No. _____

In the
Supreme Court of the United States

Dustin Randall,

Petitioner,

v.

United States of America,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Petition for a Writ of Certiorari

Rene Valladares
Federal Public Defender, District of Nevada
*Amy B. Cleary
Assistant Federal Public Defender
Office of the Federal Public Defender
411 E. Bonneville Ave., Ste. 250
Las Vegas, NV 89101
(702) 388-6577
Amy_Cleary@fd.org

*Counsel for Petitioner

Question Presented for Review

Congress mandates any person convicted of "an offense against the United States" pay a nominal special assessment under 18 U.S.C. § 3013. The total amount of this special assessment ranges between $5 to $400, depending on the type of infraction or class of offense and whether the defendant is an individual or an organization. 18 U.S.C. § 3013(a)(1)–(2). In *Rutledge v. United States*, 517 U.S. 292, 301 (1996), this Court stated § 3013 requires a "special assessment for every conviction."

In 2015, Congress mandated "an additional" special assessment in "an amount of $5,000" under 18 U.S.C. § 3014(a), triggered only if a non-indigent defendant is "convicted of an offense" among five offense categories. *See* 18 U.S.C. § 3014(a)(1)–(5). Because the text, structure, scheme, purpose, and history of § 3014 differ from § 3013, the federal circuit courts do not agree on how to interpret § 3014. Federal courts remain divided over whether § 3014(a)'s assessment in "an amount of $5,000," once triggered by a conviction under a qualifying offense category, is to be imposed only once per defendant or repeatedly for each qualifying conviction.

The question presented is whether 18 U.S.C. § 3014, once triggered by a qualifying conviction, requires a non-indigent defendant to pay a single additional special assessment in "an amount of $5,000" or pay $5,000 for every qualifying conviction.

Related Proceedings

U.S. District Court:

On October 15, 2020, final judgment was entered against Petitioner Dustin Randall in *United States v. Randall*, No. 2:18-cr-00303-JCM-EJY, Dkt. 115 (D. Nev. Oct. 15, 2020). App. 1–11.

U.S. Court of Appeals

On May 20, 2022, the Ninth Circuit affirmed Randall's sentence applying a $10,000 special assessment under 18 U.S.C. § 3014(a) in a published decision, *United States v. Randall*, 34 F.4th 867 (9th Cir. 2022). App. 12–23. That same day, the Ninth Circuit affirmed Randall's incarceration term and supervision conditions in an unpublished memorandum in *United States v. Randall*, No. 20-10339, 2022 WL 1605506, at *1 (9th Cir. May 20, 2022). App. 24–25.

The Ninth Circuit denied Randall's Petition for En Banc Review on August 26, 2022, in *United States v. Randall*, No. 20-10339, Dkt. 48. App. 26.

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Petition for Writ of Certiorari

Dustin Randall petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Opinions Below

The Ninth Circuit issued a published decision affirming imposition of a $10,000 special assessment under 18 U.S.C. § 3014(a) in *United States v. Randall*, 34 F.4th 867 (9th Cir. 2022). App. 12–23. The Ninth Circuit issued a separate unpublished memorandum affirming Randall's incarceration term and supervision conditions in *United States v. Randall*, No. 20-10339, 2022 WL 1605506 (9th Cir. May 20, 2022). App. 24–25. The district court's final judgment, App. 1–11, and the Ninth Circuit's denial of en banc review, App. 26, are unpublished and not reprinted.

Jurisdiction

The district court had original jurisdiction in this criminal case under 18 U.S.C. § 3231. The Ninth Circuit had jurisdiction over Randall's direct appeal of his final judgment per 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

The Ninth Circuit's decision affirming Randall's sentence became final on August 26, 2022, with its denial of Randall's request for en banc review. App. 26.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254, and this petition is timely under Supreme Court Rule 13.1.

Statutory Provisions

18 U.S.C. § 3013. Special assessment on convicted persons

(a) The court shall assess on any person convicted of an offense against the United States—

(1) in the case of an infraction or a misdemeanor—

(A) if the defendant is an individual—

(i) the amount of $5 in the case of an infraction or a class C misdemeanor;
(ii) the amount of $10 in the case of a class B misdemeanor; and
(iii) the amount of $25 in the case of a class A misdemeanor; and

(B) if the defendant is a person other than an individual—

(i) the amount of $25 in the case of an infraction or a class C misdemeanor;
(ii) the amount of $50 in the case of a class B misdemeanor; and
(iii) the amount of $125 in the case of a class A misdemeanor;

(2) in the case of a felony--

(A) the amount of $100 if the defendant is an individual; and

(B) the amount of $400 if the defendant is a person other than an individual.

(b) Such amount so assessed shall be collected in the manner that fines are collected in criminal cases.

(c) The obligation to pay an assessment ceases five years after the date of the judgment. This subsection shall apply to all assessments irrespective of the date of imposition.

