., N. A. C. A. 2d Cir. Certiorari denied. Reported below: 837 F. 3d 146.

No. 16–995. WILLIAMS *v.* HICKS ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 224 Md. App. 722 and 735.

No. 16–1004. VEY *v.* TYSKIEWIEZ. Sup. Ct. Pa. Certiorari denied.

No. 16–1020. SHIMEL *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 838 F. 3d 685.

No. 16–1041. STONE *v.* ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Certiorari denied.

No. 16–1048. RANKIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 435.

No. 16–1051. LAUER ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–1078. BACH *v.* WISCONSIN OFFICE OF LAWYER REGULATION. Sup. Ct. Wis. Certiorari denied. Reported below: 2016 WI 95, 372 Wis. 2d 187, 887 N. W. 2d 335.

No. 16–1081. HAAGENSEN, PERSONAL REPRESENTATIVE OF THE ESTATE OF HAAGENSEN *v.* REED ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 666 Fed. Appx. 140.

No. 16–1088. NIGRO *v.* CARRASQUILLO. C. A. 11th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 894.

No. 16–1101. LIBERTY AMMUNITION, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 835 F. 3d 1388.

No. 16–1104. SALVESON ET AL. *v.* JPMORGAN CHASE & CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 663 Fed. Appx. 71.

No. 16–1108. WINGET ET AL. *v.* JPMORGAN CHASE BANK, N. A. C. A. 6th Cir. Certiorari denied. Reported below: 678 Fed. Appx. 355.

No. 16–1111. SOLARIA CORP. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 671 Fed. Appx. 797.

No. 16–1117. KENNARD *v.* MEANS INDUSTRIES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 333.

No. 16–1124. SCOTTSDALE CAPITAL ADVISORS CORP. ET AL. *v.* FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. C. A. 4th Cir. Certiorari denied. Reported below: 844 F. 3d 414.

No. 16–1133. CLAIR *v.* DOE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 774.

No. 16–1134. PICHARDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 603.

No. 16–1143. ILLINOIS TRANSPORTATION TRADE ASSN. ET AL. *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 839 F. 3d 594.

No. 16–1158. NAGLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 664 Fed. Appx. 212.

No. 16–5909. WILLIAMS *v.* SOUTH CAROLINA. Ct. Common Pleas of Greenville County, S. C. Certiorari denied.

No. 16–6561. KOSS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 3d 460.

No. 16–6806. WEST *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Certiorari denied.

No. 16–7215. RAY *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 378 P. 3d 772.

No. 16–7237. Hernandez Sandoval *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 433.

No. 16–7576. Zagorski *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–7580. White *v.* EDS Care Management LLC et al. Ct. App. Mich. Certiorari denied.

No. 16–7593. White et ux. *v.* Attorney Grievance Commission of Michigan. Sup. Ct. Mich. Certiorari denied. Reported below: 500 Mich. 884, 886 N. W. 2d 630.

No. 16–7954. Garvey, Individually and as Fiduciary of the Estate of Garvey *v.* Garvey et al. C. A. 2d Cir. Certiorari denied.

No. 16–7958. Heuston *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 16–7961. Jackson *v.* South Dakota. Sup. Ct. S. D. Certiorari denied. Reported below: 885 N. W. 2d 590.

No. 16–7963. Mann *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 203 So. 3d 160.

No. 16–7967. Gough *v.* Calvert County Detention Center et al. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 670.

No. 16–7968. Fealy *v.* Wells Fargo Bank, N. A. C. A. 9th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 420.

No. 16–7977. Lamar *v.* Hubbard et al. C. A. 8th Cir. Certiorari denied.

No. 16–7978. Cooks *v.* Jones, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied.

No. 16–7981. DeVaughn *v.* Kernan, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied.

No. 16–7988. Mansfield *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 204 So. 3d 14.

No. 16–7989. BROCATTO *v.* FRAUENHEIM, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–8002. PORTER *v.* ILLINOIS STATE BOARD OF EDUCATION ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 143613–U.

No. 16–8006. PHILLIPS *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 933.

No. 16–8012. LING *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–8013. MARTIN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 149 Ohio St. 3d 292, 2016-Ohio-7196, 75 N. E. 3d 109.

No. 16–8026. CROWELL *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8027. BELL *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–8029. PHILIPS *v.* NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 419.

No. 16–8032. SORBELLO *v.* HAYWOOD COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 71.

No. 16–8040. WHITNUM *v.* TOWN OF GREENWICH, CONNECTICUT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 649 Fed. Appx. 58.

No. 16–8049. RIDDLE *v.* CITIGROUP ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 640 Fed. Appx. 77.

No. 16–8057. BRIZAN, AKA BRIZEN *v.* CAPRA, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 16–8063. MILLIGAN *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 64 N. E. 3d 1269.

No. 16–8068. Morrison *v.* Swarthout, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–8076. Johnson *v.* New York. Ct. App. N. Y. Certiorari denied. Reported below: 28 N. Y. 3d 1073, 69 N. E. 3d 1027.

No. 16–8115. Tullis *v.* Barrett, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 16–8133. Kawczynski *v.* American College of Cardiology et al. C. A. 7th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 398.

No. 16–8143. Evans *v.* Mississippi. Ct. App. Miss. Certiorari denied. Reported below: 188 So. 3d 1256.

No. 16–8152. Woolf *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied.

No. 16–8174. Williams *v.* Baker, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 16–8177. Tate, aka Abdul-El Ali *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 645.

No. 16–8187. Pennington *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 428.

No. 16–8189. Lepeska *v.* Connecticut. App. Ct. Conn. Certiorari denied. Reported below: 169 Conn. App. 135, 149 A. 3d 213.

No. 16–8190. Jones *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 16–8191. Lee *v.* Katz, Commissioner, Connecticut Department of Children and Families, et al. C. A. 2d Cir. Certiorari denied. Reported below: 669 Fed. Appx. 57.

No. 16–8194. Caton *v.* Nebraska. C. A. 8th Cir. Certiorari denied.

No. 16–8203. Haizlip *v.* Poole, Superintendent, Scotland Correctional Institution. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 673.

No. 16–8217. TROTTER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 16–8223. MCKINNEY *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 16–8243. REYES *v.* ARTUS. C. A. 2d Cir. Certiorari denied.

No. 16–8247. WILLIAMS *v.* CAIN, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 499.

No. 16–8261. CORLEY *v.* BUSH, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 14.

No. 16–8271. GASPARD *v.* BAC HOME LOANS SERVICING, L. P. Sup. Ct. Fla. Certiorari denied.

No. 16–8284. FULLER *v.* OKUN, JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 672 Fed. Appx. 21.

No. 16–8288. FATIR *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 140 A. 3d 1142.

No. 16–8292. HENDERSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 145 A. 3d 786.

No. 16–8294. BOYD *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 187.

No. 16–8300. HOOVER *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Iredell County, N. C. Certiorari denied.

No. 16–8319. TRULL *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Cabarrus County, N. C. Certiorari denied.

No. 16–8323. CRAIG *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Catawba County, N. C. Certiorari denied.

No. 16–8325. CONRAD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 746.

No. 16–8363. GREEN *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 28.

No. 16–8365. Fox *v.* Massachusetts. App. Ct. Mass. Certiorari denied. Reported below: 90 Mass. App. 1108, 60 N. E. 3d 1196.

No. 16–8373. Heater *v.* West Virginia. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 237 W. Va. 638, 790 S. E. 2d 49.

No. 16–8403. Davis *v.* Genovese, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 869.

No. 16–8406. Bates *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 155 A. 3d 414.

No. 16–8420. Ventura-Oliver *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 647.

No. 16–8421. Toth *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 151.

No. 16–8422. Tellez-Solorzano *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 939.

No. 16–8432. Sandoval *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 898.

No. 16–8434. Dees *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 16–8435. Doctor *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 842 F. 3d 306.

No. 16–8436. Pettengill *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 16–8445. Martin *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 631.

No. 16–8452. Carlos Vasquez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 636.

No. 16–8454. Montoya *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 844 F. 3d 63.

No. 16–8460. Hedary *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 434.

No. 16–8463. Reyes *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 663 Fed. Appx. 63.

No. 16–8464. MAGEE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 834 F. 3d 30.

No. 16–8468. JOHNSON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 214 So. 3d 675.

No. 16–8471. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 788.

No. 16–8473. RILEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–8476. ASKEW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 666 Fed. Appx. 316.

No. 16–8480. NEWTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–8483. ANDERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 664 Fed. Appx. 29.

No. 16–8484. FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 649.

No. 16–8486. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 666 Fed. Appx. 847.

No. 16–8509. POKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–8524. BURNS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 337.

No. 16–8530. AGUIRRE-RAMIREZ, AKA VALDIVIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 667.

No. 16–8550. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–515. SALAZAR-LIMON *v.* CITY OF HOUSTON, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 3d 272.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring.

Every year the courts of appeals decide hundreds of cases in which they must determine whether thin evidence provided by a

plaintiff is just enough to survive a motion for summary judgment or not quite enough. This is one such case. Officer Thompson stated in a deposition that he shot Salazar-Limon because he saw him turn toward him and reach for his waist in a movement consistent with reaching for a gun. Record, Doc. 39–2, pp. 29–30, 33. Remarkably, Salazar-Limon did not state in his deposition or in an affidavit that he did not reach for his waist, and on that ground the Court of Appeals held that respondents were entitled to summary judgment. 826 F. 3d 272, 278–279 (CA5 2016).

The dissent disagrees with that judgment. The dissent acknowledges that summary judgment would be proper if the record compelled the conclusion that Salazar-Limon reached for his waist, but the dissent believes that, if the case had gone to trial, a jury could have reasonably inferred that Salazar-Limon did not reach for his waist—even if Salazar-Limon never testified to that fact. The dissent's conclusion is surely debatable. But in any event, this Court does not typically grant a petition for a writ of certiorari to review a factual question of this sort, see this Court's Rule 10, and I therefore concur in the denial of review here.

I write to put our disposition of this petition in perspective. First, whether or not one agrees with the grant of summary judgment in favor of Officer Thompson, it is clear that the lower courts acted responsibly and attempted faithfully to apply the correct legal rule to what is at best a marginal set of facts.

Second, this Court applies uniform standards in determining whether to grant review in cases involving allegations that a law enforcement officer engaged in unconstitutional conduct. We may grant review if the lower court conspicuously failed to apply a governing legal rule. See this Court's Rule 10. The dissent cites five such cases in which we granted relief for law enforcement officers, and in all but one of those cases there was no published dissent. *White* v. *Pauly*, 580 U. S. 73 (2017) (*per curiam*); *Mullenix* v. *Luna*, 577 U. S. 7 (2015) (*per curiam*); *Taylor* v. *Barkes*, 575 U. S. 822 (2015) (*per curiam*); *Carroll* v. *Carman*, 574 U. S. 13 (2014) (*per curiam*); *Stanton* v. *Sims*, 571 U. S. 3 (2013) (*per curiam*). The dissent has not identified a single case in which we failed to grant a similar petition filed by an alleged victim of unconstitutional police conduct.

As noted, regardless of whether the petitioner is an officer or an alleged victim of police misconduct, we rarely grant review where the thrust of the claim is that a lower court simply erred

in applying a settled rule of law to the facts of a particular case. See this Court's Rule 10. The case before us falls squarely in that category.

This is undeniably a tragic case, but as the dissent notes, *post*, at 954 (opinion of SOTOMAYOR, J.), we have no way of determining what actually happened in Houston on the night when Salazar-Limon was shot. All that the lower courts and this Court can do is apply the governing rules in a neutral fashion.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

Just after midnight on October 29, 2010, a Houston police officer shot petitioner Ricardo Salazar-Limon in the back. Salazar-Limon claims the officer shot him as he tried to walk away from a confrontation with the officer on an overpass. The officer, by contrast, claims that Salazar-Limon turned toward him and reached for his waistband—as if for a gun—before the officer fired a shot. The question whether the officer used excessive force in shooting Salazar-Limon thus turns in large part on which man is telling the truth. Our legal system entrusts this decision to a jury sitting as finder of fact, not a judge reviewing a paper record.

The courts below thought otherwise. The District Court credited the officer's version of events and granted summary judgment to respondents—the officer and the city. 97 F. Supp. 3d 898 (SD Tex. 2015). The Fifth Circuit affirmed. 826 F. 3d 272 (2016). But summary judgment is appropriate only where "there is no genuine dispute as to any material fact." Fed. Rule Civ. Proc. 56(a). The courts below failed to heed that mandate. Three Terms ago, we summarily reversed the Fifth Circuit in a case "reflect[ing] a clear misapprehension of summary judgment standards." *Tolan* v. *Cotton*, 572 U. S. 650, 659 (2014) (*per curiam*). This case reflects the same fundamental error. I respectfully dissent from the Court's failure to grant certiorari and reverse.

I

The encounter at issue here occurred around midnight on October 29, 2010, on the outskirts of Houston, Texas. Salazar-Limon, who had been drinking, was driving with three other men down Houston's Southwest Freeway. Houston Police Department Offi-

cer Chris Thompson was manning a speed gun on the freeway that night and spotted Salazar-Limon's truck weaving between lanes. He turned on his lights and sirens, and Salazar-Limon pulled over and stopped on the shoulder of an overpass. Thompson walked over to the window of Salazar-Limon's truck and asked for his driver's license and proof of insurance, which Salazar-Limon provided. Thompson checked Salazar-Limon's license and found no outstanding warrants.

When Thompson returned to the truck, the incident quickly escalated. Thompson asked Salazar-Limon to step out of the truck—apparently intending to conduct a blood alcohol test—and the two men began to walk together toward Thompson's patrol car. Although the men dispute the details of what happened next, they agree that Thompson tried to put Salazar-Limon in handcuffs; that Salazar-Limon resisted; and that a brief struggle ensued. At the end of the struggle, Salazar-Limon turned away and began to walk back to his truck, his back to Thompson. Thompson drew his firearm and told Salazar-Limon to stop walking.

What matters is what happened next, and here the men tell different stories. According to Salazar-Limon, Thompson shot him "immediately"—at most, within "seconds" of the oral command. Record, Doc. 39–1, p. 8. Salazar-Limon testified that when the bullet hit his back, he began to turn toward Thompson and then fell to the ground. *Ibid.* Thompson's version of the story differs. According to Thompson, when he told Salazar-Limon to stop walking, Salazar-Limon raised his hands toward his waistband—as if for a weapon—and turned toward him. *Id.*, Doc. 39–2, at 29. Thompson testified that he shot Salazar-Limon only "[o]nce he made the motion towards his waistband." *Ibid.* Salazar-Limon, in other words, claims that Thompson shot him in the back while he was walking away. Thompson claims that Salazar-Limon provoked the shot by turning toward him and reaching for what he thought was a gun.

Salazar-Limon survived the encounter but sustained crippling injuries. In 2011, he sued Thompson, the city of Houston, and various police officials, alleging violations of his constitutional rights. Respondents removed the case to federal court and moved for summary judgment, arguing that Thompson was pro-

tected by qualified immunity.[1] Respondents emphasized that, in their view, even viewed in the light most favorable to Salazar-Limon, the facts did not support an excessive-force claim:

> "Thompson was dealing with a suspect who physically resisted arres[t] while the two stood on a dimly lit overpass of a busy expressway; he was alone with Salazar-Limon and [three] other suspects, all of whom he had not searched; Salazar-Limon disobeyed Thompson's orders to stop and proceeded to walk in the direction of his truck[,] which had not been searched either." *Id.*, Doc. 31, at 20.

Respondents did not cite Thompson's allegation that Salazar-Limon had turned and reached for his waistband, at least not in any part of their motion that relied only on undisputed facts; rather, they relied on the facts *preceding* the alleged turn and reach to argue that Thompson acted reasonably under the circumstances. See *id.*, at 13–14 (statement of undisputed facts).

The District Court granted summary judgment to respondents, but on a different understanding of the alleged facts. In the District Court's view, "Thompson testified that Salazar[-Limon] stopped walking and start[ed] turning back toward Thompson, reaching toward his waistband," and Salazar-Limon "offered no controverting evidence." 97 F. Supp. 3d, at 906. As a result, the District Court found, "uncontroverted record evidence" showed that Salazar-Limon "disregarded repeated orders, walked away, then turned back toward Thom[p]son and reached for his waistband before Thompson fired." *Ibid.*; see also *ibid.* ("The undisputed summary judgment evidence showe[d] that . . . as [Salazar-Limon] walked away from Officer Thompson toward his own truck, he reached toward his waistband and began to turn back toward the officer"); *id.*, at 907 ("[T]he record shows that when Thompson saw Salazar[-Limon] turn toward him, he was reaching toward his waistband"); *id.*, at 909 ("Salazar[-Limon] has pointed to no summary judgment evidence contradicting Thompson's testimony that he shot because . . . Salazar[-Limon] reached for his waistband and turned toward him"). On this view of the

[1] The city also argued that Salazar-Limon had failed to plead a claim for supervisory liability against it under *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658 (1978). The District Court granted summary judgment to the city, and although Salazar-Limon argued on appeal that it erred in doing so, he does not renew that contention here.

facts, the District Court held, Thompson was entitled to qualified immunity. *Ibid.*

The Fifth Circuit affirmed. 826 F. 3d 272. It acknowledged Salazar-Limon's argument that the District Court erred in relying on disputed facts, including its findings that Salazar-Limon had turned and reached for his waistband before he was shot. *Id.*, at 278. But it explained that "only one [of these findings] need be addressed—whether Salazar[-Limon] reached for his waistband before being shot." *Ibid.* "[R]ecord evidence," the panel stated, "shows that Officer Thompson testified that . . . he saw Salazar[-Limon] reach for his waistband." *Ibid.* By contrast, it explained, Salazar-Limon "did not deny reaching for his waistband; nor has he submitted any other controverting evidence in this regard." *Id.*, at 278–279 (footnote omitted). To support its assertion, the panel cited only the District Court's finding that "'uncontroverted record evidence shows that Salazar[-Limon] . . . reached for his waistband before Thompson fired.'" *Id.*, at 278, n. 5 (quoting 97 F. Supp. 3d, at 906). Thus adopting the same view of the facts as the District Court had, the panel held that Thompson was shielded by qualified immunity.

