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OFFICIAL REPORTS

OF

THE SUPREME COURT

MAY 30 THROUGH JUNE 8, 2017

AMENDMENT TO FEDERAL RULES OF APPELLATE PROCEDURE
AMENDMENTS TO FEDERAL RULES OF BANKRUPTCY PROCEDURE
AMENDMENT TO FEDERAL RULES OF CIVIL PROCEDURE
AMENDMENTS TO FEDERAL RULES OF EVIDENCE

END OF VOLUME

CHRISTINE LUCHOK FALLON
REPORTER OF DECISIONS

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OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

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SUPREME COURT OF THE UNITED STATES

Allotment of Justices

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

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

For the First Circuit, Stephen Breyer, Associate Justice.

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

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

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

For the Fifth Circuit, Clarence Thomas, Associate Justice.

For the Sixth Circuit, Elena Kagan, Associate Justice.

For the Seventh Circuit, Elena Kagan, Associate Justice.

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

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

For the Tenth Circuit, Sonia Sotomayor, Associate Justice.

For the Eleventh Circuit, Clarence Thomas, Associate Justice.

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

February 25, 2016.

(For next previous allotment, see 577 U. S., Pt. 2, p. II.)

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2016

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.

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.

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*.

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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*.

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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 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).

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

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*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, Charles 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 "constru[e] '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

[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)

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

*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.").

[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-*

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[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 Sheriff's 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

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*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.

* * *

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. Brecklenridge*,

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-

[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

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[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.

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

**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

[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 co-conspirators.

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;
>
> "(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 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.

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 *Elizabeth 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 Franciscan Missionaries of Our Lady Health System et al. by *Howard Shapiro*; 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

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[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 extra-statutory 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.

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

Orders commencing with May 30, 2017, begin with page 1003. The preceding orders in 581 U. S., from March 29 through May 26, 2017, were reported in Part 1, at 901–1003. These page numbers are the same as they will be in the bound volume, thus making the *permanent* citations available upon publication of the preliminary prints of the United States Reports.

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. xi.

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

Rule 803. Exceptions to the rule against hearsay—regardless of whether the declarant is available as a witness.

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

. . . . .

(*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).