(d) For the purposes of this section, an offense under section 13 of this title is an offense against the United States.

18 U.S.C. § 3014. Additional special assessment

(a) In general.--Beginning on the date of enactment of the Justice for Victims of Trafficking Act of 2015 and ending on December 16, 2022, in addition to the assessment imposed under section 3013, the court shall assess an amount of $5,000 on any non-indigent person or entity convicted of an offense under--

(1) chapter 77 (relating to peonage, slavery, and trafficking in persons);

(2) chapter 109A (relating to sexual abuse);

(3) chapter 110 (relating to sexual exploitation and other abuse of children);

(4) chapter 117 (relating to transportation for illegal sexual activity and related crimes); or

(5) section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) (relating to human smuggling), unless the person induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(b) Satisfaction of other court-ordered obligations.--An assessment under subsection (a) shall not be payable until the person subject to the assessment has satisfied all outstanding court-ordered fines, orders of restitution, and any other obligation related to victim-compensation arising from the criminal convictions on which the special assessment is based.

(c) Establishment of Domestic Trafficking Victims' Fund.--There is established in the Treasury of the United States a fund, to be known as the "Domestic Trafficking Victims' Fund" (referred to in this section as the "Fund"), to be administered by the Attorney General, in consultation with the Secretary of Homeland Security and the Secretary of Health and Human Services.

(d) Transfers.--In a manner consistent with section 3302(b) of title 31, there shall be transferred to the Fund from the General Fund of the Treasury an amount equal to the amount of the assessments collected under this section, which shall remain available until expended.

(e) Use of funds.--

(1) In general.--From amounts in the Fund, in addition to any other amounts available, and without further appropriation, the Attorney General, in coordination with the Secretary of Health and Human Services shall, for each of fiscal years 2016 through 2023, use amounts available in the Fund to award grants or enhance victims' programming under--

(A) section 204 of the Trafficking Victims Protection Reauthorization Act of 2005 (42 U.S.C. 14044c);

(B) subsections (b)(2) and (f) of section 107 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105);

(C) section 214(b) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13002(b)); and

(D) section 106 of the PROTECT Our Children Act of 2008 (42 U.S.C. 17616).

(2) Limitation.--Except as provided in subsection (h)(2), none of the amounts in the Fund may be used to provide health care or medical items or services.

(f) Collection method.--The amount assessed under subsection (a) shall, subject to subsection (b), be collected in the manner that fines are collected in criminal cases, including the mandatory imposition of civil remedies for satisfaction of an unpaid fine as authorized under section 3613, where appropriate.

(g) Duration of obligation.--Subject to section 3613(b), the obligation to pay an assessment imposed on or after the date of enactment of the Justice for Victims of Trafficking Act of 2015 shall not cease until the assessment is paid in full.

(h) Health or medical services.--

(1) Transfer of funds.--From amounts appropriated under subparagraphs (E) and (F) of section 10503(b)(1) of the Patient Protection and Affordable Care Act (42 U.S.C. 254b-2(b)(1)), there shall be transferred to the Fund an amount equal to the amount transferred under subsection (d) for each fiscal year, except that the amount transferred under this paragraph shall not be less than $5,000,000 or more than

$30,000,000 in each such fiscal year, and such amounts shall remain available until expended.

(2) Use of funds.--The Attorney General, in coordination with the Secretary of Health and Human Services, shall use amounts transferred to the Fund under paragraph (1) to award grants that may be used for the provision of health care or medical items or services to victims of trafficking under--

(A) sections 202, 203, and 204 of the Trafficking Victims Protection Reauthorization Act of 2005 (42 U.S.C. 14044a, 14044b, and 14044c);

(B) subsections (b)(2) and (f) of section 107 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105); and

(C) section 214(b) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13002(b)).

(3) Grants.--Of the amounts in the Fund used under paragraph (1), not less than $2,000,000, if such amounts are available in the Fund during the relevant fiscal year, shall be used for grants to provide services for child pornography victims and child victims of a severe form of trafficking (as defined in section 103 of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7102)) under section 214(b) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13002(b)).

(4) Application of provision.--The application of the provisions of section 221(c) of the Medicare Access and CHIP Reauthorization Act of 2015, section 50901(e) of the Advancing Chronic Care, Extenders, and Social Services Act, section 3831 of the CARES Act, section 2101 of the Continuing Appropriations Act, 2021 and Other Extensions Act,[] section 1201(d) of the Further Continuing Appropriations Act, 2021, and Other Extensions Act, and section 301(d) of division BB of the Consolidated Appropriations Act, 2021[,] shall continue to apply to the amounts transferred pursuant to paragraph (1).

18 U.S. Code § 3613 - Civil remedies for satisfaction of an unpaid fine

(b) Termination of Liability.—

The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person fined, or upon the death of the individual fined. . . .