II

This is not a case that should have been resolved on summary judgment. Summary judgment is appropriate only where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. Rule Civ. Proc. 56(a). A "judge's function" in evaluating a motion for summary judgment is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson* v. *Liberty Lobby, Inc.*, 477 U. S. 242, 249 (1986); see also *First Nat. Bank of Ariz.* v. *Cities Service Co.*, 391 U. S. 253, 289 (1968) (the question at summary judgment is whether a jury should "resolve the parties' differing versions of the truth at trial"). In doing so, the court must "view the facts and draw reasonable inferences 'in the light most favorable to the party opposing the . . . motion.'" *Scott* v. *Harris*, 550 U. S. 372, 378 (2007) (quoting *United States* v. *Diebold, Inc.*, 369 U. S. 654, 655 (1962) (*per curiam*)).

Applying that rule to this case is easy work. The question before the lower courts was whether the facts, taken in the light most favorable to Salazar-Limon, entitled Thompson to judgment

on Salazar-Limon's excessive-force claim. *Saucier* v. *Katz*, 533 U. S. 194, 201 (2001); *Graham* v. *Connor*, 490 U. S. 386, 394 (1989). Although such cases generally require courts to wade through the "factbound morass of 'reasonableness,'" *Scott*, 550 U. S., at 383, here the question whether Thompson's use of force was reasonable turns in large part on exactly what Salazar-Limon did in the moments before Thompson shot him. Indeed, the courts below needed to ask only one question: Did Salazar-Limon turn and reach for his waistband, or not? If he did, Thompson's use of force was reasonable. If he did not, a jury could justifiably decide that the use of force was excessive.

Given that this case turns in large part on what Salazar-Limon did just before he was shot, it should be obvious that the parties' competing accounts of the event preclude the entry of summary judgment for Thompson. Thompson attested in a deposition that he fired his gun only *after* he saw Salazar-Limon turn and "ma[k]e [a] motion towards his waistband area." Record, Doc. 39–2, at 29. Salazar-Limon, by contrast, attested that Thompson fired either "immediately" or "seconds" after telling Salazar-Limon to stop—and in any case *before* Salazar-Limon turned toward him. *Id.*, Doc. 39–1, at 7–8. These accounts flatly contradict each other. On the one, Salazar-Limon provoked the use of force by turning and raising his hands toward his waistband. On the other, Thompson shot without being provoked. It is not for a judge to resolve these "differing versions of the truth" on summary judgment, *First Nat. Bank*, 391 U. S., at 289; that question is for a jury to decide at trial.

The courts below reached the opposite conclusion only by disregarding basic principles of summary judgment. The District Court reasoned that Salazar-Limon "offered no controverting evidence" against Thompson's testimony that he turned and reached for his waistband before he was shot, 97 F. Supp. 3d, at 906, and the Fifth Circuit similarly reasoned that Salazar-Limon had not "submitted any other controverting evidence" regarding that fact, 826 F. 3d, at 279. This is plainly wrong. Salazar-Limon's own testimony "controverted" Thompson's claim that Salazar-Limon had turned and reached for his waistband. The sworn testimony of an eyewitness is competent summary judgment evidence. And Salazar-Limon's testimony "controverted" Thompson's; indeed, the two contradict one another in every material way. Salazar-Limon needed no other evidence to defeat summary judgment.

Respondents defend the judgment below on the ground that Salazar-Limon "had the opportunity to directly contradict Officer Thompson's testimony," but did not do so. Brief in Opposition 16. JUSTICE ALITO advances the same argument. *Ante*, at 947 (concurring opinion). They argue that Salazar-Limon never explicitly stated, "I did not reach for my waistband," and that his failure to do so permitted the courts below to grant summary judgment to Thompson. But this inference is questionable at best: Salazar-Limon had no need to introduce such an explicit statement, given respondents' concession that the events immediately preceding the gunshot (including the alleged waistband reach) were subject to dispute. See Record, Doc. 31, at 13–14. And even if the inference respondents suggest was a reasonable one, it would be improper at the summary judgment stage. At that stage, all "reasonable inferences should be drawn in favor of the nonmoving party"—here, Salazar-Limon. *Tolan*, 572 U. S., at 660. The most natural inference to be drawn from Salazar-Limon's testimony was that he neither turned nor reached for his waistband before he was shot—especially as no gun was ever recovered. See *Cruz* v. *Anaheim*, 765 F. 3d 1076, 1079 (CA9 2014) ("In this case, there's circumstantial evidence that could give a reasonable jury pause. Most obvious is the fact that [the victim] didn't have a gun on him, so why would he have reached for his waistband?").[2] Respondents' argument to the contrary "reflects a clear misapprehension of summary judgment standards." *Tolan*, 572 U. S., at 659.

This is not a difficult case. When a police officer claims that the victim of the use of force took some act that would have justified that force, and the victim claims he did not, summary

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[2] Some commentators have observed the increasing frequency of incidents in which unarmed men allegedly reach for empty waistbands when facing armed officers. See Faturechi, Deputies' Shooting of Unarmed Suspects Rise, L. A. Times, Sept. 23, 2011, pp. AA1, AA7 (reporting that nearly half of the individuals shot by Los Angeles police after allegedly reaching for their waistbands turned out to be unarmed); Balko, When Unarmed Men Reach for Their Waistbands, Washington Post, Aug. 29, 2014, https://www.washingtonpost.com/news/the-watch/wp/2014/08/29/when-unarmed-men-reach-for-their-waistbands/ (as last visited Apr. 11, 2017) (collecting cases). That these cases are increasingly common makes it even more important for lower courts—confronted with such inconsistencies—to let the jury exercise its role as the arbiter of credibility disputes.

judgment is improper. The Fifth Circuit's decision should be reversed.

* * *

Only Thompson and Salazar-Limon know what happened on that overpass on October 29, 2010. It is possible that Salazar-Limon did something that Thompson reasonably found threatening; it is also possible that Thompson shot an unarmed man in the back without justification. What is clear is that our legal system does not entrust the resolution of this dispute to a judge faced with competing affidavits. The evenhanded administration of justice does not permit such a shortcut.

Our failure to correct the error made by the courts below leaves in place a judgment that accepts the word of one party over the word of another. It also continues a disturbing trend regarding the use of this Court's resources. We have not hesitated to summarily reverse courts for wrongly denying officers the protection of qualified immunity in cases involving the use of force. See, *e. g.*, *White* v. *Pauly*, 580 U. S. 73 (2017) (*per curiam*); *Mullenix* v. *Luna*, 577 U. S. 7 (2015) (*per curiam*); *Taylor* v. *Barkes*, 575 U. S. 822 (2015) (*per curiam*); *Carroll* v. *Carman*, 574 U. S. 13 (2014) (*per curiam*); *Stanton* v. *Sims*, 571 U. S. 3 (2013) (*per curiam*). But we rarely intervene where courts wrongly afford officers the benefit of qualified immunity in these same cases. The erroneous grant of summary judgment in qualified-immunity cases imposes no less harm on "'society as a whole,'" *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, 611, n. 3 (2015) (quoting *Harlow* v. *Fitzgerald*, 457 U. S. 800, 814 (1982)), than does the erroneous denial of summary judgment in such cases. We took one step toward addressing this asymmetry in *Tolan*. 572 U. S., at 660. We take one step back today.

I respectfully dissent.

No. 16–1000. Filson, Warden, et al. *v.* Tarango. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 837 F. 3d 936.

No. 16–8071. Smith *v.* Ryan, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 3d 1270.

Statement of JUSTICE BREYER respecting the denial of certiorari.

The petitioner, Joe Clarence Smith, was sentenced to death nearly 40 years ago. Primarily because of constitutional defects in his sentencing, his execution has been long delayed. He has spent the last 40 years in prison under threat of execution. And for most of that time Smith has been held in solitary confinement. Pet. for Cert. 9.

Members of this Court have recognized that "[y]ears on end of near-total isolation exact a terrible price." *Davis* v. *Ayala*, 576 U. S. 257, 289 (2015) (KENNEDY, J., concurring). Long ago we observed that solitary confinement was "considered as an additional punishment of such a severe kind that it is spoken of . . . as 'a further terror and peculiar mark of infamy.'" *In re Medley*, 134 U. S. 160, 170 (1890). And, as I have previously pointed out, we have written that the uncertainty a person experiences during just four weeks of confinement under threat of execution is "one of the most horrible feelings to which [a person] can be subjected." *Id.*, at 172.

What legitimate purpose does it serve to hold any human being in solitary confinement for 40 years awaiting execution? What does this case tell us about a capital punishment system that, in my view, works in random, virtually arbitrary ways? I have previously explored these matters more systematically, coming to the conclusion that this Court should hear argument as to whether capital punishment as currently practiced is consistent with the Constitution's prohibition of "cruel and unusual punishments." Amdt. 8. See *Glossip* v. *Gross*, 576 U. S. 863, 908–909, 946 (2015) (BREYER, J., dissenting). The facts and circumstances of Smith's case reinforce that conclusion.

I recognize the procedural obstacles that make it difficult for this Court now to grant certiorari in this particular case. See 28 U. S. C. § 2254. Those problems would not have prevented the Court from granting certiorari 10 years ago when Smith asked us to do so (after spending 30 years on death row). See *Smith* v. *Arizona*, 552 U. S. 985 (2007) (BREYER, J., dissenting from denial of certiorari). Regardless, Smith's confinement reinforces the need for this Court, or other courts, to consider in an appropriate case the underlying constitutional question.

No. 16–8814 (16A1027). JONES *v.* ARKANSAS. Sup. Ct. Ark. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied.

No. 16–8815 (16A1029). WILLIAMS *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied. Reported below: 854 F. 3d 998.

JUSTICE SOTOMAYOR, dissenting from denial of application for stay and denial of certiorari.

I dissent for the reasons set out in *McGehee* v. *Hutchinson*, *ante*, p. 935 (SOTOMAYOR, J., dissenting).

No. 16–8816 (16A1030). WILLIAMS *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied. Reported below: 854 F. 3d 1002.

Rehearing Denied

No. 16–714. TAVARES *v.* BRICKELL COMMERCE PLAZA, INC., ET AL., 580 U. S. 1116;

No. 16–797. TERRY ET AL. *v.* NEWELL ET AL., 580 U. S. 1160;

No. 16–815. MUHAMMAD *v.* MUHAMMAD ET AL., 580 U. S. 1160;

No. 16–816. HAMILTON *v.* MURRAY ET AL., 580 U. S. 1172;

No. 16–960. WU ET UX. *v.* UNITED STATES, 580 U. S. 1173;

No. 16–6224. VENNES *v.* UNITED STATES, 580 U. S. 1161;

No. 16–7063. JONES *v.* MCFADDEN, WARDEN, 580 U. S. 1124;

No. 16–7122. SMITH *v.* HOWERTON, WARDEN, 580 U. S. 1126;

No. 16–7190. IN RE WIDEMAN, 580 U. S. 1113;

No. 16–7224. RITZ *v.* FLORIDA, 580 U. S. 1129;

No. 16–7245. DUBERRY *v.* BRENNAN, POSTMASTER GENERAL, 580 U. S. 1130;

No. 16–7377. SCHREIBER *v.* LUDWICK, WARDEN, 580 U. S. 1135;

No. 16–7383. WHITE *v.* UNITED STATES, 580 U. S. 1135;

No. 16–7402. SHEPARD *v.* MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES, 580 U. S. 1174;

No. 16–7463. HEATH *v.* JONES ET AL., 580 U. S. 1164;
No. 16–7595. DEAN *v.* UNITED STATES, 580 U. S. 1140; and
No. 16–7607. MITCHELL *v.* UNITED STATES, 580 U. S. 1164. Petitions for rehearing denied.

No. 16–602. ARTHUR *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL., 580 U. S. 1141; and
No. 16–6496. JOHNSON ET AL. *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL., 580 U. S. 1155. Petitions for rehearing denied. JUSTICE SOTOMAYOR would grant the petitions for rehearing.

No. 16–6961. GORBEY *v.* UNITED STATES, 580 U. S. 1084. Petition for rehearing denied. THE CHIEF JUSTICE and JUSTICE KAGAN took no part in the consideration or decision of this petition.*

APRIL 27, 2017

Miscellaneous Order†

No. 16–8922 (16A1044). IN RE WILLIAMS. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 16–8921 (16A1043). WILLIAMS *v.* ARKANSAS. Sup. Ct. Ark. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied.

No. 16–8923 (16A1045). WILLIAMS *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied. Reported below: 858 F. 3d 464.

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*See also note, *supra*, p. 936.

†For the Court's orders prescribing an amendment to the Federal Rules of Appellate Procedure, see *post*, p. 1031; amendments to the Federal Rules of Bankruptcy Procedure, see *post*, p. 1037; an amendment to the Federal Rules of Civil Procedure, see *post*, p. 1051; and amendments to the Federal Rules of Evidence, see *post*, p. 1057.

MAY 1, 2017

Certiorari Granted—Vacated and Remanded

No. 16–7685. CARROLL *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 *Moore* v. *Texas*, *ante*, p. 1. Reported below: 215 So. 3d 1135.

Certiorari Dismissed

No. 16–8441. JACKMAN *v.* HOLLINGSWORTH, WARDEN. 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. JUSTICE ALITO took no part in the consideration or decision of this motion and this petition.

No. 16–8475. CAPOZZI *v.* UNITED STATES. C. A. 1st 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. 16M122. SAID *v.* COHEN ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 16–7564. KASTNER *v.* CARDOZO ET AL. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [580 U. S. 1195] denied.

No. 16–8663. IN RE MONTE. Petition for writ of habeas corpus denied.

No. 16–8369. IN RE SANDLAIN. Petition for writ of mandamus denied.

No. 16–8508. IN RE KOH. 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.

Certiorari Granted

No. 16–784. MERIT MANAGEMENT GROUP, LP *v.* FTI CONSULTING, INC. C. A. 7th Cir. Certiorari granted. Reported below: 830 F. 3d 690.

No. 16–498. PATCHAK *v.* ZINKE, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Motion of Federal Courts Scholars for leave to file brief as *amici curiae* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 828 F. 3d 995.

Certiorari Denied

No. 15–1486. TUNICA-BILOXI GAMING AUTHORITY ET AL. *v.* ZAUNBRECHER ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 2015–769 (La. App. 3 Cir. 12/9/15), 181 So. 3d 885.

No. 16–596. ALASKA ET AL. *v.* ZINKE, SECRETARY OF THE INTERIOR, ET AL.; and

No. 16–610. ALASKA OIL AND GAS ASSN. ET AL. *v.* ZINKE, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 3d 544.

No. 16–703. STUART *v.* WALKER. Ct. App. D. C. Certiorari denied. Reported below: 143 A. 3d 761.

No. 16–813. RESNICK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 823 F. 3d 888.

No. 16–843. PAOLINO ET UX. *v.* JF REALTY, LLC, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 830 F. 3d 8.

No. 16–845. WELCH ET AL. *v.* BROWN, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 834 F. 3d 1041.

No. 16–846. POMPONIO *v.* BLACK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 835 F. 3d 358.

No. 16–1028. SMITH *v.* LOS ANGELES COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 262.

No. 16–1030. BENT *v.* BENT. C. A. 9th Cir. Certiorari denied.

No. 16–1037. MILLER ET AL. *v.* FORD. C. A. 3d Cir. Certiorari denied.

No. 16–1039. STENMAN ET AL. *v.* DETROIT EDISON CO. Ct. App. Mich. Certiorari denied. Reported below: 311 Mich. App. 367, 875 N. W. 2d 767.

No. 16–1040. CITY OF ANAHEIM, CALIFORNIA, ET AL. *v.* ESTATE OF DIAZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 840 F. 3d 592.

No. 16–1042. HERNANDEZ *v.* AVERA QUEEN OF PEACE HOSPITAL ET AL. Sup. Ct. S. D. Certiorari denied. Reported below: 2016 S.D. 68, 886 N. W. 2d 338.

No. 16–1064. WESTERN RADIO SERVICES CO., INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 677.

No. 16–1076. PHYSICIANS FOR INTEGRITY IN MEDICAL RESEARCH, INC. *v.* HAMBURG, COMMISSIONER, FOOD AND DRUG ADMINISTRATION. C. A. 9th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 450.

No. 16–1091. HILL *v.* SUWANNEE RIVER WATER MANAGEMENT DISTRICT. C. A. 11th Cir. Certiorari denied.

No. 16–1121. RANA *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 664 Fed. Appx. 943.

No. 16–1132. ENGLAND ECONOMIC AND INDUSTRIAL DEVELOPMENT DISTRICT *v.* JACKSON. Ct. App. La., 3d Cir. Certiorari denied.

No. 16–1166. BANSAL, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF BANSAL, DECEASED, ET AL. *v.* UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 502 S. W. 3d 347.

No. 16–6476. TELUSME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 743.

No. 16–6525. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 738.

No. 16–6780. RUSSELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 894.

No. 16–6845. ADAMS *v.* MERIT SYSTEMS PROTECTION BOARD ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 651 Fed. Appx. 993.

No. 16–6931. Faulkner *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 826 F. 3d 1139.

No. 16–7145. Cox *v.* Jones, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 837 F. 3d 1114.

No. 16–7425. Greene *v.* Kelley, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 16–7856. Montgomery *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 148 Ohio St. 3d 347, 2016-Ohio-5487, 71 N. E. 3d 180.

No. 16–8045. Austin et al. *v.* PS 157 Lofts, LLC. Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 3d 1054, 53 N. E. 3d 753.

No. 16–8065. Dingle *v.* Stevenson, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 840 F. 3d 171.

No. 16–8073. Rowley *v.* California. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 16–8080. Bynum *v.* Florida Gas Transmission Co., LLC. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 202 So. 3d 408.

No. 16–8084. Jones *v.* Filson, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 16–8085. Johnson *v.* Clarke, Director, Virginia Department of Corrections. Sup. Ct. Va. Certiorari denied.

No. 16–8090. Villaverde *v.* Smith, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 16–8092. Winston *v.* Maryland Department of Human Resources et al. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 88.

No. 16–8093. Salgado *v.* Davey, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–8098. Jackson *v.* Rivard, Warden. C. A. 6th Cir. Certiorari denied.

No. 16–8099. Brinson *v.* Dozier, Commissioner, Georgia Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 16–8100. Anderson *v.* Kimbrell et al. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 223.

No. 16–8101. Anthony *v.* Borders, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–8103. Damani *v.* Simer SP, Inc., et al. C. A. 7th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 897.

No. 16–8110. Monte *v.* Mingo, Warden, et al. Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 3d 1079, 54 N. E. 3d 1173.

No. 16–8112. Bower *v.* Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 16–8113. Ackerman *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 133 App. Div. 3d 1196, 20 N. Y. S. 3d 258.

No. 16–8124. Powell *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 1019.

No. 16–8127. Mayes *v.* Addington. Ct. App. Ore. Certiorari denied. Reported below: 278 Ore. App. 625, 379 P. 3d 870.

No. 16–8129. Pearson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 896.

No. 16–8130. Hai Kim Nguyen *v.* Hoffman, Attorney General of New Jersey, et al. C. A. 3d Cir. Certiorari denied. Reported below: 832 F. 3d 455.

No. 16–8131. Pentecost *v.* South Dakota. Sup. Ct. S. D. Certiorari denied. Reported below: 2016 S.D. 84, 887 N. W. 2d 877.

No. 16–8134. Moorefield *v.* Pennsylvania et al. C. A. 3d Cir. Certiorari denied.

No. 16–8137. Hess *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 229 So. 3d 331.

No. 16–8169. COLLIER *v.* GRIFFIN, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 16–8208. HERBST *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 671 Fed. Appx. 795.

No. 16–8218. VANCE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–8221. ANDREWS *v.* CASSADY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–8233. MERCHANT *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 16–8238. MCCOY *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 21.

No. 16–8257. PANOWICZ *v.* HANCOCK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 83.

No. 16–8260. P. P. D. *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–8282. BELCHER *v.* HATCHER, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 16–8296. LOMELI *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2016 IL App (3d) 130817–U.

No. 16–8298. DAVIS *v.* CORRECTIONS CORPORATION OF AMERICA ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–8308. PETERSEN *v.* FRINK ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–8311. CABEZA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–8324. COOK *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 295 Neb. xix.

No. 16–8328. JARNIGAN *v.* GROSS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8371. HADDIX *v.* MEKO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8378. THOMAS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–8397. MITCHELL *v.* NEW YORK UNIVERSITY ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 28 N. Y. 3d 1046, 65 N. E. 3d 1280.

No. 16–8408. COPPOLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–8411. DILLINGHAM *v.* JENKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8442. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 349.

No. 16–8443. MYERS *v.* O'BRIEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 195.

No. 16–8456. VERNON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8466. CHAVEZ *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 16–8478. CASTRO-MOLINA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–8489. GRANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 304.

No. 16–8490. HOLMES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 143 A. 3d 60.

No. 16–8493. KEMP, AKA OAKLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 673 Fed. Appx. 336.

No. 16–8498. MCKOY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 666 Fed. Appx. 224.

No. 16–8500. NELSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–8501. HAMDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 1004.

No. 16–8502. HOLMES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 159 A. 3d 1220.

No. 16–8503. ANTOINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–8511. READER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–8514. THOMPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 675 Fed. Appx. 221.

No. 16–8516. THIPPRACHACK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 404.

No. 16–8522. DAVIES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–8523. ARNETTE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 127 A. 3d 400.

No. 16–8527. OGUNBANKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–8532. BROXMEYER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 661 Fed. Appx. 744.

No. 16–8533. BROOKS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 229 So. 2d 322.

No. 16–8541. GORNY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 655 Fed. Appx. 920.

No. 16–8542. FUEHRER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 844 F. 3d 767.

No. 16–8543. HELTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–8544. ITURRES-BONILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 803 F. 3d 713.

No. 16–8547. STALLWORTH *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 206 So. 3d 91.

No. 16–8548. Ross *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 16–8552. Harrison *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 220.

No. 16–8558. Massey *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 16–8560. Alridge *v.* Rite Aid of Washington, D. C., Inc. C. A. D. C. Cir. Certiorari denied. Reported below: 672 Fed. Appx. 3.

No. 16–8567. Johnson *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 16–8576. Blue *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 59.

No. 16–8578. Reyes-Lara *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 666 Fed. Appx. 6.

No. 16–8582. Kachikan *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 828 F. 3d 763.

No. 16–8589. Carmichael *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 676 Fed. Appx. 402.

No. 16–8594. Sawyer et vir *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 16–8610. Heard *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 677 Fed. Appx. 636.

No. 16–8611. Gilliam *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 842 F. 3d 801.

No. 16–8623. Mallish *v.* Raemisch, Executive Director, Colorado Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 584.

No. 16–8640. Barber *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 674 Fed. Appx. 380.

No. 16–7156. Rose *v.* United States. C. A. 5th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 16–8083. LANCASTER *v.* SPRINT/UNITED MANAGEMENT CO., AKA SPRINT NEXTEL GROUP. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 670 Fed. Appx. 984.

No. 16–8510. RIVERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 665 Fed. Appx. 713.

Rehearing Denied

No. 16–665. SNYDER *v.* GROUNDS, WARDEN, 580 U. S. 1099;

No. 16–5004. GARRETT *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 580 U. S. 875;

No. 16–6210. COLEY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, 580 U. S. 991;

No. 16–6250. PEREZ *v.* FLORIDA, 580 U. S. 1187;

No. 16–7099. KISSNER *v.* HARRY, WARDEN, 580 U. S. 1125;

No. 16–7236. RANDALL *v.* ALLBAUGH, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, 580 U. S. 1129;

No. 16–7272. BACCUS *v.* STIRLING ET AL., 580 U. S. 1131;

No. 16–7284. JAIME *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 580 U. S. 1131;

No. 16–7295. GRANDBERRY *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 580 U. S. 1132;

No. 16–7342. LABLANCHE *v.* IOVATE HEALTH SCIENCES USA, INC., ET AL., 580 U. S. 1162;

No. 16–7398. WARREN *v.* SHARTLE, WARDEN, 580 U. S. 1135;

No. 16–7451. HILL *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL., 580 U. S. 1175;

No. 16–7680. SIRLEAF *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, 580 U. S. 1220; and

No. 16–7858. SIRLEAF *v.* ROBINSON ET AL., 580 U. S. 1212. Petitions for rehearing denied.

No. 15–9907. CAMPBELL *v.* ILLINOIS, 580 U. S. 1030. Motion for leave to file petition for rehearing denied.

May 4, 2017

Dismissal Under Rule 46

No. 16–8595. In re Roy. Petition for writ of mandamus dismissed under this Court's Rule 46.

May 8, 2017

Dismissals Under Rule 46

No. 16–1138. Medtronic, Inc. *v.* Lee, Director, United States Patent and Trademark Office. C. A. Fed. Cir. Certiorari before judgment dismissed under this Court's Rule 46.

No. 16–1139. Medtronic, Inc. *v.* Robert Bosch Healthcare Systems, Inc. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 839 F. 3d 1382.

May 15, 2017

Certiorari Granted—Vacated and Remanded

No. 16–1054. S. D., a Minor, by His Parents and Natural Guardians, A. D. et al., et al. *v.* Haddon Heights Board of Education. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Fry* v. *Napoleon Community Schools*, 580 U. S. 154 (2017). Reported below: 833 F. 3d 389.

Certiorari Dismissed

No. 16–8138. Phillips *v.* City of Dallas, Texas, et al. 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. Reported below: 644 Fed. Appx. 368.

No. 16–8184. Knox *v.* Oklahoma Pardon and Parole Board et al. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Justice Gorsuch took no part in the consideration or decision of this motion and this petition.

No. 16–8220. Johnson *v.* Rite Aid Corp. 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. 16–8279. PHILLIPS *v.* DALLAS COUNTY COMMUNITY COLLEGE DISTRICT ET AL. 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. Reported below: 669 Fed. Appx. 249.

No. 16–8320. WILSON *v.* ARPAIO, WARDEN. 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. 16–8337. AJAMIAN *v.* NIMEH 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. 16–8353. AJAMIAN *v.* ZAKURIAN 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. 16–8358. AZEEZ *v.* WEST VIRGINIA. 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: 668 Fed. Appx. 492.

No. 16–8630. NIBLOCK *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. 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*). JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 669 Fed. Appx. 659.

No. 16–8636. TELFAIR *v.* SESSIONS, ATTORNEY GENERAL, ET AL. 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. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. 16A888. TRIVEDI *v.* DEPARTMENT OF HOMELAND SECURITY ET AL. Application for injunction, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D–2969. IN RE DISCIPLINE OF CORBETT. William P. Corbett, Jr., of Syracuse, 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–2970. IN RE DISCIPLINE OF CONWAY. Darrell J. Conway, of Babylon, 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–2971. IN RE DISCIPLINE OF SULLIVAN. Christopher Patrick Sullivan, 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. D–2972. IN RE DISCIPLINE OF STUART. Pamela Bruce Stuart, of Washington, D. C., 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–2973. IN RE DISCIPLINE OF ROBBINS. James A. Robbins, 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–2974. IN RE DISCIPLINE OF SAMPSON. John L. Sampson, of Brooklyn, 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–2975. IN RE DISCIPLINE OF KLEIN. Eric A. Klein, of Harrington Park, N. J., 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–2976. IN RE DISCIPLINE OF REID. Trevor A. Reid, of Bronx, 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. 16M123. BAILEY *v.* LANDEROS 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. 16M124. JACKSON *v.* VALENZUELA, WARDEN. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 16M125. LANGAN *v.* DOWNIE ET AL. Motion for leave to file petition for writ of certiorari under seal denied.

No. 16M126. BUTTS *v.* PRINCE WILLIAM COUNTY SCHOOL BOARD. Motion for leave to proceed as a veteran granted.

No. 16–970. RINEHART *v.* CALIFORNIA. Sup. Ct. Cal.; and

No. 16–1043. CLARK *v.* VIRGINIA DEPARTMENT OF STATE POLICE. Sup. Ct. Va. The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 16–7509. CARUSO *v.* ZUGIBE ET AL. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [580 U. S. 1195] denied.

No. 16–7627. SHOVE *v.* DAVIS, WARDEN. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [580 U. S. 1214] denied.

No. 16–8291. HEDMAN ET AL. *v.* NATIONSTAR MORTGAGE, LLC, ET AL. Ct. App. Cal., 3d App. Dist. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until June 5, 2017, 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. 16–8761. IN RE CULLINS;

No. 16–8772. IN RE WITTINGHAM; and

No. 16–8796. IN RE BOOKER-EL. Petitions for writs of habeas corpus denied.

No. 16–8250. IN RE WELCH. Petition for writ of mandamus denied.

No. 16–8210. In re George. Petition for writ of mandamus and/or prohibition denied.

No. 16–8181. In re Beverly. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition dismissed. See this Court's Rule 39.8. Justice Kagan took no part in the consideration or decision of this motion and this petition.

Certiorari Denied

No. 15–698. Helmerich & Payne International Drilling Co. et al. *v.* Bolivarian Republic of Venezuela et al. C. A. D. C. Cir. Certiorari denied. Reported below: 784 F. 3d 804.

No. 16–652. Democratic Party of Hawaii *v.* Nago, Chief Election Officer of the State of Hawaii; and

No. 16–806. Ravalli County Republican Central Committee et al. *v.* Stapleton, Montana Secretary of State, et al. C. A. 9th Cir. Certiorari denied. Reported below: No. 16–652 833 F. 3d 1119.

No. 16–678. Tingman *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 642 Fed. Appx. 12.

No. 16–903. Hillmann *v.* City of Chicago, Illinois. C. A. 7th Cir. Certiorari denied. Reported below: 834 F. 3d 787.

No. 16–911. City of San Gabriel, California *v.* Flores et al. C. A. 9th Cir. Certiorari denied. Reported below: 824 F. 3d 890.

No. 16–940. C. R. *v.* Eugene School District 4J. C. A. 9th Cir. Certiorari denied. Reported below: 835 F. 3d 1142.

No. 16–947. Kennedy *v.* Equity Transportation Co., Inc. C. A. 2d Cir. Certiorari denied. Reported below: 663 Fed. Appx. 38.

No. 16–976. Nami *v.* Union Pacific Railroad Co. Sup. Ct. Tex. Certiorari denied. Reported below: 498 S. W. 3d 890.

No. 16–1012. Silva *v.* Connecticut. App. Ct. Conn. Certiorari denied. Reported below: 166 Conn. App. 255, 141 A. 3d 916.

No. 16–1034. LIBERTARIAN PARTY OF KENTUCKY ET AL. *v.* GRIMES, KENTUCKY SECRETARY OF STATE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 835 F. 3d 570.

No. 16–1038. COBHAM *v.* LECANN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 171.

No. 16–1050. HAMMOCK *v.* NASA HEADQUARTERS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 326.

No. 16–1052. JOHNSON *v.* UMG RECORDINGS, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 478.

No. 16–1053. MULLIGAN *v.* NICHOLS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 835 F. 3d 983.

No. 16–1057. RHUMA ET AL. *v.* STATE OF LIBYA. C. A. 9th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 287.

No. 16–1058. DUGAN ET AL. *v.* CITY OF COLUMBUS, OHIO. C. A. 6th Cir. Certiorari denied.

No. 16–1061. ASSA'AD-FALTAS *v.* WEISS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 181.

No. 16–1069. SHIPP *v.* ESTATE OF KING ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 669 Fed. Appx. 15.

No. 16–1072. RAJA ET UX. *v.* MERSCORP, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 250.

No. 16–1073. CARRILLO ET AL. *v.* U. S. BANK N. A., AS TRUSTEE. Sup. Ct. Fla. Certiorari denied.

No. 16–1090. HEATH *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 16–1093. ZARATE JUAREZ ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 838 F. 3d 662.

No. 16–1096. TOM *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of Sacramento. Certiorari denied.

No. 16–1097. SHELLER, P. C. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 663 Fed. Appx. 150.

No. 16–1099. ESPINA *v.* WELLS FARGO BANK, N. A., ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 205 So. 3d 598.

No. 16–1100. HARRIS *v.* WARD GREENBERG HELLER AND REIDY LLP ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–1112. RAYMAX MANAGEMENT L. P. *v.* AMERICAN TOWER CORP. ET AL. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 16–1118. KELLY *v.* DUN & BRADSTREET, INC. C. A. 11th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 922.

No. 16–1122. BELL ET UX. *v.* DYCK-O'NEAL, INC. Ct. Sp. App. Md. Certiorari denied. Reported below: 228 Md. App. 730 and 734.

No. 16–1135. CENTRAL NEW YORK FAIR BUSINESS ASSN. ET AL. *v.* ZINKE, SECRETARY OF THE INTERIOR, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 673 Fed. Appx. 63.

No. 16–1145. LUNDEEN *v.* RHOAD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 666 Fed. Appx. 539.

No. 16–1152. JONES *v.* BAY SHORE UNION FREE SCHOOL DISTRICT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 666 Fed. Appx. 92.

No. 16–1160. HARRIS *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 16–1165. BARNES ET AL. *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 336 Ga. App. XXIII.

No. 16–1183. STURM *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 489.

No. 16–1202. SHAYONA INVESTMENT, LLC *v.* CENTURY SURETY CO. C. A. 10th Cir. Certiorari denied. Reported below: 840 F. 3d 1175.

No. 16–1203. GORNEY *v.* ARIZONA BOARD OF REGENTS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 725.

No. 16–1210. Cook *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 674 Fed. Appx. 56.

No. 16–1219. Womack *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 675 Fed. Appx. 402.

No. 16–1242. Kolbusz *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 837 F. 3d 811.

No. 16–1246. White *v.* Crystal Mover Services, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 675 Fed. Appx. 913.

No. 16–6335. Moritz *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 807.

No. 16–6532. Sanchez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 806.