Statement of the Case

This case presents the Court an opportunity to resolve a ripe federal circuit split concerning the statutory authority to impose an additional mandatory special assessment beyond the $5,000 sum identified in 18 U.S.C. § 3014. The federal circuits interpreting § 3014 have reached opposing conclusions. This split results in disproportionate federal sentences, with some defendants sentenced to pay a $5,000 special assessment while others like Randall are sentenced to pay much higher amounts. It is critical that federal courts interpret § 3014 consistently to restore equity in federal sentencing.

A. Legal Background

Statutory assessments imposed upon conviction constitute a criminal punishment. *Rutledge v. United States*, 517 U.S. 292, 301 (1996). Courts are thus prohibited from imposing any assessment "beyond what Congress in fact has enacted" or intended to enact. *Welch v. United States*, 578 U.S. 120, 134 (2016) (citing *Bousley v. United States*, 523 U.S. 614, 620–21 (1998)).

To determine exactly what punishment Congress authorized, this Court begins, as it always does, with the statutory text to discern its ordinary meaning. *Ross v. Blake*, 578 U.S. 632, 638 (2016) (citation omitted); *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1484–85 (2021). This textual focus accompanies the "cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001)

(internal quotation marks omitted). To assist this process, courts may also "consult grammar and dictionary definitions—along with statutory structure and history," as "the rules that govern language often inform how ordinary people understand the rules that govern them." *Niz-Chavez*, 141 S. Ct. at 1484–85.

Here, the federal district court imposed two different mandatory special assessments: a nominal special assessment of $200 under 18 U.S.C. § 3013(a)(2)(A) and an additional special assessment of $10,000 under § 18 U.S.C. § 3014(a)(1)(3). Section 3013, this Court explained in *Rutledge*, 517 U.S. at 301, requires a "special assessment for every conviction." But this Court has not yet addressed imposition of § 3014's much larger special assessment. Given the textual, contextual, structural, and historical differences between § 3013 and § 3014, the two statutes cannot be interpreted identically. The circuit split exists, however, as some courts do interpret them identically.

1. 18 U.S.C. § 3013 authorizes varying but nominal special assessments to be imposed for each federal conviction.

Section 3013 was enacted as part of the "Victims of Crime Act of 1984" in which Congress authorized a penalty in the form of an assessment on "any person convicted of an offense against the United States." Pub. L. 98–473 (H.J. Res. 648), Pub. L 98–473, October 12, 1984, 98 Stat 1837. The assessments in § 3013 are nominal, ranging from "the amount of $5" to "the amount of $400," with the total sum contingent on whether the convicted offense is a misdemeanor or felony, the number of convicted offenses, and the defendant's status as individual or an

organization. 18 U.S.C. § 3013(a)(1)–(2). Assessments under § 3013 thus vary from case to case.

Congress directed that assessments collected under § 3013 be deposited into a Crime Victims Fund. Pub. L. 98–473 (H.J. Res. 648), Pub. L 98–473, October 12, 1984, 98 Stat 1837. A separate statute governs the Crime Victims Fund, 34 U.S.C. § 20101.[1] Section 20101 provides that, along with § 3013 assessments, the Crime Victims Fund is subsidized by fines collected and paid into by several other statutory acts; proceeds of forfeited appearance and bail bonds; gifts, bequests, and donations; and funds from deferred or non-prosecution agreements. 34 U.S.C. § 20101(b)(1)–(6). Distribution of funds in the Crime Victims Fund is explained in 34 U.S.C. § 20101(c)–(e), (g).

2. 18 U.S.C. § 3014 authorizes an additional special assessment in "an amount of $5,000" on a non-indigent defendant convicted of a triggering offense.

Section 3014 was enacted as part of the Justice for Victims of Trafficking Act of 2015. Pub. L. 114-22, May 29, 2015, 129 Stat 227. Under § 3014, Congress authorized an additional mandatory special assessment in "an amount of $5,000 on any non-indigent person or entity." 18 U.S.C. § 3014(a). But to trigger § 3014, the defendant must be "convicted of an offense under" a qualified offense category:

(1) chapter 77 (relating to peonage, slavery, and trafficking in persons);

(2) chapter 109A (relating to sexual abuse);

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[1] The governing directives were originally set forth in 42 U.S.C. § 10601. Pub. L. 98–473 (H.J. Res. 648), Pub. L. 98–473, October 12, 1984, 98 Stat 1837).

> (3) chapter 110 (relating to sexual exploitation and other abuse of children);
>
> (4) chapter 117 (relating to transportation for illegal sexual activity and related crimes); or
>
> (5) section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) (relating to human smuggling), unless the person induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

18 U.S.C. § 3014(a). Thus, once § 3014 is triggered by conviction under a qualifying offense category, a single assessment in "an amount of $5,000" is imposed. *Id.*

Congress established a "Domestic Trafficking Victims' Fund" for assessments collected under § 3014. 18 U.S.C. § 3014(c). Congress also directed this fund be subsidized in two ways. First, "an amount equal to the amount of the assessments collected" must be drawn and deposited from the "General Fund of the Treasury." 18 U.S.C. § 3014(d). Second, appropriated sums from the "Patient Protection and Affordable Care Act" must be transferred to this fund in "an amount equal to the amount transferred under subsection (d) for each fiscal year," in an amount "not be less than $5,000,000 or more than $30,000,000 in each such fiscal year." *Id.* at § 3014(h). Directives for allocating these funds are set forth in 18 U.S.C. § 3014(e)(1), (h)(2)–(3) and depend on the availability of funds.

Originally slated to sunset on September 19, 2019, Congress has continued to amend § 3014 to extend its expiration date.[2] The statute remains in effect today.[3]

B. Factual background and procedural history.

1. The district court imposed an additional special assessment under 18 U.S.C. § 3014(a) in an amount of $10,000.

In 2020, Randall pleaded guilty to two felony counts under 18 U.S.C. § 2252A(a)(2): receipt of child pornography and distribution of child pornography. App. 15. The district court sentenced Randall to serve 96 months in prison, followed by lifetime supervised release, and to pay $13,000 in restitution. (cite). The district court also sentenced Randall to pay two special assessments: (1) a nominal $200 special assessment under 18 U.S.C. § 3013; and (2) a $10,000 additional special assessment under 18 U.S.C. § 3014.

Randall is an individual convicted of two felony offenses, triggering § 3013's special assessment in "the amount of $100" for each offense. 18 U.S.C. §

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[2] As of this filing, Congress extended the sunset date of 18 U.S.C. § 3014(a) seven times since its enactment. *See* Pub. L. 115-392, December 21, 2018, 132 Stat 5250 (extending to "September 30, 2021"); Pub. L. 117-43, September 30, 2021, 135 Stat 344 (extending to "December 31, 2021"); Pub. L. 117-70, December 3, 2021, 135 Stat 1499 (extending to "February 18, 2022"); Pub. L. 117-86, February 18, 2022, 136 Stat 15 (extending to "March 11, 2022"); Pub. L. 117-103, March 15, 2022, 136 Stat 49 (extending to "September 11, 2022"); Pub. L. 117-177, September 16, 2022, 136 Stat 2109 (extending to "September 30," 2022); and Pub. L 117-180, September 30, 2022, 136 Stat 2114 (extending to "December 16, 2022").

[3] Pub. L. 115-392, December 21, 2018, 132 Stat 5250. Thus, the current version of 18 U.S.C. § 3014 is referenced herein.

3013(a)(2)(A). There is no dispute he is subject to a special assessment totaling $200 under 18 U.S.C. § 3013(a).

Randall is also non-indigent person convicted under an offense in chapter 110, triggering an additional special assessment under 18 U.S.C. § 3014(a)(3). Randall agreed he was subject to a single assessment in "an amount of $5,000." 1-ER-16-17; 2-ER-277-278. He disagreed, however, with imposition of a $10,000 special assessment reached by assessing $5,000 for each qualifying conviction. 1-ER-16-17; 2-ER-277-278; 2-ER-146–150.

At the time of Randall's sentencing, the Ninth Circuit Court of Appeals had not yet resolved if § 3014(a) requires an additional special assessment in "an amount of $5,000" per-defendant once the statute is triggered by conviction in a qualifying offense category or per-count for each conviction in a qualified offense category. Other federal circuits considering the issue reached opposite conclusions. In *United States v. Haverkamp*, 958 F.3d 145 (2d Cir. 2020), the Second Circuit held an additional special assessment under § 3014(a) is to be imposed on a "per-defendant" basis, not "per-count." The Third Circuit in *United States v. Johnman*, 948 F.3d 612 (3d Cir. 2020), held § 3014(a) requires a per-count assessment.

Without analysis, the district court calculated the § 3014 assessment for each count of conviction, resulting in a total fee of $10,000. App. 7; 1-ER-17 (district court stating only "I think it's $5,000 per count," which it what "I've always done in the past").

2. In a divided opinion, the Ninth Circuit affirmed an additional special assessment in an amount of $10,000 under 18 U.S.C. § 3014(a).

Randall timely appealed the district court's calculation of the additional special assessment under § 3014(a) to the Ninth Circuit Court of Appeals. A divided Ninth Circuit panel affirmed. App. 18–20.

The *Randall* majority interpreted § 3014 by predominantly relying on judicial opinions interpreting the special assessment imposed in 18 U.S.C. § 3013. App. 18–20. So interpreted, the majority held an additional special assessment of $5,000 must be to be imposed on every count of conviction qualifying under the offense categories listed in 18 U.S.C. § 3014(a)(1)–(5). App. 18–20.