No. 16–6973. Gordon *v.* Perry et al. Sup. Ct. N. C. Certiorari denied. Reported below: 368 N. C. 770, 781 S. E. 2d 801.

No. 16–7115. Joy *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 233.

No. 16–7146. Freeman *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 659 Fed. Appx. 94.

No. 16–7204. Jackson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 290.

No. 16–7276. Davila *v.* Marshall, Sheriff, McDuffie County, Georgia, et al. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 977.

No. 16–7307. Manuelito *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 872.

No. 16–7454. Moreno Ramos *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 359.

No. 16–7471. Moore *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 531.

No. 16–7489. Mendez-Maldonado *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 308.

No. 16–7545. CATHEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 326.

No. 16–7570. WILLIAMS *v.* SCHAFER ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 202 So. 3d 414.

No. 16–7767. FOGG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 836 F. 3d 951.

No. 16–7781. HOLLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 831 F. 3d 322.

No. 16–7798. HERNANDEZ ACOSTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 276.

No. 16–7920. PATINO-ALMENDARIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 399.

No. 16–7984. BRINKLEY *v.* SHELDON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 3d 356.

No. 16–8014. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 416.

No. 16–8117. JACKSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–8123. SCHAEFER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–8139. MARKLAND *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 197 So. 3d 1138.

No. 16–8141. LYTLE *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8145. COWAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 16–8146. REINWAND *v.* BLACKBURN. C. A. 7th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 304.

No. 16–8149. STULTZ *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–8150. DUPREE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2014 IL App (1st) 12–1179–U.

No. 16–8154. ROGERS *v.* SWARTHOUT, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–8155. SIRLEAF *v.* ROBINSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 676 Fed. Appx. 201.

No. 16–8160. MARSHALL *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 971.

No. 16–8161. COOK *v.* MOORE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 891.

No. 16–8164. WILLIAMS *v.* LAZAROFF, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 548.

No. 16–8166. VERDI *v.* WILKINSON COUNTY, GEORGIA, ET AL. Sup. Ct. Ga. Certiorari denied.

No. 16–8170. YORK *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–8176. WEI ZHOU *v.* MARQUETTE UNIVERSITY. C. A. 7th Cir. Certiorari denied.

No. 16–8180. BAUER *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 16–8182. RODRIGUEZ *v.* MONTANA ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 385 Mont. 542, 381 P. 3d 548.

No. 16–8188. JOHNSON *v.* PIERCE, DEPUTY SHERIFF, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 132.

No. 16–8196. BROWN *v.* MICHIGAN. Cir. Ct. Oakland County, Mich. Certiorari denied.

No. 16–8199. WILLIAMS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2016–1509 (La. 11/15/16), 209 So. 3d 783.

No. 16–8206. FLEMING *v.* VIRGINIA STATE UNIVERSITY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 117.

No. 16–8209. GREEN *v.* DONAT, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–8213. ADAMS *v.* BREWER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8215. THOMPSON *v.* RAPELJE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 839 F. 3d 481.

No. 16–8224. MCARTHUR *v.* BOLDEN ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–8226. POHOSKI *v.* BURTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8231. GORDON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 16–8235. DEWBERRY *v.* ALLBAUGH, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 821.

No. 16–8236. STANLEY *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 200 So. 3d 74.

No. 16–8237. CIAVONE *v.* HORTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8239. LEAVER *v.* SHORTESS. C. A. 7th Cir. Certiorari denied. Reported below: 844 F. 3d 665.

No. 16–8240. KATZ-CRANK *v.* HASKETT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 843 F. 3d 641.

No. 16–8241. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 16–8245. ABDULLAH *v.* FINNEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 673 Fed. Appx. 344.

No. 16–8246. CARRICO *v.* MONTANA BOARD OF PUBLIC ASSISTANCE. Sup. Ct. Mont. Certiorari denied. Reported below: 385 Mont. 538.

No. 16–8248. ANNABEL *v.* FROST ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–8251. TALL *v.* PARTNERSHIP DEVELOPMENT GROUP INC. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 679.

No. 16–8262. CUNNINGHAM *v.* NAPEL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8264. VALENTINE *v.* CITY OF AUSTIN, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 128.

No. 16–8265. SMITH *v.* TAYLOR, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–8266. LISLE *v.* PIERCE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 832 F. 3d 778.

No. 16–8267. JOHNSTON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–8268. JARVIS *v.* LEBO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8270. JING GUAN *v.* COLUMBIA UNIVERSITY ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–8272. GREENE *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 16–8281. BORDEN *v.* ARNOLD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–8285. LEE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–8295. WARREN *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–8302. BUSSELL *v.* PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS. C. A. 4th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 283.

No. 16–8304. COOK *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8306. LATOUCHE *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 16–8310. ROBINSON *v.* REGIONAL MEDICAL CENTER AT MEMPHIS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 440.

No. 16–8315. BOONE *v.* GUTIERREZ. C. A. 5th Cir. Certiorari denied.

No. 16–8316. ENGLAND *v.* WINDHAM, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–8317. DENHOF *v.* BARRETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8326. STEG ET AL. *v.* JOHNSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 206.

No. 16–8330. BALTIMORE *v.* NELSON ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 239 So. 3d 1102 and 1103.

No. 16–8332. AVILA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 16–8335. MCCLURE *v.* OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION. Ct. App. Ore. Certiorari denied. Reported below: 277 Ore. App. 783, 376 P. 3d 307.

No. 16–8338. CARTER *v.* HAAS ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–8339. EATO *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–8341. R. D. T. *v.* MARSHALL COUNTY DEPARTMENT OF HUMAN RESOURCES. Ct. Civ. App. Ala. Certiorari denied. Reported below: 234 So. 3d 499.

No. 16–8342. SKARITKA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 142344–U.

No. 16–8374. HARRIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 141471–U.

No. 16–8396. MOE *v.* PRINGLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–8404. RODGERS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–8405. STALLINGS *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied.

No. 16–8425. KINCAID *v.* CORRECT CARE SOLUTIONS, LLC. C. A. 6th Cir. Certiorari denied.

No. 16–8430. REYNOLDS *v.* HODGES, MAGISTRATE JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 664 Fed. Appx. 6.

No. 16–8437. OWENS *v.* PRINGLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–8447. DENNIS *v.* IVEY, SHERIFF, BREVARD COUNTY, FLORIDA, ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 229 So. 3d 355.

No. 16–8479. MALONE *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–8491. CORTEZ RAMIREZ *v.* RAWSKI, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 217.

No. 16–8497. OKEOWO *v.* HARLEQUIN BOOKS S. A. ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–8512. RAWLINGS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 203 So. 3d 172.

No. 16–8521. AVILA *v.* RICHARDSON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 896.

No. 16–8525. ALLEN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 16–8529. MCMICKLE *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied.

No. 16–8546. KLEIN *v.* CENTENNIAL RANCH AND ASPEN MOUNTAIN RANCH ASSN. Ct. App. Colo. Certiorari denied.

No. 16–8551. GREEN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 190 So. 3d 645.

No. 16–8590. WINSTON *v.* OFFICE OF NAVAL RESEARCH. C. A. 4th Cir. Certiorari denied. Reported below: 677 Fed. Appx. 837.

No. 16–8593. CALDWELL *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 886 N. W. 2d 491.

No. 16–8604. THOMPKINS *v.* WINGARD, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–8605. GUZMAN GONZALES, AKA ROJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 673 Fed. Appx. 460.

No. 16–8606. OLMEDO, AKA OLMEDO-TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–8607. LONG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8608. HAMPTON *v.* VANNOY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 516.

No. 16–8609. ROUNDTREE *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 16–8612. HEMNY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8613. MANUEL GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 674 Fed. Appx. 351.

No. 16–8618. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 461.

No. 16–8619. CARY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 678 Fed. Appx. 421.

No. 16–8622. LORFILS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8627. ABDULWAHAB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 206.

No. 16–8628. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 910.

No. 16–8633. ANDERSON *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–8634. CHARLESTAIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 691.

No. 16–8635. DEAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 666 Fed. Appx. 81.

No. 16–8639. BARNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 502.

No. 16–8641. WATKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8645. WALKER *v.* WERLICH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–8648. CORDOVA-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 436.

No. 16–8652. HEARNS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 845 F. 3d 641.

No. 16–8654. ALBRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 297.

No. 16–8656. COFFELT *v.* NVIDIA CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 680 Fed. Appx. 1010.

No. 16–8657. ROCKEFELLER *v.* CARTER, FORMER PRESIDENT OF THE UNITED STATES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 209.

No. 16–8671. BRENNAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 977.

No. 16–8672. YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 973.

No. 16–8679. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 681 Fed. Appx. 483.

No. 16–8680. DULAURENCE *v.* TELEGEN ET AL. C. A. 1st Cir. Certiorari denied.

No. 16–8681. MENERA-ARZATA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 315.

No. 16–8684. BUTLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–8685. HUMPHREY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 845 F. 3d 1320.

No. 16–8687. HOLLEY *v.* UNITED STATES; and
No. 16–8717. GARNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 676 Fed. Appx. 402.

No. 16–8688. GONZALEZ-LOERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 680 Fed. Appx. 595.

No. 16–8690. CRUZ-MERCADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 675 Fed. Appx. 646.

No. 16–8693. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 846 F. 3d 303.

No. 16–8694. VELARDO-BENITEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 484.

No. 16–8700. MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 677 Fed. Appx. 306.

No. 16–8703. GARCIA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 491.

No. 16–8705. BUEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 675 Fed. Appx. 375.

No. 16–8708. REESE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 741.

No. 16–8712. RITCHIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8714. SILLA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 649.

No. 16–8718. VIERA, AKA CARANZA-DERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 305.

No. 16–8723. SAMPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 684 Fed. Appx. 177.

No. 16–8724. RODRIGUEZ-BAUTISTA *v.* UNITED STATES (Reported below: 677 Fed. Appx. 149); LOPEZ-RODRIGUEZ *v.* UNITED STATES (677 Fed. Appx. 168); SCHILLING *v.* UNITED STATES (677

Fed. Appx. 170); and CURI *v.* UNITED STATES (680 Fed. Appx. 324). C. A. 5th Cir. Certiorari denied.

No. 16–8725. RAFIDI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 829 F. 3d 437.

No. 16–8737. BEDELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 669 Fed. Appx. 620.

No. 16–239. WHYTE, AS TRUSTEE OF THE SEMGROUP LITIGATION TRUST *v.* BARCLAYS BANK PLC ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 644 Fed. Appx. 60.

No. 16–661. JAWAD *v.* GATES, FORMER SECRETARY OF DEFENSE, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAGAN and JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 832 F. 3d 364.

No. 16–833. NORTH CAROLINA ET AL. *v.* NORTH CAROLINA STATE CONFERENCE OF THE NAACP ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 831 F. 3d 204.

Statement of CHIEF JUSTICE ROBERTS respecting the denial of certiorari.

In 2013, the North Carolina Legislature enacted Session Law 2013–381 (SL 2013–381). This omnibus law contained measures (1) requiring voters to present an approved form of photo identification before casting a valid ballot; (2) reducing the early voting period from 17 to 10 days; (3) eliminating out-of-precinct voting; (4) eliminating same-day registration and voting; and (5) eliminating pre-registration by 16-year-olds. The United States and private plaintiffs (Plaintiffs) sued in the United States District Court for the Middle District of North Carolina, claiming that those measures had a discriminatory effect in violation of § 2 of the Voting Rights Act of 1965, codified at 52 U. S. C. § 10301, and had been motivated by discriminatory intent in violation of § 2, as well as the Fourteenth and Fifteenth Amendments. The District Court dismissed Plaintiffs' claims after trial. In a nearly 500-page opinion, that court determined that Plaintiffs had failed to establish either discriminatory impact or intent. *North Carolina State Conference of NAACP* v. *McCrory*, 182 F. Supp. 3d 320 (2016).

The Court of Appeals for the Fourth Circuit reversed, holding that "the North Carolina General Assembly enacted the challenged provisions of the law with discriminatory intent." 831 F. 3d 204, 215 (2016). As to remedy, the Court of Appeals enjoined all the challenged provisions. Judge Motz wrote for the court, except as to one part of the opinion from which she dissented. The State of North Carolina, its then-Governor, the State Board of Elections, and members of the board in their official capacities petitioned for certiorari, asking this Court to review the Fourth Circuit's conclusion that SL 2013–381 was enacted with discriminatory intent.

In January 2017, a new Governor and state attorney general assumed office. Shortly after, the new attorney general moved to dismiss the petition, initially on behalf of only the Governor and the State. A few days later, however, the attorney general filed a supplemental motion to dismiss on behalf of all named petitioners. The North Carolina General Assembly objected, arguing that North Carolina law does not authorize the state attorney general to dismiss the petition on behalf of the State and instead expressly permits the Assembly to retain private counsel to defend SL 2013–381 on behalf of North Carolina.

The speaker and the president *pro tempore* of the Assembly have also filed a conditional motion to intervene, asking this Court to add the General Assembly as a petitioner in the event the Court finds that the attorney general may withdraw the petition. The private respondents have filed a reply, arguing that the speaker and the president *pro tempore* lack standing to intervene because North Carolina law does not authorize them to represent the State's interests in federal court. According to the private respondents, the speaker and the president *pro tempore* erroneously rely on a state statute that governs intervention in state proceedings.

Given the blizzard of filings over who is and who is not authorized to seek review in this Court under North Carolina law, it is important to recall our frequent admonition that "[t]he denial of a writ of certiorari imports no expression of opinion upon the merits of the case." *United States* v. *Carver*, 260 U. S. 482, 490 (1923).

No. 16–984. A. M., on Behalf of Her Minor Child, F. M. *v.* Acosta. C. A. 10th Cir. Certiorari denied. Justice Gorsuch

took no part in the consideration or decision of this petition. Reported below: 830 F. 3d 1123.

No. 16–1055. Crane-Hogan Structural Systems, Inc. *v.* Amscot Structural Products Corp. Super. Ct. N. J., App. Div. Motion of Builder's Exchange, Inc., for leave to file brief as *amicus curiae* granted. Certiorari denied.

No. 16–1186. Baron *v.* Abbott Laboratories. C. A. 3d Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 672 Fed. Appx. 158.

No. 16–1205. Home Depot U. S. A., Inc. *v.* Bauer et al. C. A. 7th Cir. Motions of Product Liability Advisory Council, Inc., and Chamber of Commerce of the United States of America for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 845 F. 3d 350.

No. 16–8625. Maehr *v.* Commissioner of Internal Revenue et al. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 664 Fed. Appx. 683.

Rehearing Denied

No. 16–536. Howell *v.* United States, 580 U. S. 1216;

No. 16–831. Woldeselassie *v.* American Eagle Airlines, Inc., et al., 580 U. S. 1172;

No. 16–848. Hernandez *v.* Ducey, Governor of Arizona, et al., 580 U. S. 1198;

No. 16–6444. Ledford *v.* Sellers, Warden, *ante*, p. 906;

No. 16–6456. Nuritdinova *v.* Children's Hospital Medical Center, 580 U. S. 1101;

No. 16–7059. Jackson *v.* Gualtieri, Sheriff, Pinellas County, Florida, 580 U. S. 1124;

No. 16–7152. Cleveland *v.* Duvall et al., 580 U. S. 1126;

No. 16–7191. Williams *v.* Jones, Secretary, Florida Department of Corrections, et al., 580 U. S. 1128;

No. 16–7408. Steele *v.* Harrington, Warden, 580 U. S. 1174;

No. 16–7440. Hill *v.* Tennessee Department of Transportation, 580 U. S. 1136;

No. 16–7442. McClarty *v.* Jones, Secretary, Florida Department of Corrections, et al., 580 U. S. 1136;
No. 16–7496. Wilson *v.* Arkansas, 580 U. S. 1138;
No. 16–7562. Crisp *v.* United States, 580 U. S. 1139;
No. 16–7589. In re Brascom, 580 U. S. 1196;
No. 16–7605. Gueye *v.* Bishop et al., 580 U. S. 1219;
No. 16–7669. Belanus *v.* Montana, 580 U. S. 1219;
No. 16–7910. In re Davis, 580 U. S. 1196;
No. 16–7913. Lane *v.* United States, 580 U. S. 1209;
No. 16–7922. Earls *v.* United States, 580 U. S. 1210; and
No. 16–8070. Mitchell *v.* United States, 580 U. S. 1223. Petitions for rehearing denied.

No. 14–8071. Bernard *v.* United States, 577 U. S. 1101. Motion of petitioner for leave to file petition for rehearing denied.

No. 16–6289. Sing *v.* United States, 580 U. S. 991. Motion of petitioner for leave to file petition for rehearing denied. Justice Gorsuch took no part in the consideration or decision of this motion.

No. 16–7393. Smith *v.* Royal, Warden, 580 U. S. 1202; and
No. 16–7426. Gordon *v.* United States, 580 U. S. 1136. Petitions for rehearing denied. Justice Gorsuch took no part in the consideration or decision of these petitions.

No. 16–7779. Ebanks *v.* Samsung Telecommunication America, LLP, et al., 580 U. S. 1212. Petition for rehearing denied. The Chief Justice took no part in the consideration or decision of this petition.

May 16, 2017

Certiorari Denied

No. 16–9177 (16A1116). Ledford *v.* Sellers, 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.

No. 16–9179 (16A1118). Ledford *v.* Dozier, Commissioner, Georgia Department of Corrections, et al. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to Justice Thomas, and by him referred to the Court, denied. Certiorari denied. Reported below: 856 F. 3d 1312.

MAY 22, 2017

Affirmed on Appeal

No. 16–865. REPUBLICAN PARTY OF LOUISIANA ET AL. *v.* FEDERAL ELECTION COMMISSION. Affirmed on appeal from D. C. D. C. JUSTICE THOMAS and JUSTICE GORSUCH would note probable jurisdiction and set the case for oral argument. Reported below: 219 F. Supp. 3d 86.

Certiorari Granted—Vacated and Remanded

No. 15–1139. MERRILL *v.* MERRILL. Sup. Ct. Ariz. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Howell* v. *Howell*, *ante*, p. 214. Reported below: 238 Ariz. 467, 362 P. 3d 1034.

Certiorari Dismissed

No. 16–8384. PHILLIPS *v.* DALLAS CITY ATTORNEY'S OFFICE ET AL. 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.

No. 16–8395. MALLOY *v.* ESTES, WARDEN, ET AL. C. A. 11th Cir.; and

No. 16–8495. MALLOY *v.* MONTGOMERY COUNTY, ALABAMA, ET AL. C. A. 11th Cir. Motions 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. 16–8561. MORROW *v.* BRENNAN, POSTMASTER GENERAL; and

No. 16–8562. MORROW *v.* BRENNAN, POSTMASTER GENERAL. C. A. 7th Cir. Motions of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 676 Fed. Appx. 582.

No. 16–8735. JONASSEN *v.* JOHNSON, WARDEN, ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pau-*

peris denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2935. IN RE DISBARMENT OF STONE. Disbarment entered. [For earlier order herein, see 580 U. S. 956.]

No. D–2937. IN RE DISBARMENT OF ELSTEAD. Disbarment entered. [For earlier order herein, see 580 U. S. 957.]

No. D–2938. IN RE DISBARMENT OF ACKERMAN. Disbarment entered. [For earlier order herein, see 580 U. S. 957.]

No. D–2939. IN RE DISBARMENT OF HOLSTEIN. Disbarment entered. [For earlier order herein, see 580 U. S. 957.]

No. D–2940. IN RE DISBARMENT OF MCPHERON. Disbarment entered. [For earlier order herein, see 580 U. S. 957.]

No. D–2941. IN RE DISBARMENT OF GREGORY. Disbarment entered. [For earlier order herein, see 580 U. S. 957.]

No. D–2942. IN RE DISBARMENT OF WOODRUFF. Disbarment entered. [For earlier order herein, see 580 U. S. 957.]

No. D–2949. IN RE JOHNSON. Rankin Johnson IV, of Portland, Ore., 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 February 21, 2017, [580 U. S. 1110] is discharged.

No. D–2951. IN RE SCHWARTZ. Jeffrey Scott Schwartz, of San Diego, Cal., 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 February 21, 2017, [580 U. S. 1110] is discharged.

No. D–2952. IN RE DISBARMENT OF MOFFATT. Disbarment entered. [For earlier order herein, see 580 U. S. 1194.]

No. D–2953. IN RE DISBARMENT OF ORLOFF. Disbarment entered. [For earlier order herein, see 580 U. S. 1194.]

No. D–2967. In re Septowski. Charles D. Septowski, of St. Louis, Mo., 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 April 17, 2017, [*ante*, p. 915] is discharged.

No. 16M127. Williams *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. Motion for leave to proceed as a veteran denied.

No. 16M128. Fontana *v.* Colorado;

No. 16M129. Jeane *v.* Serhan et al.; and

No. 16M130. Garman *v.* Serhan et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M131. Granados *v.* Crowley County Correctional Facility et al. Motion for leave to proceed as a veteran denied. Justice Gorsuch took no part in the consideration or decision of this motion.

No. 141, Orig. Texas *v.* New Mexico et al. Third Interim Motion of the Special Master for allowance of fees and disbursements, as amended by his letter dated May 17, 2017, granted, and the Special Master is awarded a total of $219,125.57, for the period November 2, 2015, through March 13, 2017, 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.*, 580 U. S. 1195.]

No. 16–7790. Lan *v.* Comcast Corp., LLC. Ct. App. Cal., 1st App. Dist., Div. 5. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 916] denied.

No. 16–8423. Bonner *v.* Superior Court of California, San Diego County, et al. Ct. App. Cal., 4th App. Dist., Div. 1;

No. 16–8571. Melgar *v.* Deutsche Bank National Trust et al. Ct. App. Cal., 4th App. Dist., Div. 3; and

No. 16–8651. Richardson *v.* Faulk et al. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until June 12, 2017, 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.

Certiorari Granted

No. 16–969. SAS Institute Inc. *v.* Lee, Director, United States Patent and Trademark Office, et al. C. A. Fed. Cir. Certiorari granted. Reported below: 825 F. 3d 1341.

Certiorari Denied

No. 15–1318. TAMKO Building Products, Inc. *v.* Hobbs et al. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 479 S. W. 3d 147.

No. 16–130. United States ex rel. Advocates for Basic Legal Equality, Inc. *v.* U. S. Bank, N. A. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 3d 428.

No. 16–308. Dot Foods, Inc. *v.* Department of Revenue of the State of Washington. Sup. Ct. Wash. Certiorari denied. Reported below: 185 Wash. 2d 239, 372 P. 3d 747.

No. 16–315. Owens et al. *v.* LVNV Funding, LLC, et al. C. A. 7th Cir. Certiorari denied. Reported below: 832 F. 3d 726.

No. 16–706. Detroit Free Press, Inc. *v.* Department of Justice. C. A. 6th Cir. Certiorari denied. Reported below: 829 F. 3d 478.

No. 16–707. Dubois, fka Gaines, et al. *v.* Atlas Acquisitions, LLC. C. A. 4th Cir. Certiorari denied. Reported below: 834 F. 3d 522.

No. 16–757. Nelson *v.* Midland Credit Management, Inc. C. A. 8th Cir. Certiorari denied. Reported below: 828 F. 3d 749.

No. 16–759. Rutgerson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 822 F. 3d 1223.

No. 16–765. Lopez *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 16–860. Arellano Hernandez *v.* Sessions, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 3d 1127.

No. 16–874. Goldman et vir *v.* Citigroup Global Markets Inc. et al. C. A. 3d Cir. Certiorari denied. Reported below: 834 F. 3d 242.

No. 16–876. Doe *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 833 F. 3d 192.

No. 16–877. DeCoster et al. *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 828 F. 3d 626.

No. 16–1021. Neal, Superintendent, Indiana State Prison *v.* Kubsch. C. A. 7th Cir. Certiorari denied. Reported below: 838 F. 3d 845.

No. 16–1103. Hardin *v.* Kentucky. Sup. Ct. Ky. Certiorari denied.

No. 16–1107. Stephens, Wrongful Death Beneficiary of Beam, et al. *v.* Progressive Gulf Insurance Co. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 592.

No. 16–1114. Rodgers *v.* Louisiana Board of Nursing. C. A. 5th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 326.

No. 16–1115. Tinsley *v.* Townsend et al. Ct. Sp. App. Md. Certiorari denied. Reported below: 228 Md. App. 749.

No. 16–1119. Pennacchia *v.* Hayes. C. A. 9th Cir. Certiorari denied. Reported below: 666 Fed. Appx. 677.

No. 16–1127. Robinson et al. *v.* Mortgage Electronics Registration Systems, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 562.

No. 16–1131. Roth *v.* Plikaytis. C. A. 9th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 540.

No. 16–1154. LD III, LLC *v.* BBRD, LC, et al. Ct. App. Utah. Certiorari denied. Reported below: 2016 UT App 206, 385 P. 3d 689.

No. 16–1162. Epstein *v.* Epstein et al. C. A. 7th Cir. Certiorari denied. Reported below: 843 F. 3d 1147.

No. 16–1185. United States ex rel. Bauchwitz *v.* Holloman et al. C. A. 3d Cir. Certiorari denied. Reported below: 670 Fed. Appx. 762.

No. 16–1188. Tamburrino *v.* Office of the Disciplinary Counsel of the Supreme Court of Ohio. Sup. Ct. Ohio.

Certiorari denied. Reported below: 151 Ohio St. 3d 148, 2016-Ohio-8014, 87 N. E. 3d 158.

No. 16–1193. KERRIGAN *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 833 F. 3d 1349.

No. 16–1195. NORTH EAST MEDICAL SERVICES, INC. *v.* CALIFORNIA DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 615.

No. 16–1211. HASAN *v.* ALVES, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 16–1212. TRICOLI *v.* WATTS ET AL. Ct. App. Ga. Certiorari denied. Reported below: 336 Ga. App. 837, 783 S. E. 2d 475.

No. 16–1238. SUN LIFE & HEALTH INSURANCE CO. ET AL. *v.* SOLNIN. C. A. 2d Cir. Certiorari denied. Reported below: 672 Fed. Appx. 121.

No. 16–1256. MATHIS *v.* MUSE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 156.

No. 16–1258. TCA TELEVISION CORP. ET AL. *v.* MCCOLLUM ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 839 F. 3d 168.

No. 16–1277. MCGARRY & MCGARRY LLC *v.* RABOBANK, N. A. C. A. 7th Cir. Certiorari denied. Reported below: 847 F. 3d 404.

No. 16–7212. TURNER *v.* UPTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 695.

No. 16–7327. BANNER *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 1005.

No. 16–7352. STRAIN *v.* JONES, SECRETARY FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–7472. NURRIDDIN *v.* BOLDEN, ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. C. A. D. C. Cir. Certiorari denied. Reported below: 818 F. 3d 751.

No. 16–7652. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 566.

No. 16–7918. CRAWFORD *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 218 So. 3d 1142.

No. 16–7932. RALEIGH *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 827 F. 3d 938.

No. 16–7974. GUILLORY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 360.

No. 16–8158. JORDAN ET AL. *v.* MISSOURI DEPARTMENT OF CORRECTIONS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 839 F. 3d 732.

No. 16–8318. WARD *v.* NEAL, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 835 F. 3d 698.

No. 16–8322. THOMAS *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–8345. BAEZ *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 16–8347. MORALES *v.* CUOMO ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–8352. DEROVEN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–8354. COHEN *v.* CAPOZZA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH. Super. Ct. Pa. Certiorari denied. Reported below: 145 A. 3d 795.

No. 16–8362. HOWARD *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 191 So. 3d 474.

No. 16–8364. FRAZIER *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 495 S. W. 3d 246.

No. 16–8366. HOLLEY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 16–8367. SMITH *v.* ALFORD. C. A. 6th Cir. Certiorari denied.

No. 16–8372. FERGUSON *v.* CORIZON MEDICAL SERVICES ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–8375. HILTON *v.* HORTON, WARDEN. Sup. Ct. Mich. Certiorari denied. Reported below: 500 Mich. 899, 887 N. W. 2d 626.

No. 16–8381. WINANS *v.* PASH, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–8382. MORENO *v.* EIGHTH JUDICIAL DISTRICT COURT OF NEVADA, CLARK COUNTY, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 1009, 386 P. 3d 988.

No. 16–8388. GALAN *v.* GEGENHEIMER ET AL. C. A. 5th Cir. Certiorari denied.

No. 16–8390. COLOMA *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied.

No. 16–8399. COLEN *v.* CITY OF NORCO, CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 16–8409. CARMOUCHE *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 2015–264 (La. App. 3 Cir. 10/7/15), 176 So. 3d 1179.

No. 16–8410. EVANS *v.* FISHER, FORMER COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 259.

No. 16–8412. CHATMAN *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 500 Mich. 921, 888 N. W. 2d 67.

No. 16–8413. MAXIE *v.* BRUEMMER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 392.

No. 16–8416. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 16–8419. WRIGHT *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 403.

No. 16–8428. SCHMITZ *v.* LIZARRAGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–8433. RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 16–8438. MCDUF *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 16–8439. MCQUAY *v.* STATE FARM FIRE & CASUALTY CORP. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 16–8440. MOUNTS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–8444. RIVENBURGH *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 28 N. Y. 3d 1075, 69 N. E. 3d 1029.

No. 16–8449. TIPTON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–8488. HOLLAND *v.* MACLAREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8504. JACOBS *v.* BERRIOS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 39.

No. 16–8507. DIAZ *v.* HOLLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–8518. WASYLK *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 52 Kan. App. 2d xlii, 359 P. 3d 1071.

No. 16–8531. PATE *v.* COOPER. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 226.

No. 16–8535. SINGO *v.* GENOVESE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8566. TOWNSEND *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–8575. REYNOLDS *v.* SEMPLE, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. Sup. Ct. Conn. Certiorari denied. Reported below: 321 Conn. 750, 140 A. 3d 894.

No. 16–8579. ROBERTS *v.* MORGAN ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–8583. ALBERTO MARTINEZ *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 16–8592. DORSEY *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 500 Mich. 920, 888 N. W. 2d 61.

No. 16–8597. SANDERS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 16–8662. MCCREA *v.* JOHNS HOPKINS UNIVERSITY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 90.

No. 16–8691. DAVIS *v.* MAIORANA, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 561.

No. 16–8692. LEGG *v.* NATIONSTAR MORTGAGE LLC. Sup. Ct. Del. Certiorari denied. Reported below: 155 A. 3d 1284.

No. 16–8696. VAUGHN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 677 Fed. Appx. 666.

No. 16–8698. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–8721. LARA-RUIZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–8729. NEIL W. *v.* MIRANDY, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 16–8730. WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–8731. MCCULLOUGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 851 F. 3d 1194.

No. 16–8732. WILLIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 844 F. 3d 155.

No. 16–8736. MATHIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8745. REYES-RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 508.

No. 16–8746. Rivera *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 675 Fed. Appx. 753.

No. 16–8747. Spain *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 666 Fed. Appx. 313.

No. 16–8749. Rusk *v.* Harstad et al. Ct. App. Utah. Certiorari denied. Reported below: 2017 UT App 27, 393 P. 3d 341.

No. 16–8751. Santana *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 677 Fed. Appx. 744.

No. 16–8756. Qin Zhang *v.* State Bar of California. Sup. Ct. Cal. Certiorari denied.

No. 16–8782. Hinton *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 16–8783. Glass *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 16–8784. Fulton *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 353.

No. 16–8786. Fata *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 260.

No. 16–8789. Sayasane *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 16–8790. Syms *v.* United States (Reported below: 846 F. 3d 230); and Molina-Trujillo *v.* United States (674 Fed. Appx. 568). C. A. 7th Cir. Certiorari denied.

No. 16–8794. Bays *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 680 Fed. Appx. 303.

No. 16–8798. Snell *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 676 Fed. Appx. 144.

No. 16–8800. Morgan *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 842 F. 3d 1070.

No. 16–8820. Acosta-Guzman *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 315.

No. 16–8850. Mendez-Henriquez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 847 F. 3d 214.

No. 16–8856. AGYEKUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 846 F. 3d 744.

No. 16–8857. BRACKETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 846 F. 3d 987.

No. 16–687. SONOCO PRODUCTS CO. ET AL. *v.* MICHIGAN DEPARTMENT OF TREASURY; and INTUITIVE SURGICAL, INC., ET AL. *v.* MICHIGAN DEPARTMENT OF TREASURY;

No. 16–688. SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP *v.* MICHIGAN DEPARTMENT OF TREASURY;

No. 16–697. GILLETTE COMMERCIAL OPERATIONS NORTH AMERICA AND SUBSIDIARIES *v.* MICHIGAN DEPARTMENT OF TREASURY;

No. 16–698. INTERNATIONAL BUSINESS MACHINES CORP. *v.* MICHIGAN DEPARTMENT OF TREASURY (two judgments);

No. 16–699. GOODYEAR TIRE & RUBBER CO. ET AL. *v.* MICHIGAN DEPARTMENT OF TREASURY; and

No. 16–736. DIRECTV GROUP HOLDINGS, LLC *v.* MICHIGAN DEPARTMENT OF TREASURY. Ct. App. Mich. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of these petitions. Reported below: No. 16–687, 312 Mich. App. 394, 878 N. W. 2d 891 (first judgment); No. 16–697, 312 Mich. App. 394, 878 N. W. 2d 891; No. 16–698, 312 Mich. App. 394, 878 N. W. 2d 891 (first judgment).

No. 16–998. FLORIDA *v.* HURST. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 202 So. 3d 40.

No. 16–1241. BROADBAND iTV, INC. *v.* HAWAIIAN TELCOM, INC., ET AL. C. A. Fed. Cir. Motions of US Inventor, Inc., et al. and AliphCom, dba Jawbone, for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 669 Fed. Appx. 555.

No. 16–1271. PARALLEL NETWORKS, LLC *v.* JENNER & BLOCK LLP. Ct. App. Tex., 5th Dist. Motion of Eagle Forum Education & Legal Defense Fund for leave to file brief as *amicus curiae* granted. Certiorari denied.

No. 16–8348. BOONE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari before judgment denied.

No. 16–8383. Morris *v.* Dowling, Warden. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 670 Fed. Appx. 976.

No. 16–8427. Cleveland *v.* Sharp, Warden. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 672 Fed. Appx. 824.

No. 16–8803. Espinoza, aka Angel Manzo *v.* United States. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 663 Fed. Appx. 678.