The Honorable Kim McLane Wardlaw dissented, criticizing the *Randall* majority's reliance on cases interpreting § 3013. App. 21–23. Interpreting the plain text, structure, scheme, and history of § 3014, Judge Wardlaw concluded § 3014(a) limits an additional special assessment to $5,000 whenever a non-indigent defendant is convicted of a qualifying offense under § 3014(a)(1)–(5). App. 21–23.

Randall timely petitioned for rehearing en banc to the Ninth Circuit Court of Appeals. While Judge Wardlaw voted to grant rehearing, the Ninth Circuit denied Randall's petition without a written opinion. App. 26.

Reasons for Granting the Petition

The federal circuits disagree on how to interpret 18 U.S.C. § 3014(a)'s mandate to impose an additional special assessment in an amount of $5,000 on non-indigent defendants convicted of an offense under 18 U.S.C. § 3014(a)(1)–(5). One view, followed by the Second Circuit, limits the assessment to "an amount of $5,000" per-defendant once the § 3014 is triggered by a qualifying conviction. Another view, followed by the Third and Ninth Circuits, requires a $5,000 assessment be imposed for each qualifying conviction.

Defendants like Randall thus receive much harsher federal sentences in circuits where a $5,000 additional special assessment under § 3014 is aggregated for each qualifying conviction. This Court should grant review to resolve the judicial divide over how to interpret § 3014, the result of which will restore consistency in federal sentencing.

A. This Court must resolve the circuit split concerning the breadth of 18 U.S.C. § 3014 by applying traditional rules of statutory interpretation.

The growing circuit spit over the extent of the punishment Congress authorized in 18 U.S.C. § 3014 requires this Court's intervention. This is especially necessary as the majority of the circuit courts interpreting § 3014 have violated the most fundamental tenets of statutory construction.

This Court employs traditional rules of statutory construction to interpret a statute and Congress's intent in enacting it. The most critical of these rules requires courts to begin analysis with a statute's text. *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1568 (2017). This is because courts must presume

Congress says what it means and means what it says. *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). Thus, courts must construe statutes so that, to the greatest extent possible, "no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal quotation marks omitted). The text must also be read in "context" and with consideration of the "overall statutory scheme" as well as the legislative history. *Roberts v. Sea-Land Servs.*, 566 U.S. 93, 101 (2012) (internal quotation marks and citation omitted); *Niz-Chavez*, 141 S. Ct. 1474, 1448–45 (2021). To assist this interpretive process, courts may also "consult grammar and dictionary definitions" for guidance. *Niz-Chavez*, 141 S. Ct. at 1484–85. Through these traditional tools, courts honor the words Congress chose and those it did not choose when enacting legislation. *See Murphy v. Smith*, 138 S. Ct. 784, 787–88 (2018); *see also Adams Fruit Co. v. Barrett*, 494 U.S. 638, 645 (1990) (requiring courts to give effect to both "the meaning and placement of the words chosen by Congress").

1. The Second Circuit interprets 18 U.S.C. § 3014 as mandating a total assessment of $5,000 for each defendant.

The Second Circuit holds "the text of § 3014, taken as a whole and in its context, is straightforwardly meant to be applied on a per-offender, not a per-count, basis." *United States v. Haverkamp*, 958 F.3d 145, 149 (2d Cir. 2020). Beginning with the statute's text, the Second Court found the "provision directs the court to 'assess **an** amount of $5,000' on any non-indigent person or entity convicted of an [eligible] offense.'" *Id.* (quoting 18 U.S.C. § 3014(a) (emphasis added by

Havercamp). Applying "grammar and common understanding," the Second Circuit concluded the phrase "'an amount' on any person convicted means the amount is assessed one time. It does not mean an amount for each count of conviction." *Id.*

Confirming its textual analysis, the Second Circuit compared the language Congress chose to enact 18 U.S.C. § 3014 with the language Congress chose to enact 18 U.S.C. § 3013. *Haverkamp*, 958 F.3d at 149–150. This comparison reveals "that when Congress intended multiple amounts to be assessed rather than 'an amount' it knew how to do so." *Id.* at 149.

Specifically, under § 3013, courts are instructed to:

> to impose a special assessment, the amount of which varies, with specifications for the grade or classification of the offense or offenses of which the defendant is convicted. Indeed, § 3013(a) is divided into subsections, providing for distinct and nominal charges depending on whether the offense is an infraction, misdemeanor, or felony, and then further divided based on the class of misdemeanor. 18 U.S.C. § 3013(a). Section 3013 specifically ties the amount of the special assessment to the classification of the offense of conviction, and therefore plainly authorizes multiple assessments where there are multiple counts of conviction. The special assessments of § 3013 are also nominal, ranging from $5 for an infraction or a class C misdemeanor to $50 for a felony. As this Court has noted, it would not make sense to read § 3013 as imposing only one assessment on a given defendant. *United States v. Pagan*, 785 F.2d 378, 381 (2d Cir. 1986).