Rehearing Denied

No. 16–6405. Comeaux *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 580 U. S. 1059;

No. 16–6446. Leaschauer *v.* Huerta, Administrator, Federal Aviation Administration, 580 U. S. 1218;

No. 16–6447. Leaschauer *v.* National Transportation Safety Board et al., 580 U. S. 1218;

No. 16–6469. Leaschauer *v.* Federal Aviation Administration et al., 580 U. S. 1218;

No. 16–6793. Santa *v.* Texas, 580 U. S. 1073;

No. 16–6823. Shipe *v.* Ray, Warden, 580 U. S. 1093;

No. 16–7269. Biller *v.* Triplett et al., *ante*, p. 906;

No. 16–7461. Rowe *v.* Villmer, Warden, 580 U. S. 1203;

No. 16–7474. Taubman *v.* Muniz, Warden, 580 U. S. 1203;

No. 16–7513. Chhim *v.* University of Texas at Austin, 580 U. S. 1204;

No. 16–7592. White et ux. *v.* Attorney Grievance Commission of Michigan, *ante*, p. 906;

No. 16–7606. Gueye *v.* Richards et al., 580 U. S. 1219;

No. 16–8081. In re Wells-Ali, 580 U. S. 1196;

No. 16–8114. Wheeler *v.* United States, *ante*, p. 910; and

No. 16–8179. Young *v.* United States et al., *ante*, p. 911. Petitions for rehearing denied.

No. 16–6032. Akel *v.* United States, *ante*, p. 902. Petition for rehearing denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 16–7491. PINKERTON *v.* UNITED STATES, 580 U. S. 1138. Petition for rehearing denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition.

MAY 25, 2017

Dismissal Under Rule 46

No. 16–1257. TELEGUZ *v.* ZOOK, WARDEN. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46.

Certiorari Denied

No. 16–1407 (16A1160). ARTHUR *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. The order heretofore entered by JUSTICE THOMAS is vacated. Reported below: 680 Fed. Appx. 894.

JUSTICE SOTOMAYOR, dissenting.

Alabama plans to execute Thomas Arthur tonight using a three-drug lethal-injection protocol that uses midazolam as a sedative. I continue to doubt whether midazolam is capable of rendering prisoners insensate to the excruciating pain of lethal injection and thus whether midazolam may be constitutionally used in lethal-injection protocols. See *Arthur* v. *Dunn*, 580 U. S. 1141, 1153–1154 (2017) (SOTOMAYOR, J., dissenting from denial of certiorari); *Glossip* v. *Gross*, 576 U. S. 863, 958–969 (2015) (SOTOMAYOR, J., dissenting). Here, the State has—with the blessing of the courts below—compounded the risks inherent in the use of midazolam by denying Arthur's counsel access to a phone through which to seek legal relief if the execution fails to proceed as planned.

Prisoners possess a "constitutional right of access to the courts." *Bounds* v. *Smith*, 430 U. S. 817, 821 (1977). When prison officials seek to limit that right, the restriction is permitted only if "it is reasonably related to legitimate penological interests." *Turner* v. *Safley*, 482 U. S. 78, 89 (1987). Here, the State has no legitimate reason—penological or otherwise—to prohibit Arthur's counsel from possessing a phone during the execution, particularly in light of the demonstrated risk that midazolam will fail. See *Arthur*, 580 U. S., at 1153 (detailing "mounting firsthand evidence that midazolam is simply unable to render prisoners

phone would impose no cost or burden on the State; Arthur's attorneys have offered to pay for the phone and provide it for the State's inspection. The State's refusal serves only to frustrate any effort by Arthur's attorneys to petition the courts in the event of yet another botched execution. See, *e. g.*, Berman, Arizona Execution Lasts Nearly Two Hours, Washington Post, July 23, 2014 ("During the execution, Wood's attorneys filed a request to halt the lethal injection because he was still awake more than an hour after the process began"), https: //www.washingtonpost.com/news/post-nation/wp/2014/07/23/arizona-supreme-court-stays-planned-execution/ (as last visited May 25, 2017). Its action means that when Thomas Arthur enters the execution chamber tonight, he will leave his constitutional rights at the door.

I dissent from the Court's refusal to grant the application for a stay and accompanying petition for certiorari.

No. 16–1408 (16A1161). ARTHUR *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 695 Fed. Appx. 418.

MAY 26, 2017

Miscellaneous Order

No. 16–166. HARRIS ET AL. *v.* COOPER, GOVERNOR OF NORTH CAROLINA, ET AL. Appeal from D. C. M. D. N. C. The parties are directed to file letter briefs addressing the following questions: "(1) Do the appellants have standing to challenge the remedial map as a partisan gerrymander? (2) Is the District Court's order denying the appellants' objections to the remedial map appealable under 28 U. S. C. § 1253?" Letter briefs are to be filed simultaneously with the Clerk and served upon opposing counsel on or before noon, Tuesday, June 6, 2017.

MAY 30, 2017

Affirmed for Absence of Quorum

No. 16–1181. JAFFE *v.* ROBERTS, CHIEF JUSTICE, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. 9th Cir. Because the Court lacks a quorum, 28 U. S. C. § 1, and since the qualified Justice is of the opinion that the case cannot be heard and deter-

mined at the next Term of the Court, the judgment is affirmed under 28 U. S. C. § 2109, which provides that under these circumstances "the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court." THE CHIEF JUSTICE, JUSTICE KENNEDY, JUSTICE THOMAS, JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE ALITO, JUSTICE SOTOMAYOR, and JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–8629. ARUNGA *v.* OBAMA ET AL. C. A. 5th Cir. Because the Court lacks a quorum, 28 U. S. C. § 1, and since the qualified Justices are of the opinion that the case cannot be heard and determined at the next Term of the Court, the judgment is affirmed under 28 U. S. C. § 2109, which provides that under these circumstances "the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court." JUSTICE KENNEDY, JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE KAGAN took no part in the consideration or decision of this petition.

Certiorari Granted—Vacated and Remanded

No. 16–24. DICKSON ET AL. *v.* RUCHO ET AL. Sup. Ct. N. C. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Cooper* v. *Harris*, *ante*, p. 285. Reported below: 368 N. C. 481, 781 S. E. 2d 404.

Certiorari Dismissed

No. 16–8554. HOLMES *v.* SATTERBERG 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. 16–8881. SCHWARTZ *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. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. D–2971. IN RE SULLIVAN. Due to mistaken identity, the order suspending Christopher Patrick Sullivan of Boston, Mass.,

from the practice of law in this Court, dated May 15, 2017, [*ante*, p. 970] is vacated and the rule to show cause issued on that date is discharged.

No. 16M132. RECTOR *v.* UNITED STATES; and

No. 16M134. BRITTON *v.* DRUMMER BOY HOMES ASSN., INC. Motions for leave to proceed as veterans denied.

No. 16M133. EDDY *v.* MEDEIROS, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 16–460. ARTIS *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. [Certiorari granted, 580 U. S. 1159.] Motion of petitioner to dispense with printing joint appendix granted.

No. 16–1011. WESTERNGECO LLC *v.* ION GEOPHYSICAL CORP. C. A. Fed. Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 16–8470. MAQAGI *v.* HORIZON LAMPS, INC., ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 20, 2017, 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. 16–8986. IN RE SMITH;

No. 16–9024. IN RE BRICE;

No. 16–9053. IN RE WOODS; and

No. 16–9069. IN RE ROBINSON. Petitions for writs of habeas corpus denied.

No. 16–9048. IN RE VISINTINE. 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. 16–8450. IN RE WILLIAMSON; and

No. 16–8785. IN RE GADSDEN. Petitions for writs of prohibition denied.

Certiorari Granted

No. 16–980. HUSTED, OHIO SECRETARY OF STATE *v.* A. PHILIP RANDOLPH INSTITUTE ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 838 F. 3d 699.

Certiorari Denied

No. 15–1223. SOUTHWEST SECURITIES, FSB *v.* SEGNER. C. A. 5th Cir. Certiorari denied. Reported below: 811 F. 3d 691.

No. 16–423. CRIPPS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2016 OK CR 14, 387 P. 3d 906.

No. 16–722. MILIK ET AL. *v.* PRICE, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 822 F. 3d 1367.

No. 16–830. EL-NAHAL *v.* YASSKY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 835 F. 3d 248.

No. 16–834. ROBINSON *v.* CAMPBELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–886. HOOKS, WARDEN *v.* LANGFORD. C. A. 6th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 388.

No. 16–906. TILTON ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 824 F. 3d 276.

No. 16–919. TEXAS *v.* MCGUIRE. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 493 S. W. 3d 177.

No. 16–1015. MISSOURI EX REL. HAWLEY, ATTORNEY GENERAL, ET AL. *v.* BECERRA, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 847 F. 3d 646.

No. 16–1156. WADE *v.* STEVENS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 669.

No. 16–1164. BUILDING INDUSTRY ASSOCIATION OF THE BAY AREA *v.* CITY OF SAN RAMON, CALIFORNIA, ET AL. Ct. App. Cal., 1st App. Dist., Div. 2. Certiorari denied. Reported below: 4 Cal. App. 5th 62, 208 Cal. Rptr. 3d 320.

No. 16–1174. THARP *v.* SESSIONS, ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 217.

No. 16–1191. SMITH ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 3d 1207.

No. 16–1213. ESCAMILLA *v.* M2 TECHNOLOGY, INC. C. A. 5th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 318.

No. 16–1226. HUBBARD *v.* MISSOURI DEPARTMENT OF MENTAL HEALTH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 816.

No. 16–1233. CONWAY, SHERIFF, GWINNETT COUNTY, GEORGIA, ET AL. *v.* SHUFORD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 666 Fed. Appx. 811.

No. 16–1240. SHORE *v.* LEE, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 670 Fed. Appx. 716.

No. 16–1250. BARTH *v.* ISLAMIC SOCIETY OF BASKING RIDGE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 681 Fed. Appx. 110.

No. 16–1263. CAMPBELL *v.* LAMAR INSTITUTE OF TECHNOLOGY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 842 F. 3d 375.

No. 16–1268. HINES *v.* PAXTON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 676 Fed. Appx. 546.

No. 16–1279. SOLONICHNYY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–1284. BARRO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 661 Fed. Appx. 741.

No. 16–1294. TRESCOTT *v.* DEPARTMENT OF TRANSPORTATION ET AL. C. A. 5th Cir. Certiorari denied.

No. 16–7092. CUDJO *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 16–7254. SOTO GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 618.

No. 16–7257. WRIGHT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 16–7586. MONTES DE OCA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 831.

No. 16–7876. JONES *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 673 Fed. Appx. 369.

No. 16–8009. FRANKLIN *v.* JENKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 839 F. 3d 465.

No. 16–8446. JOHNSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–8451. WIMBUSH *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 673 Fed. Appx. 965.

No. 16–8458. JOHNSON *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8462. RUSK *v.* UNIVERSITY OF UTAH HEALTHCARE RISK MANAGEMENT. Ct. App. Utah. Certiorari denied. Reported below: 2016 UT App 243, 391 P. 3d 325.

No. 16–8467. MOUSAW *v.* FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 207 So. 3d 224.

No. 16–8469. SALDANA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–8472. SCOTT *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 16–8485. FLANAGAN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 968.

No. 16–8492. DOMES *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 151 A. 3d 1162.

No. 16–8499. PEDEN *v.* DISTRICT COUNCIL 33 LOCAL 696. C. A. 3d Cir. Certiorari denied. Reported below: 662 Fed. Appx. 183.

No. 16–8505. DAVIS *v.* PERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8506. MUA *v.* O'NEAL LAW FIRM, LLP, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 534.

No. 16–8513. SMITH *v.* SHARIAT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 667.

No. 16–8517. WALKER *v.* BONDI, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–8528. NELSON *v.* FLEMMER, JUDGE, FIFTH JUDICIAL COURT OF ROBERTS COUNTY, SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied.

No. 16–8534. ROGERS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 16–8537. KRUPCZAK *v.* DLA PIPER LLP (US) ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 184.

No. 16–8538. MUA *v.* BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 535.

No. 16–8539. MUA *v.* FROSH, ATTORNEY GENERAL OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 533.

No. 16–8549. STURGIS *v.* SUARDINI ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–8553. PAYNE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 147 Ohio St. 3d 1503, 2017-Ohio-261, 67 N. E. 3d 822.

No. 16–8563. MAYBERRY *v.* CONLEY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–8600. JOHNSON *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 45.

No. 16–8601. VILLALTA *v.* EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–8614. HAWRELAK *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 161.

No. 16–8620. SMITH *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 786.

No. 16–8621. RUCKER *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 212 So. 3d 884.

No. 16–8649. VAN HOOSE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 141763–U.

No. 16–8658. HENDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–8659. GERBER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 141 A. 3d 582.

No. 16–8660. FURNACE *v.* GIURBINO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 838 F. 3d 1019.

No. 16–8667. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 475.

No. 16–8676. NASH *v.* BANK OF AMERICA, N. A., ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 200 So. 3d 131.

No. 16–8678. BANKS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–8682. PIGRAM *v.* PFISTER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–8683. COLEMAN *v.* STARBUCKS COFFEE CO. C. A. 11th Cir. Certiorari denied.

No. 16–8686. HYMAS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 810 F. 3d 1312.

No. 16–8702. SMITH *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 44.

No. 16–8709. ZAMORA *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 16–8726. STEWART *v.* PERRY. C. A. 4th Cir. Certiorari denied. Reported below: 676 Fed. Appx. 188.

No. 16–8742. CHI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–8744. SMITH *v.* NEBRASKA. Ct. App. Neb. Certiorari denied. Reported below: 24 Neb. App. x.

No. 16–8755. BROADWAY *v.* OFFICE OF DISTRICT ATTORNEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 676 Fed. Appx. 346.

No. 16–8758. SMILEY *v.* FERGUSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT BENNER TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–8768. EASON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 16–8769. BREWER *v.* MCGINLEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–8773. MURRAY *v.* MCEWEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 673 Fed. Appx. 669.

No. 16–8775. TURNER *v.* BREATHITT COUNTY GERIATRIC CORP. C. A. 6th Cir. Certiorari denied.

No. 16–8809. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 674 Fed. Appx. 432.

No. 16–8810. LAMONDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8826. HARSHMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 330.

No. 16–8828. GUZMAN *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–8833. TRAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 368.

No. 16–8838. WARNER *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–8839. VANCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 847 F. 3d 328.

No. 16–8840. HAYES *v.* PASTRANA, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–8846. HARMON *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 50.

No. 16–8849. PRICE *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 16–8862. WATTS-EL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–8863. WINSTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 845 F. 3d 876.

No. 16–8867. HILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 674 Fed. Appx. 738.

No. 16–8868. GUERRIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 544.

No. 16–8877. SWIGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 675 Fed. Appx. 367.

No. 16–8878. RESTERHOUSE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 685 Fed. Appx. 436.

No. 16–8880. STEWART *v.* LEE, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 782.

No. 16–8885. NIXON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 673 Fed. Appx. 459.

No. 16–8888. SIMMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–8889. JEAN-BAPTISTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 663 Fed. Appx. 7.

No. 16–8893. Eubanks *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 16–8900. Gaona-Gaona *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 599 Fed. Appx. 210.

No. 16–8902. Galarza-Morales *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 193.

No. 16–8907. White *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 846 F. 3d 170.

No. 16–8916. Hester *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 674 Fed. Appx. 31.

No. 16–8917. Castelo Armienta *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 665.

No. 16–8925. Redrick *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 841 F. 3d 478.

No. 16–8927. Rivera-Izquierdo *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 850 F. 3d 38.

No. 16–8934. Constant *v.* Martuscello, Superintendent, Coxsackie Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 677 Fed. Appx. 727.

No. 16–8941. Oliver *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 675 Fed. Appx. 757.

No. 16–8954. Doxey *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 833 F. 3d 692.

No. 16–8960. Whitson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 503.

No. 16–8961. Trice *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 16–773. Cortes-Morales *v.* Hastings, Warden. C. A. 11th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition. Reported below: 827 F. 3d 1009.

No. 16–8515. WILSON *v.* BRYANT, WARDEN. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 655 Fed. Appx. 636.

No. 16–8795. BARAJAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 670 Fed. Appx. 993.

Rehearing Denied

No. 16–962. GROOMS, ADMINISTRATRIX OF THE ESTATE OF GROOMS, DECEASED *v.* HUNTER HOLMES MCGUIRE VETERANS ADMINISTRATION MEDICAL CENTER ET AL., *ante*, p. 905;

No. 16–6436. ALTHAGE *v.* UNITED STATES, 580 U. S. 1201;

No. 16–6630. FREDERICK *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, 580 U. S. 1065;

No. 16–6690. GOODSON *v.* CALIFORNIA, 580 U. S. 1068;

No. 16–7181. BARTLETT *v.* ALLEGAN COUNTY COURTS ET AL., 580 U. S. 1127;

No. 16–7462. ROSA *v.* SHARTLE, WARDEN, 580 U. S. 1203;

No. 16–7470. SCHLITTLER *v.* TEXAS, 580 U. S. 1203;

No. 16–7677. DIXON *v.* NEW YORK, *ante*, p. 906;

No. 16–7703. IN RE SCHECKEL, *ante*, p. 904;

No. 16–7719. NAWLS ET AL. *v.* SHAKOPEE MDEWAKANTON SIOUX GAMING ENTERPRISE—MYSTIC LAKE CASINO, *ante*, p. 907;

No. 16–7723. ELANSARI *v.* PENNSYLVANIA, 580 U. S. 1207;

No. 16–7821. SMITH *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, *ante*, p. 921;

No. 16–7849. CELESTINE *v.* NIEVES, *ante*, p. 922;

No. 16–7881. SMITH *v.* CAPOZZA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL., 580 U. S. 1221;

No. 16–7911. DIXSON *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, *ante*, p. 923; and

No. 16–8031. PALOM RAMIREZ *v.* UNITED STATES, 580 U. S. 1222. Petitions for rehearing denied.