Haverkamp, 958 F.3d at 149–50. As such, § 3013 "is a reticulated provision that calibrates assessments according to the severity of the offense(s)—from infractions to felonies and then sub-classifies them according to the class of misdemeanors." *Id.* at 150 n.3. Thus, each such discrete category of offense is subject to assessments in "the amount" indicated. *Id.*

On the other hand, § 3014—underpinned by the phrase "an amount"—only authorizes courts to impose "a single assessment: $5,000 if a defendant is convicted of an eligible offense. The classification of the offense and the number of offenses is not relevant to the assessment." *Haverkamp*, 958 F.3d at 150 & 150 n.3. Viewing the $5,000 assessment as a singular penalty is reinforced by its exponential increase from those in § 3013 by "one hundred to one thousand times." *Id.* at 150 n.3.

The Second Circuit also found § 3014's "legislative record confirms [its] reading." *Haverkamp*, 958 F.3d at 150. On the two-year anniversary of the Justice for Victims of Trafficking Act of 2015, its lead House sponsor noted that the Act "allows a federal judge to impose **an** additional assessment of up to $5,000." *Id.* (quoting 163 *Cong. Rec.* H4564 (daily ed., May 24, 2017) (statement of Rep. Poe)) (emphasis added by *Haverkamp*). Though "not conclusive in itself," the Second Circuit concluded "this remark lends further support to [its] conclusion that the special assessment in § 3014 applies on a per-offender basis." *Id.* [result].

The *Randall* dissent agreed with the Second Circuit's textual analysis in *Haverkamp*. App. 21–23. "Congress could have included language that assessed an amount of $5,000 for each qualifying count of conviction, but it chose not to do so." App. 21–23. Focusing on the words Congress did choose, the dissent concluded that "[w]hen, as here, 'amount' is followed by 'of' and a numerical value, that numerical value, in this case $5,000, represents a 'precise sum, total, or quantity amounting to the specified figure.'" App. 21. As long as one offense qualifies among the five

categories triggering § 3014, a non-indigent "defendant is subject to the $5,000 assessment" and no more. App. 11. Resolving the issue within § 3014's text, the dissent concluded "[t]his should be the end of the matter." App. 10.

The analysis undertaken by the Second Circuit and the *Randall* dissent follows this Court's directive that when a statutory "examination yields a clear answer, judges must stop." *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) (citations omitted). Otherwise, judges impermissibly engage in a "casual disregard of the rules of statutory interpretation." *Id.*

2. The Third and Ninth Circuits interpret 18 U.S.C. § 3014 as mandating an assessment of $5,000 for each offense of conviction.

The Third and Ninth Circuits violate the foremost rule of statutory interpretation by primarily relying on the text of another statute to interpret the text of 18 U.S.C. § 3014. Doing so, each conclude the $5,000 assessment in § 3014 should be applied like the varying range of assessments in § 3013. The approach in these circuits improperly ignores § 3014's text, context, structure, purpose, and history.[4]

In *United States v. Johnmann*, 948 F.3d 612 (3d Cir. 2020), the Third Circuit interpreted § 3014(a) to mandate a $5,000 assessment for each "enumerated

[4] The Eleventh Circuit in an unpublished case is aligned with the Third and Ninth Circuits. *United States v. Pye*, 781 F. App'x 808, 814 (11th Cir. 2019) (upholding without analysis a $15,000 assessment under 18 U.S.C. § 3014).

offense" falling within the five designated offense categories. *Johnmann*, 948 F.3d at 618 n.6. The Third Circuit flatly discounted the textual, structural, and historical differences between § 3014(a) and § 3013(a). *See id.* at 617–20. Instead, as each statutes contains the phrase "convicted of an offense," the court relied on cases interpreting § 3013 to define that phrase in § 3014. *Id.* at 616 n.2, 617, 619 (citing *Rutledge*, 517 U.S. at 301 (noting that § 3013 requires a special assessment for every count of conviction), and *United States v. Luongo*, 11 F.3d 7, 10 (1st Cir. 1993) (finding § 3013 requires a separate special assessment for each felony)). Applying § 3013's interpretative gloss to § 3014 and maintaining insular focus on this phrase, the court concluded every triggering offense in a category "requires a separate assessment, no matter how many convictions." *Id.* at 617.

The Ninth Circuit majority followed the Third Circuit by focusing on the phrase "convicted of an offense" and relying on judicial interpretation of § 3013 to interpret § 3014's meaning. App. 18–21. And like the Third Circuit, the majority flatly discounted the differing text, structure, purpose, and history between the two statutes. App. 18–20.