No. 15–8219. RICHARDSON *v.* INDUSTRIAL COMMISSION OF OHIO ET AL., 578 U. S. 932. Motion for leave to file petition for rehearing denied.

No. 16–6107. FORD *v.* UNITED STATES, 580 U. S. 1224; and
No. 16–7403. MORALES *v.* FLORIDA, 580 U. S. 1190. Petitions for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions.

No. 16–7390. BAHEL *v.* UNITED STATES, *ante*, p. 911. Petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

JUNE 2, 2017

Miscellaneous Order

No. 16–1436. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* INTERNATIONAL REFUGEE ASSISTANCE PROJECT ET AL. C. A. 4th Cir. Respondents are directed to file a response to the petition for writ of certiorari on or before 3 p.m., Monday, June 12, 2017.

JUNE 5, 2017

Affirmed on Appeal

No. 16–649. NORTH CAROLINA ET AL. *v.* COVINGTON ET AL. Affirmed on appeal from D. C. M. D. N. C.

Certiorari Granted—Vacated and Remanded

No. 16–6059. JUAN FLORES, AKA JUAN-FLORES *v.* UNITED STATES (Reported below: 668 Fed. Appx. 146); RODRIGUEZ-RODRIGUEZ *v.* UNITED STATES (668 Fed. Appx. 148); MATA-ALVAREZ *v.* UNITED STATES (667 Fed. Appx. 109); AGUILAR-HERNANDEZ *v.* UNITED STATES (667 Fed. Appx. 110); RAYON-GONZALEZ *v.* UNITED STATES (668 Fed. Appx. 95). C. A. 5th Cir.;
No. 16–6747. PAZ-CRUZ *v.* UNITED STATES. Reported below: 668 Fed. Appx. 91. C. A. 5th Cir.;
No. 16–8455. OVALLE-GARCIA *v.* UNITED STATES (Reported below: 672 Fed. Appx. 421); and SILVA-DURAN *v.* UNITED STATES (672 Fed. Appx. 412). C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Esquivel-Quintana* v. *Sessions*, *ante*, p. 385.

No. 16–7553. LAURIANO-ESTEBAN *v.* UNITED STATES (Reported below: 669 Fed. Appx. 757); and MORENO-ORNELLAS *v.* UNITED STATES (669 Fed. Appx. 758). C. A. 5th Cir. Motion for

leave to proceed *in forma pauperis* and certiorari as to Juan Lauriano-Esteban granted, judgment vacated, and case remanded for further consideration in light of *Esquivel-Quintana* v. *Sessions*, *ante*, p. 385. Certiorari as to Rafael Moreno-Ornellas denied.

Certiorari Dismissed

No. 16–8848. Fish *v.* Seventh District Court of Appeals of Ohio et al. Sup. Ct. Ohio. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 148 Ohio St. 3d 1423, 2017-Ohio-905, 71 N. E. 3d 295.

No. 16–8930. Garey *v.* Mansukeani, Warden, 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. Justice Kagan took no part in the consideration or decision of this motion and this petition. Reported below: 654 Fed. Appx. 638.

Miscellaneous Orders

No. D–2945. In re Disbarment of Legome. Disbarment entered. [For earlier order herein, see 580 U. S. 1028.]

No. 16M135. Pinkney *v.* United States;

No. 16M136. Heath *v.* Massachusetts Department of Children and Families; and

No. 16M137. Garcia *v.* McEwen, Warden. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M138. Wilburn *v.* Merit Systems Protection Board. Motion for leave to proceed as a veteran granted.

No. 16–6795. Manuel Ayestas, aka Zelaya Corea *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. [Certiorari granted, *ante*, p. 904.] Motion of petitioner for appointment of counsel granted, and Lee B. Kovarsky, Esq., of Baltimore, Md., is appointed to serve as counsel for petitioner in this case.

No. 16–7915. Jackman *v.* 5751 Unit Team Fort Dix et al. C. A. 3d Cir. Motion of petitioner for reconsideration of order

denying leave to proceed *in forma pauperis* [*ante*, p. 913] denied.

No. 16–8765. LAMKIN *v.* PHENY ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 26, 2017, 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. 16–8969. IN RE CABRERA. Petition for writ of mandamus denied.

Certiorari Granted

No. 16–402. CARPENTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari granted. Reported below: 819 F. 3d 880.

Certiorari Denied. (See also No. 16–7553, *supra*.)

No. 16–814. STERLING *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 75 M. J. 407.

No. 16–898. WERNER *v.* WALL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 836 F. 3d 751.

No. 16–929. SHAKBAZYAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 841 F. 3d 286.

No. 16–932. TEAMSTERS UNION LOCAL NO. 70, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 283.

No. 16–967. BAYOU SHORES SNF, LLC *v.* FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 828 F. 3d 1297.

No. 16–1065. SAI *v.* TRANSPORTATION SECURITY ADMINISTRATION ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 843 F. 3d 33.

No. 16–1163. STRONG ET AL. *v.* KITTLE-AIKELEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 844 F. 3d 727.

No. 16–1173. IKO *v.* IKO. Sup. Ct. Va. Certiorari denied.

No. 16–1176. Soeth *v.* Newmaker et al. C. A. 9th Cir. Certiorari denied. Reported below: 842 F. 3d 1108.

No. 16–1179. Hsu *v.* California Department of Toxic Substances Control et al.; and Hsu *v.* California Department of Toxic Substances Control. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 16–1182. Kinney *v.* Clark. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied.

No. 16–1184. Arunachalam *v.* United States District Court for the District of Delaware. C. A. 3d Cir. Certiorari denied. Reported below: 663 Fed. Appx. 237.

No. 16–1187. Truesdale *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 16–1192. Allen et al. *v.* Connecticut Commissioner of Revenue Services. Sup. Ct. Conn. Certiorari denied. Reported below: 324 Conn. 292, 152 A. 3d 488.

No. 16–1196. Turner *v.* Brown, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 845 F. 3d 294.

No. 16–1199. Corliss *v.* Lynot et al. C. A. 3d Cir. Certiorari denied. Reported below: 672 Fed. Appx. 184.

No. 16–1204. City of Memphis, Tennessee *v.* Cole et al. C. A. 6th Cir. Certiorari denied. Reported below: 839 F. 3d 530.

No. 16–1222. Canuto et al., Parents of D. A. C., a Minor *v.* Price, Secretary of Health and Human Services. C. A. Fed. Cir. Certiorari denied. Reported below: 660 Fed. Appx. 955.

No. 16–1311. McNeil *v.* Commissioner of Internal Revenue et al. C. A. D. C. Cir. Certiorari denied. Reported below: 689 Fed. Appx. 648.

No. 16–5913. Carcamo *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 168.

No. 16–6880. Perez-Delgado *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 149.

No. 16–7124. LUSTIG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 830 F. 3d 1075.

No. 16–7160. VILLA-LUJAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 285.

No. 16–7317. LEE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 833 F. 3d 56.

No. 16–7338. CRUZ DE JESUS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 296.

No. 16–7340. HICKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 213.

No. 16–7452. RISHOR *v.* FERGUSON, ATTORNEY GENERAL OF WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 822 F. 3d 482.

No. 16–7585. PENALOZA-CARLON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 842 F. 3d 863.

No. 16–7725. ROBEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 831 F. 3d 857.

No. 16–7840. MICKEL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 2 Cal. 5th 181, 385 P. 3d 796.

No. 16–7885. ROCHA-ALVARADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 843 F. 3d 802.

No. 16–7950. SANTIAGO *v.* LABOR AND INDUSTRY REVIEW COMMISSION ET AL. Ct. App. Wis. Certiorari denied. Reported below: 2016 WI App 67, 371 Wis. 2d 564, 884 N. W. 2d 535.

No. 16–7962. JUDKINS *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 16–8118. CHAVEZ-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 844 F. 3d 540.

No. 16–8125. ELDRIDGE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 253.

No. 16–8520. CEPEC *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 149 Ohio St. 3d 438, 2016-Ohio-8076, 75 N. E. 3d 1185.

No. 16–8555. STODDART *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–8564. AMENUVOR *v.* TICE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–8565. COPELAND *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 229 So. 2d 322.

No. 16–8568. LEWIS *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–8569. DAVIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 207 So. 3d 142.

No. 16–8570. DAVIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 207 So. 3d 177.

No. 16–8572. OLIVER *v.* DUCART, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–8573. SIMMONS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–8584. BROWN *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 16–8585. BROOKS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 229 So. 3d 322.

No. 16–8586. ALTOUNIAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 7. Certiorari denied.

No. 16–8588. BROWN *v.* ALLBAUGH, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 678 Fed. Appx. 638.

No. 16–8591. EVANS *v.* FISHER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 676 Fed. Appx. 344.

No. 16–8596. SPAULDING *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 151 Ohio St. 3d 378, 2016-Ohio-8126, 89 N. E. 3d 554.

No. 16–8638. WOODLEY *v.* MACLAREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8653. NOWICKI *v.* CUNNINGHAM, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 669 Fed. Appx. 52.

No. 16–8661. BOWMAN *v.* MILLER, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 661 Fed. Appx. 56.

No. 16–8666. MULLER *v.* GRIFFIN, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 16–8669. JOHNSON *v.* OKLAHOMA DEPARTMENT OF TRANSPORTATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 673 Fed. Appx. 898.

No. 16–8677. BUTLER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 222 So. 3d 1203.

No. 16–8697. TAYLOR *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 662 Fed. Appx. 915.

No. 16–8704. BOHANNAN *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 16–8707. SMITH *v.* KLEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8715. LANE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2017 Ark. 34, 513 S. W. 3d 230.

No. 16–8719. COTTRELL *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 677 Fed. Appx. 125.

No. 16–8720. PARKER *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 10th Cir. Certiorari denied. Reported below: 676 Fed. Appx. 798.

No. 16–8738. Bolivar *v.* Texas. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 16–8762. Wilks *v.* Rymarkiewicz et al. C. A. 7th Cir. Certiorari denied.

No. 16–8776. Lee *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 16–8780. Henry *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 848 F. 3d 1.

No. 16–8801. Campbell *v.* Gage, Warden. Ct. App. Neb. Certiorari denied. Reported below: 24 Neb. App. xxi.

No. 16–8808. Kosh *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 674 Fed. Appx. 592.

No. 16–8819. Bernardez *v.* Graham, Superintendent, Auburn Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 16–8847. Harrell *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 16–8854. Self *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–8879. Ruiz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 607.

No. 16–8884. Bray *v.* Phillips, Warden. C. A. 6th Cir. Certiorari denied.

No. 16–8887. Reed *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 206 So. 3d 39.

No. 16–8896. Gabriel Cisneros *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 16–8897. Dutcher *v.* Massachusetts. App. Ct. Mass. Certiorari denied. Reported below: 90 Mass. App. 1115, 63 N. E. 3d 65.

No. 16–8904. Thuener *v.* Smith, Warden. C. A. 6th Cir. Certiorari denied.

No. 16–8914. IVES *v.* MILLION, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 669 Fed. Appx. 619.

No. 16–8918. FORD *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–8919. ADEFEYINTI *v.* VARGA, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–8924. ANGEL HERRERA *v.* MCFADDEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 689.

No. 16–8933. HAYES *v.* WESTBROOKS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–8937. KRAEMER *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 16–8942. MCDOWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–8945. RIVERA-BUGARIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–8950. HARRINGTON *v.* OBENLAND. C. A. 9th Cir. Certiorari denied.

No. 16–8953. WHITENER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 194.

No. 16–8955. ROBINSON *v.* SEMPLE, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. App. Ct. Conn. Certiorari denied. Reported below: 169 Conn. App. 907, 155 A. 3d 329.

No. 16–8957. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–8964. THERRIEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 847 F. 3d 9.

No. 16–8979. STRICKLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 682 Fed. Appx. 742.

No. 16–8980. RIVERA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 847 F. 3d 847.

No. 16–8981. SHEPHERD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–8983. ROBERTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–8985. DESAI *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 672 Fed. Appx. 201.

No. 16–8990. LLANOS-FALERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 847 F. 3d 29.

No. 16–8995. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 847 F. 3d 193.

No. 16–8998. MEDINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8999. KARLIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–9000. MARIUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 678 Fed. Appx. 960.

No. 16–9006. SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 675 Fed. Appx. 474.

No. 16–9008. GOOCH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 850 F. 3d 285.

No. 16–9009. GASKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 685 Fed. Appx. 698.

No. 16–9011. EKWEBELEM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 868.

No. 16–9013. KASTNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–9015. LAVICTOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 848 F. 3d 428.

No. 16–9018. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–9023. BRINKLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 91.

No. 16–9025. Broderick *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 870.

No. 16–9029. Ford *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 16–9030. Lussier *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 844 F. 3d 1019.

No. 16–9034. Allen *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 847 F. 3d 267.

No. 16–9039. Edwards *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 260.

No. 16–9047. Zweigle *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 16–9050. Thompson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 986.

No. 16–9055. Perez *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 16–9058. De Nier *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 841.

No. 16–9061. Patel *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 16–9062. Elder *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 675 Fed. Appx. 480.

No. 16–9077. Rene Rivera *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 686 Fed. Appx. 470.

No. 16–8119. Digiorgio *v.* Securities and Exchange Commission. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* granted. The order entered April 17, 2017, [*ante*, p. 916] vacated. Certiorari denied. Reported below: 653 Fed. Appx. 744.

No. 16–8713. Rosiere *v.* United States. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 673 Fed. Appx. 834.

No. 16–8967. CONCEPCION *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 679 Fed. Appx. 230.

No. 16–8972. FOWLER *v.* ATKINSON, WARDEN. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 656 Fed. Appx. 11.

No. 16–8976. GRIGSBY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 665 Fed. Appx. 708.

No. 16–8977. GRIGSBY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 665 Fed. Appx. 701.

No. 16–8982. RICHMOND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 677 Fed. Appx. 403.

No. 16–8993. WILSON *v.* JONES, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 669 Fed. Appx. 498.

No. 16–9035. BURRELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 665 Fed. Appx. 91.

Rehearing Denied

No. 15–9441. GARDNER *v.* WOODS, WARDEN, 580 U. S. 840;

No. 16–934. COULTER *v.* JAMSAN HOTEL MANAGEMENT, INC., ET AL., *ante*, p. 905;

No. 16–6309. TIGER *v.* PYNKALA ET AL., 580 U. S. 1218;

No. 16–7069. ADKINS *v.* WHOLE FOODS MARKET GROUP, INC., *ante*, p. 920;

No. 16–7333. JOHNSON *v.* VANNOY, WARDEN, 580 U. S. 1133;

No. 16–7550. OWENS *v.* LEWIS, WARDEN, 580 U. S. 1205;

No. 16–7675. WILLIAMS *v.* JACKSON, 580 U. S. 1220;

No. 16–7934. SAITTA *v.* TUCSON UNITED SCHOOL DISTRICT, *ante*, p. 923;

No. 16–8038. IN RE BROWN, 580 U. S. 1196;

No. 16–8097. CAMPBELL *v.* NEW YORK CITY TRANSIT AUTHORITY, *ante*, p. 925;

No. 16–8111. IN RE LAWSON, 580 U. S. 1196;

No. 16–8275. MARTINEZ *v.* UNITED STATES, *ante*, p. 927; and

No. 16–8557. IN RE SELDEN, *ante*, p. 937. Petitions for rehearing denied.

JUNE 6, 2017

Miscellaneous Order

No. 16A1200. DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. *v.* MELSON. Application to vacate stay of execution of sentence of death, entered by the United States Court of Appeals for the Eleventh Circuit on June 2, 2017, presented to JUSTICE THOMAS, and by him referred to the Court, granted. JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE SOTOMAYOR would deny the application to vacate the stay of execution.

JUNE 8, 2017

Miscellaneous Order

No. 16A1212. MELSON *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. The order heretofore entered by JUSTICE THOMAS is vacated.

AMENDMENT TO FEDERAL RULES OF APPELLATE PROCEDURE

The following amendment to the Federal Rules of Appellate Procedure was prescribed by the Supreme Court of the United States on April 27, 2017, pursuant to 28 U. S. C. § 2072, and was reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1030. 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, 572 U. S. 1161, and 578 U. S. 1031.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 27, 2017

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 amendment to the Federal Rules of Appellate Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying this rule are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated March 16, 2017; a redline version of the rule with committee note; and an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States.

Sincerely,

(Signed) JOHN G. ROBERTS, JR.
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 27, 2017

ORDERED:

1. That the Federal Rules of Appellate Procedure be, and they hereby are, amended by including therein an amendment to Appellate Rule 4.

[See *infra*, p. 1033.]

2. That the foregoing amendment to the Federal Rules of Appellate Procedure shall take effect on December 1, 2017, 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 amendment to the Federal Rules of Appellate Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

AMENDMENT 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.*

. . . . .

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment–but before it disposes of any motion listed in Rule 4(a)(4)(A)–the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal–in compliance with Rule 3(c)–within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

. . . . .

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 27, 2017, 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. 1036. 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, 575 U. S. 1049, and 578 U. S. 1051.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 27, 2017

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 that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code:

(1) a transmittal letter to the Court dated September 28, 2016, concerning Bankruptcy Rules 1001, 1006, and 1015, followed by redline versions of those rules and excerpts from related reports of the rules committees; and

(2) a transmittal letter to the Court dated March 16, 2017, concerning amended Bankruptcy Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, and new Rule 3015.1, followed by redline versions of those rules and excerpts from related reports of the rules committees.

Sincerely,

(Signed) JOHN G. ROBERTS, JR.
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 27, 2017

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 1001, 1006, 1015, 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, and new Rule 3015.1.

[See *infra*, pp. 1039–1048.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2017, 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 1001. Scope of rules and forms; short title.

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.

Rule 1006. Filing fee.

. . . . .

(*b*) *Payment of filing fee in installments.*

(*1*) *Application to pay filing fee in installments.*—A voluntary petition by an individual shall be accepted for filing, regardless of whether any portion of the filing fee is paid, if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments.

. . . . .

Rule 1015. Consolidation or joint administration of cases pending in same court.

. . . . .

(*b*) *Cases involving two or more related debtors.*—If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to pro-

tecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the other has elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).

. . . . .

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.

(*a*) *Twenty-one-day notices to parties in interest.*—Except as provided in subdivisions (h), (i), (*l*), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

. . . . .

(7) the time fixed for filing proofs of claims pursuant to Rule 3003(c);

(8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan; and

(9) the time fixed for filing objections to confirmation of a chapter 13 plan.

(*b*) *Twenty-eight-day notices to parties in interest.*—Except as provided in subdivision (*l*) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information

so that a separate disclosure statement is not necessary; (2) for filing objections and the hearing to consider confirmation of a chapter 9 or chapter 11 plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.

. . . . .

Rule 3002. Filing proof of claim or interest.

(*a*) *Necessity for filing.*—A secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.

(*b*) *Place of filing.*—A proof of claim or interest shall be filed in accordance with Rule 5005.

(*c*) *Time for filing.*—In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered. But in all these cases, the following exceptions apply:

. . . . .

(6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that:

(A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or

(B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a

proof of claim, and the notice was mailed to the creditor at a foreign address.

(7) A proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if:

(A) the proof of claim, together with the attachments required by Rule 3001(c)(2)(C), is filed not later than 70 days after the order for relief is entered; and

(B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after the order for relief is entered.

Rule 3007. Objections to claims.

(*a*) *Time and manner of service.*

(*1*) *Time of service.*—An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing.

(*2*) *Manner of service.*

(A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and

(i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or

(ii) if the objection is to a claim of an insured depository institution, in the manner provided by Rule 7004(h).

(B) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.

. . . . .

Rule 3012. Determining the amount of secured and priority claims.

(*a*) *Determination of amount of claim.*—On request by a party in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine:

(1) the amount of a secured claim under § 506(a) of the Code; or

(2) the amount of a claim entitled to priority under § 507 of the Code.

(*b*) *Request for determination; how made.*—Except as provided in subdivision (c), a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case. When the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004. A request to determine the amount of a claim entitled to priority may be made only by motion after a claim is filed or in a claim objection.

(*c*) *Claims of governmental units.*—A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.

Rule 3015. Filing, objection to confirmation, effect of confirmation, and modification of a plan in a Chapter 12 or a Chapter 13 case.

(*a*) *Filing a Chapter 12 plan.*—The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.

(*b*) *Filing a Chapter 13 plan.*—The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the

petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(*c*) *Form of Chapter 13 plan.*—If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, "nonstandard provision" means a provision not otherwise included in the Official or Local Form or deviating from it.

(*d*) *Notice.*—If the plan is not included with the notice of the hearing on confirmation mailed under Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.

(*e*) *Transmission to United States trustee.*—The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed under subdivision (a) or (b) of this rule.

(*f*) *Objection to confirmation; determination of good faith in the absence of an objection.*—An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(*g*) *Effect of confirmation.*—Upon the confirmation of a chapter 12 or chapter 13 plan:

(1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed; and

(2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.

(*h*) *Modification of plan after confirmation.*—A request to modify a plan under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

Rule 3015.1. Requirements for a local form for plans filed in a Chapter 13 case.

Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:

(a) a single Local Form is adopted for the district after public notice and an opportunity for public comment;

(b) each paragraph is numbered and labeled in boldface type with a heading stating the general subject matter of the paragraph;

(c) the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not:

(1) contain any nonstandard provision;

(2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or

(3) avoid a security interest or lien;

(d) the Local Form contains separate paragraphs for:

(1) curing any default and maintaining payments on a claim secured by the debtor's principal residence;

(2) paying a domestic-support obligation;

(3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and

(4) surrendering property that secures a claim with a request that the stay under §§ 362(a) and 1301(a) be terminated as to the surrendered collateral; and

(e) the Local Form contains a final paragraph for:

(1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and

(2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.

Rule 4003. Exemptions.

. . . . .

(*d*) *Avoidance by debtor of transfers of exempt property.*—A proceeding under § 522(f) to avoid a lien or other transfer of property exempt under the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to a request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

Rule 5009. Closing Chapter 7, Chapter 12, Chapter 13, and Chapter 15 cases; order declaring lien satisfied.

(*a*) *Closing of cases under Chapters 7, 12, and 13.*—If in a chapter 7, chapter 12, or chapter 13 case the trustee has

filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.

. . . . .

(*d*) *Order declaring lien satisfied.*—In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and shall be served on the holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint.

Rule 7001. Scope of rules of Part VII.

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

. . . . .

(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);

. . . . .

Rule 9009. Forms

(*a*) *Official forms.*—The Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that:

(1) expand the prescribed areas for responses in order to permit complete responses;

(2) delete space not needed for responses; or

(3) delete items requiring detail in a question or category if the filer indicates—either by checking "no" or "none" or by stating in words—that there is nothing to report on that question or category.

(*b*) *Director's forms.*—The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.

(*c*) *Construction.*—The forms shall be construed to be consistent with these rules and the Code.

AMENDMENT TO FEDERAL RULES OF CIVIL PROCEDURE

The following amendment to the Federal Rules of Civil Procedure was prescribed by the Supreme Court of the United States on April 27, 2017, pursuant to 28 U. S. C. § 2072, and was reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1050. 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, 575 U. S. 1055, and 578 U. S. 1061.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 27, 2017

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 amendment to the Federal Rules of Civil Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying this rule are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated March 16, 2017; a redline version of the rule with committee note; an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the December 9, 2016 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 27, 2017

ORDERED:

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein an amendment to Civil Rule 4.

[See *infra*, p. 1053.]

2. That the foregoing amendment to the Federal Rules of Civil Procedure shall take effect on December 1, 2017, 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 amendment to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

AMENDMENT 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 court–on 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), or to service of a notice under Rule 71.1(d)(3)(A).

. . . . .

AMENDMENTS TO FEDERAL RULES OF EVIDENCE

The following amendments to the Federal Rules of Evidence were prescribed by the Supreme Court of the United States on April 27, 2017, 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. 1056. 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 reference to the Federal Rules of Evidence, see 409 U. S. 1132. For earlier publication of the Federal Rules of Evidence and amendments thereto, see 441 U. S. 1005, 480 U. S. 1023, 485 U. S. 1049, 493 U. S. 1173, 500 U. S. 1001, 507 U. S. 1187, 511 U. S. 1187, 520 U. S. 1323, 523 U. S. 1235, 529 U. S. 1189, 538 U. S. 1097, 547 U. S. 1281, 559 U. S. 1157, 563 U. S. 1075, 569 U. S. 1167, and 572 U. S. 1233.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 27, 2017

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 Evidence 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 that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated September 28, 2016; a redline version of the rules with committee notes; an excerpt from the September 2016 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 7, 2016 Report of the Advisory Committee on Evidence Rules.

Sincerely,

(Signed) JOHN G. ROBERTS, JR.
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 27, 2017

ORDERED:

1. That the Federal Rules of Evidence be, and they hereby are, amended by including therein amendments to Evidence Rules 801(d)(1)(B) and 803(6)–(8).

[See *infra*, p. 1059.]

2. That the foregoing amendments to the Federal Rules of Evidence shall take effect on December 1, 2014, and shall govern in all proceedings 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 Evidence in accordance with the provisions of Section 2072 of Title 28, United States Code.

AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE

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. . . . .

(*16*) *Statements in ancient documents.*—A statement in a document that was prepared before January 1, 1998, and whose authenticity is established.

. . . . .

Rule 902. Evidence that is self-authenticating.

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

. . . . .

(*13*) *Certified records generated by an electronic process or system.*—A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

(*14*) *Certified data copied from an electronic device, storage medium, or file.*—Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).

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EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Benefits plan for church employees—Establishment of plan by qualifying church-affiliated nonprofit.—ERISA's church-plan exemption applies to an employee benefit plan maintained by a qualifying church-affiliated organization, regardless of whether a church initially established plan. Advocate Health Care Network v. Stapleton, p. 468.

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FAIR DEBT COLLECTION PRACTICES ACT.

Proof of claim of time-barred debit in bankruptcy proceeding.—Filing of a proof of claim for an obviously time-barred debt in a bankruptcy proceeding is not a false, deceptive, misleading, unfair, or unconscionable debt collection practice within meaning of Act. Midland Funding, LLC v. Johnson, p. 224.

FAIR HOUSING ACT.

Standing of city in suit for alleged Act violations—Financial injury claims—FHA's proximate-cause requirement.—City of Miami is an "aggrieved person" authorized to bring suit under FHA, but Eleventh Circuit erred in concluding that City's complaints met FHA's proximate-cause requirement based solely on finding that City's alleged financial injuries were foreseeable results of Banks' misconduct. Bank of America Corp. v. Miami, p. 189.

FEDERAL ARBITRATION ACT.

Kentucky rule requiring explicit statement for principal to enter into arbitration agreement on agent's behalf.— Kentucky Supreme Court's clear-statement rule—that a legal representative may enter into an arbitration agreement for his principal only where a power of attorney specifically authorizes him to waive the principal's rights of access to courts and trial by jury—violates FAA. Kindred Nursing Centers L. P. v. Clark, p. 246.

FEDERAL DISTRICT COURTS. See **Congressional Redistricting.**

FEDERAL EMPLOYEES HEALTH BENEFITS ACT OF 1959. See **Pre-emption of State Law.**

FEDERAL EMPLOYERS' LIABILITY ACT.

Personal jurisdiction over out-of-state corporation—Suit for injuries sustained by railroad employees.—Title 45 U. S. C. § 56, a provision of FELA, does not address personal jurisdiction over railroads; Montana courts' exercise of personal jurisdiction over petitioner under Montana law does not comport with Fourteenth Amendment's Due Process Clause. BNSF R. Co. v. Tyrrell, p. 402.

FEDERAL RULES OF APPELLATE PROCEDURE.

Amendments to Rules, p. 1029.

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FEDERAL RULES OF CIVIL PROCEDURE.

1. Amendments to Rules, p. 1049.

2. *Intervenors of right—Article III standing requirement.*—Litigant seeking to intervene as of right under Rule 24(a)(2) must meet requirements of Article III standing if intervenor wishes to pursue relief not requested by a plaintiff. Town of Chester v. Laroe Estates, Inc., p. 433.

FEDERAL RULES OF EVIDENCE.

Amendments to Rules, p. 1055.

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FIRST AMENDMENT. See **Constitutional Law.**

FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976.

Foreign sovereign immunity—Nonfrivolous argument alone insufficient to raise expropriation exception.—Act's expropriation exception grants jurisdiction only where there is a legally valid claim that property rights are at issue and that relevant property was taken in violation of international law; simply making a nonfrivolous argument to that effect is not sufficient. Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co., p. 170.

FORFEITURE OF ASSETS RESULTING FROM DRUG-LAW VIOLATIONS. See **Comprehensive Forfeiture Act of 1984.**

FOURTEENTH AMENDMENT. See **Constitutional Law; Federal Employers' Liability Act.**

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Permissible method of service under Convention.—Convention does not prohibit service of process by mail. Water Splash, Inc. v. Menon, p. 271.

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State statutory rape offense—Question whether state offense qualifies as "sexual abuse of a minor" under the Act—Age of victim.—For purpose of determining whether a statutory rape offense criminalizing sexual intercourse based solely on participants' ages qualifies as an aggravated felony under INA, generic federal definition of "sexual abuse of a minor" requires age of victim to be less than 16. Esquivel-Quintana v. Sessions, p. 385.

IMMUNITY FROM SUIT. See **Foreign Sovereign Immunities Act of 1976; Indian Sovereign Immunity.**

INDIAN SOVEREIGN IMMUNITY.

Tribal sovereign immunity—Real party in interest—Indemnification of individual employees.—Tribal employee sued in his individual capacity, not tribe, is real party in interest, and tribe's sovereign immunity is not implicated; an indemnification provision cannot, as a matter of law, extend sovereign immunity to individual employees who would otherwise not fall under its protective cloak. Lewis v. Clarke, p. 155.

INTELLECTUAL DISABILITY STANDARD. See **Constitutional Law.**

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Proper standard of appellate review.—District court's decision whether to enforce or quash an EEOC subpoena should be reviewed for abuse of discretion, not *de novo.* McLane Co. v. EEOC, p. 72.

JURISDICTION. See **Foreign Sovereign Immunities Act of 1976.**

KENTUCKY. See **Federal Arbitration Act.**

LITIGANTS' BAD-FAITH CONDUCT. See **Attorney's Fees.**

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MENTALLY DISABLED CRIMINALS. See **Constitutional Law.**

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Exhaustion of patent rights—Contractual restriction on customers' use of product.—Lexmark exhausted all of its patent rights in toner cartridges it sold domestically as part of its Return Program as well as in toner cartridges it sold abroad. Impression Products, Inc. v. Lexmark Int'l, Inc., p. 360.

PERSONAL JURISDICTION. See **Federal Employers' Liability Act.**

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PRE-EMPTION OF STATE LAW.

Pre-emption of state laws barring contractual subrogation and reimbursement prescriptions under Federal Employees Health Benefits Act

PRE-EMPTION OF STATE LAW—Continued.

of 1959—Supremacy clause.—Because subrogation and reimbursement prescriptions in federal employees' health insurance contracts that Office of Personnel Management negotiates with private carriers plainly "relate to . . . payments with respect to benefits" under 5 U. S. C. § 8902(m)(1)—FEHBA's express preemption provision—they override state laws barring subrogation and reimbursement; congressionally enacted regime is compatible with Supremacy Clause. Coventry Health Care of Mo., Inc. v. Nevils, p. 87.

PRINCIPAL/AGENCY RELATIONSHIPS. See **Federal Arbitration Act.**

PROXIMATE CAUSE. See **Fair Housing Act.**

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REAL PARTIES IN INTEREST. See **Indian Sovereign Immunity.**

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RESTITUTION AWARDS. See **Appeals.**

RETIREMENT BENEFITS. See **Uniformed Services Former Spouses' Protection Act.**

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Disgorgement claim in SEC enforcement action—Imposition as a "penalty"—Applicability of limitations period for bringing claim.—Be-

STATUTES OF LIMITATIONS—Continued.
cause SEC disgorgement operates as a penalty under 28 U. S. C. § 2462, any claim for disgorgement in an SEC enforcement action must be commenced within five years of date claim accrued. Kokesh v. SEC, p. 455.

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1. Amendments to Federal Rules of Appellate Procedure, p. 1029.
2. Amendments to Federal Rules of Bankruptcy Procedure, p. 1035.
3. Amendments to Federal Rules of Civil Procedure, p. 1049.
4. Amendments to Federal Rules of Evidence, p. 1055.

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TRIBAL SOVEREIGN IMMUNITY. See **Indian Sovereign Immunity.**

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Indemnification of divorced spouse for loss in benefits—Waiver of retirement pay in favor of disability benefits.—Act does not permit state courts to order a veteran to indemnify a divorced spouse for loss in divorced spouse's portion of veteran's retirement pay caused by veteran's waiver of retirement pay to receive service-related disability benefits. Howell v. Howell, p. 214.

VENUE.

Venue in patent infringement suits—Domestic corporations' place of residence.—For purposes of patent venue statute, 28 U. S. C. § 1400(b)—which provides that "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides . . . "—a domestic corporation "resides" only in its State of incorporation. TC Heartland LLC v. Kraft Foods Group Brands LLC, p. 258.

VETERANS' DISABILITY BENEFITS. See **Uniformed Services Former Spouses' Protection Act.**

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WORDS AND PHRASES.

"[A]ggrieved person." Fair Housing Act, 42 U. S. C. §§ 3613(a)(1)(A), (c)(1). Bank of America Corp. v. Miami, p. 189.

"Any civil action for patent infringement may be brought in the judicial district where the defendant resides . . . ." Federal Employees Health

WORDS AND PHRASES—Continued.

Benefits Act of 1959, 28 U. S. C. § 1400(b). TC Heartland LLC v. Kraft Foods Group Brands LLC, p. 258.

"[P]enalty." 28 U. S. C. § 2462. Kokesh v. SEC, p. 455.

"[R]elate to . . . payments with respect to benefits." 5 U. S. C. § 8902(m)(1). Coventry Health Care of Mo., Inc. v. Nevils, p. 87.

"*[S]exual abuse of a minor*." Immigration and Nationality Act, 8 U. S. C. § 1101(a)(43)(A). Esquivel-Quintana v. Sessions, p. 385.

WORKPLACE INJURIES. See **Federal Employers' Liability Act.**