By focusing on the phrase "convicted of an offense" to the exclusion of the rest of § 3014(a)'s text, the Third and Ninth Circuits erroneously applied the canon of prior construction, violating the first rule of statutory construction: engage and analyze the statutory language at issue. *See Lamar, Archer & Cofrin, L.L.P. v. Appling, 13*8 S. Ct. 1752, 1759 (2018) (interpretation of statutory text starts "where all such inquiries must begin: with the language of the statute itself") (internal

quotation marks and citation omitted); *Desire, L.L.C. v. Manna Textiles, Inc.*, 986 F.3d 1253, 1265 (9th Cir.), *cert. denied*, 142 S. Ct. 343 (2021) ("As in all statutory interpretation, our inquiry begins with the statutory text, and ends there as well if the text is unambiguous.") (internal quotation marks and citation omitted). "The canon [of prior construction] teaches that if courts have settled the meaning of an existing provision, the enactment of a new provision that mirrors the existing statutory text indicates, as a general matter, that the new provision has that same meaning." *Lightfoot v. Cendant Mortg.*, 137 S. Ct. 553, 563 (2017) (emphasis added). But the text of §§ 3013 and 3014 do not "mirror[]" each other. Rather, that Congress chose "to enact separate statutes with significant structural differences demonstrates" it sought different goals in enacting the two statutes. App. 22.

Given the substantive differences between § 3013 and § 3014, proper interpretation of § 3014 requires courts to read *all* of its text in proper "context" and consider that text within "the overall statutory scheme." *Roberts,* 566 U.S. at 101 (cleaned up). Courts may not simply extract a word or phrase to interpret a statute's meaning as the Third and Ninth Circuits have. It is only through application of traditional tools of statutory construction that courts honor the words Congress chose and the words Congress did not choose when enacting legislation. *See Murphy*, 138 S. Ct. at 787–88; *see also Adams Fruit Co.*, 494 U.S. at 645 (requiring courts to give effect to both "the meaning and placement of the words chosen by Congress").

3. Courts in other circuits apply the assessment penalty in 18 U.S.C. § 3014 inconsistently.

Other federal courts apply § 3014's assessment penalty inconsistently. *Compare United States v. McMiller*, 954 F.3d 670 (4th Cir. 2020) (applying $5,000 special assessment on each of defendant's qualifying convictions under 18 U.S.C. § 3014, totaling $10,000); *United States v. Matalka*, 788 F. App'x 273 (5th Cir. 2019) (same); *United States v. Olmstead*, No. 21-1051, 2021 WL 5014358 (6th Cir. Oct. 28, 2021) (same), *with United States v. Rhodes*, 828 F. App'x 342 (8th Cir. 2020) (applying single $5,000 special assessment for two qualifying convictions under § 3014).

B. The question presented is extremely important.

Federal judges must sentence defendants "within the statutory range established by Congress." *Mistretta v. United States*, 488 U.S. 361, 391 (1989). This restraint is crucial to the fair administration of justice. The established divide over the scope of the criminal penalty mandated by 18 U.S.C. § 3014 impedes such fairness and results in inequitable sentences among similarly situated defendants. The question presented must therefore be resolved by this Court to restore equity in federal sentencing.

C. This case presents an excellent vehicle to resolve the question presented.

The facts and procedural history of this case render this case ideal for the Court's resolution of the circuit split concerning the scope of the criminal penalty 18 U.S.C. § 3014 authorizes. The question presented is squarely posed and preserved

for adjudication. Randall is sentenced to pay two $5,000 assessments under 18 U.S.C. § 3014, totaling $10,000—one for each qualifying offense of conviction. Randall objected to a special assessment greater than $5,000 in the district court and challenged the assessment on direct appeal to the Ninth Circuit. The question presented is thus properly before the Court on direct review of Randall's criminal sentence.

D. The *Randall* majority is wrong.

The majority's holding in *Randall* that 18 U.S.C. § 3014 requires stacking of special assessments in "an amount of $5,000" for each qualifying conviction is wrong. The error culminates in a $10,000 assessment against Randall—double that authorized by Congress.

The majority asserted it would begin its analysis with § 3014's text, but it did not. App. 18–21. After quoting § 3014(a), the majority immediately focused its attention to *18 U.S.C. § 3013(a)'s* text to resolve what it viewed as the "tricky textual question"— "how to interpret" § 3014(a)'s phrase "convicted of an offense." App. 18. The majority's focus on this singular phrase resulted in too narrow of a textual inquiry and one that ignored the statute's context, structure, purpose, and history.

The *Randall* majority excluded from its textual analysis the directive that courts "assess **an amount** of $5,000 on any non-indigent person or entity convicted of an [enumerated] offense." 18 U.S.C. § 3014(a) (emphasis added). The majority instead exclusively focused on the statutory phrase "convicted of an offense" in

isolation and without statutory context. App. 18–20. Limiting its textual focus to this lone phrase, the majority did not believe it could resolve whether the assessment applied once per defendant or once for each qualifying offense through analysis of § 3014's text alone. App. 18–20. The majority thus turned to caselaw interpreting § 18 U.S.C. § 3013—a statute containing different text, in a different context, with a different structure, purpose, and history. App. 19–20.

The majority's detour through § 3013 to interpret § 3014 was imprudent and based on the belief that "the text, purpose, and statutory structure" of the two statutes are "closely related." App. 19. They are not.

Sections 3013 and 3014 "are significantly different in both text and structure." App. 23. Section 3014(a) imposes a blanket $5,000 special assessment on non-indigent persons convicted of a specific kind of offense. Section 3013(a) imposes nominal special assessments ranging from $5 to $400 on all persons for all convictions, with the total assessment calculated by the classification and grade of offense, the number of offenses, and the defendant's status as an individual or organization. Thus, § 3014's assessment "is far larger (one hundred to one thousand times greater) than the assessments provided for in § 3013." App. 23 (quoting *United States v. Haverkamp*, 958 F.3d 145, 150 n.3 (2d Cir. 2020)).

Further, § 3014's text refers to a singular assessment. Under § 3014(g), "the obligation to pay *an assessment*" does "shall not cease until *the assessment* is paid in full." App. 23 (emphases added by dissent). But under § 3013(c), "[t]he obligation to pay an assessment ceases five years after the date of the judgment" and applies "to

all assessments irrespective of the date of imposition." App. 23 (emphasis added by dissent). Congress did not reference the plural word "assessments" in § 3014. App. 23. If "Congress intended multiple assessments for multiple counts" in § 3014, it would have said so. App. 22 (citing *Haverkamp*, 958 F.3d at 149)

Moreover, while both statutes fund resources to support victims of crime, the types of victims intended to be supported are not identical. Section 3014 supports human trafficking and child exploitation victims; § 3013 supports all "crime victims in the Federal criminal justice system." *Compare* 18 U.S.C. § 3014(e), (h), *with* 18 U.S.C. § 3013(d)(g). Nonetheless, it is recognized that congressional purpose alone cannot define a statutory phrase beyond what the text or statutory scheme supports. *Pinter v. Dahl*, 486 U.S. 622, 653 (1988). Courts "must" instead "assume that Congress meant what it said." *Id.*

As the dissent correctly recognized, "when Congress intended multiple amounts to be assessed rather than 'an amount' it knew how to do so." App. 22 (citing *Haverkamp*, 958 F.3d at 149). Congress directed courts to impose "the amount" designated under § 3013(a), with that amount varying based on the "grade or classification of the specific offenses of" conviction and the defendant's status as an individual or organization. App. 22. But Congress directed courts to impose "an

amount of $5,000" under § 3014 once a non-indigent defendant is convicted of an offense under a qualifying offense category.[5]

The *Randall* majority thus erred in failing to recognize the import of Congress's deliberate statutory choices. The dissent, like the Second Circuit, correctly determined the differences between § 3014 and § 3013 "are too pronounced to justify" reading the statutes in "lockstep" with one another as the majority did. App. 23 (quoting *Haverkamp*, 198 F.3d 150 n.3).

The majority also erred in assuming the phrase "convicted of an offense" in the context of special assessments imposed for all convictions under § 3013 should be identically interpreted under § 3014. App. 19–20. The majority's error arose from its reliance on the "canon of prior construction." App. 19–20. But as explained, *supra* at 19, that canon does not apply here because the text of §§ 3013 and 3014 do not "mirror[]" each other.

Section § 3014's legislative history also suggests that "an offense" references only the *kind of offense* triggering the enhancement, not the number of offenses. *See* 161 *Cong. Rec.* H3266, H3267 (May 18, 2015 statement of Rep. Smith stating JVTA will be "funded by a $5,000 penalty assessed on convicted offenders"); 163

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[5] If Congress intended to impose an additional $5,000 assessment for every qualifying offense of conviction, it could have easily amended § 3013 to so provide. App. 22–23. It chose not to do so. App. 22–23. Congress instead enacted a new statute, § 3014, using different language and a different statutory scheme requiring "an amount of $5,000" be imposed when a defendant is convicted for qualifying offenses. App. 23 (citing *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 353 (2013) ("Just as Congress' choice of words is presumed to be deliberate, so too are its structural choices.") (citation omitted)).

Cong. Rec. H4564 (May 24, 2017 statement of Rep. Poe confirming intended purpose is to "allow[s] a federal judge to impose an additional assessment of up to $5,000").

By focusing its analysis on the phrase "convicted of an offense" to the exclusion of § 3014's remaining text, erroneously applying the canon of prior construction, and applying judicial interpretations applicable to § 3013, the majority violated the first rule of statutory construction—engage and analyze the actual statutory language. For the *Randall* majority to be correct, courts must disregard § 3014's text, context, structure, purpose, and history. But this they cannot do. Proper interpretation of § 3014 reveals its $5,000 assessment applies once per defendant.

Conclusion

For these reasons, this petition for a writ of certiorari should be granted.

Dated this 16th day of November, 2022.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

s/ Amy B. Cleary
Amy B. Cleary
Assistant Federal Public Defender
Counsel of Record for Dustin Randall