

No. 21-1043

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IN THE  
**Supreme Court of the United States**

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ABITRON AUSTRIA GMBH, ET AL.,  
*Petitioners,*

v.

HETRONIC INTERNATIONAL, INC.,  
*Respondent.*

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**On Writ of Certiorari  
to the United States Court of Appeals  
for the Tenth Circuit**

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**REPLY BRIEF FOR PETITIONERS**

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**INTRODUCTION**

Hetric International would transform the Lanham Act into a global unfair-competition code that dictates trademark, labeling, and marketing standards for the entire planet. Even the accuracy of juice labels in Slovakia would come within the Act's grasp, Pet. Br. 47—a point International nowhere denies.

International would give the Act the broadest extraterritorial scope of *any* federal law. It would do so even though trademarks are inherently *territorial*. It would do so despite treaties premised on trademarks' territoriality. It would do so even though the Act offers zero guidance for navigating inevitable conflicts with other countries'

laws. And it would do so without even *mentioning* the European Union’s objections that extraterritorial application would “violate” treaties, “disrupt” the international trademark system, and “interfere” with other countries’ laws. EU.Br.4, 7, 33.

Nothing warrants that extreme result. Any extraterritorial application of U.S. law requires *unmistakable* direction from Congress. The Lanham Act offers nothing like that. International infers extraterritorial scope from the Act’s definition of “commerce.” But this Court refuses to read commerce provisions that way—including provisions that invoke the full extent of the commerce power. And while International seeks refuge in *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952), *Steele* by its terms addressed only the Act’s application to “American citizens.” It should not be *extended* to foreign conduct by foreign defendants.

International argues that imposing liability for foreign companies’ foreign sales to foreign buyers can constitute a “domestic” application of the Lanham Act. That argument is waived and meritless. The Act’s text and focus are geared to domestic *conduct*: use of marks in commerce. The Act does not extend U.S. law to foreign conduct based on putative domestic *effects*. Domestic “effects” is a test used to apply statutes *extraterritorially*, not to convert foreign conduct into a “domestic” application.

International accuses petitioners of trademark piracy (or worse). But this case arises from a garden-variety disagreement between companies with common ancestry and similar names over who owns a predecessor’s trademarks following a corporate divorce. Even if petitioners erred in believing they owned the relevant rights, the question here is whether U.S. or foreign trademark law governs foreign sales by foreign companies to foreign buyers. Mudslinging does not answer that question.

**ARGUMENT****I. THE LANHAM ACT IS NOT EXTRATERRITORIAL****A. International Cannot Overcome the Presumption Against Extraterritoriality or Trademarks' Territorial Nature**

The Lanham Act comes nowhere near “affirmatively and unmistakably instruct[ing]” that it “appl[ies] to foreign conduct.” *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325, 335 (2016); see Pet.Br.17-21. As International concedes, Resp.Br.36-37, the Act’s text never says it applies outside the U.S. and never addresses “‘conflicts with foreign laws’” that would arise if U.S. law reached “transactions occurring within [foreign countries’] territorial jurisdiction.” *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 269 (2010).

Nor can International overcome the principle that trademarks are inherently *territorial*. Pet.Br.6-7, 21-23, 27-30; 5 J. McCarthy, *Trademarks and Unfair Competition* §§ 29:1, 29:25 (5th ed. 2022) (McCarthy). Trademarks have “independent” existence in each country, Paris Convention art. 6(3), and “protection” depends “upon the law prevailing in” the country where the mark is used, *Ingenohl v. Walter E. Olsen & Co.*, 273 U.S. 541, 544 (1927).

This Court thus has held that *foreign* trademarks lack effect *inside* this country, *Baglin v. Cusenier Co.*, 221 U.S. 580, 596 (1911); *A. Bourjois & Co. v. Katzel*, 260 U.S. 689, 691-692 (1923), and U.S. trademarks lack “effect *outside* of the United States,” *Ingenohl*, 273 U.S. at 545 (emphasis added).

International ignores those authorities. It relegates the territoriality principle—a premise of American and international trademark law—to a lone paragraph devoid of legal citations. According to International, territoriality

concerns only “*priority of ownership*.” Resp.Br.42. Not so. The “principle of the territoriality of trademarks” means that “a mark exists only under the laws of each sovereign nation” and “each nation’s law shall have only territorial application.” 5 McCarthy §29:25. Trademark “rights are limited to the territorial boundaries of the granting authority.” EU.Br.2. Because “[t]rademark rights end at the border of a national territory,” “infringement of a trademark right can only take place in the state that grants the right, and not beyond its boundaries.” *Ibid.*; see Westkamp.Br.3-7.

International erroneously asserts that territoriality merely requires “respect[ing] foreign determinations as to rightful ownership.” Resp.Br.42. Territoriality means U.S. trademark law governs trademark rights in the U.S., while foreign law governs abroad. *Baglin* thus held a foreign ownership determination should be *disregarded* in a U.S. trademark dispute. 221 U.S. at 596. Courts and the PTO agree that “decisions of courts or trademark registration offices outside the U.S. are not relevant to the ownership and enforcement of trademark rights within the United States.” 5 McCarthy §29:5 & nn.3-4 (collecting cases). International’s claim that ownership of *U.S.* trademarks is resolved by a decision addressing *EU and German* trademarks “under German law,” JA58; Resp.Br.12-13, is incoherent.<sup>1</sup>

Dismissing U.S. treaty obligations, International says the Paris Convention leaves countries “free to extend their

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<sup>1</sup> International mistakenly claims to “ow[n] the marks at issue in each relevant country.” Resp.Br.42. As the EU observes, Abitron Germany owns German and EU registrations for two asserted marks (“GL” and “GR”), which International has unsuccessfully sought to cancel. EU.Br.27 n.10. International presented *no* evidence regarding ownership outside the U.S. or EU.

trademark laws extraterritorially.” Resp. Br. 42. According to the very authority International cites, however, the Convention *rejects* the notion that trademark laws “shall be given extraterritorial application” and rests “on exactly the converse principle that each nation’s law shall have only territorial application.” 5 McCarthy §29:25 (cited Resp. Br. 42); see Pet. Br. 6-7, 28-29; Paris Convention art. 6(1), (3). The EU and scholars agree that applying trademarks extraterritorially would “violate” the Convention. EU. Br. 33; see German. Law. Profs. Br. 7-8; Dodge. Br. 18-19; Pahlow. Br. 11-18. International responds with silence.

International brushes aside the Madrid Protocol. Resp. Br. 43. But the Protocol addresses how markholders “secure protection for [their] mark[s] in the territory” of another country. Madrid Protocol art. 2(1). They do so by requesting “territorial extension” to another country in accordance with that country’s law, *id.* arts. 3*ter*, 5—not by projecting one country’s laws into another’s territory.<sup>2</sup>

There is no “clear text,” Resp. Br. 42, that would justify placing the U.S. in violation of those treaties. To the contrary, the Act’s clear text *affirms* U.S. commitments under “treaties and conventions respecting trademarks.” 15 U.S.C. § 1127; see § 1126 (implementing Paris Convention); §§ 1141-1141j (implementing Madrid Protocol). The text on which International’s extraterritoriality argument hinges is itself limited to commerce Congress may “lawfully” regulate. § 1127. That counsels against a construction that would *violate* international-law obligations under “Treaties” that are “the supreme Law of the Land.” U.S.

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<sup>2</sup> The Paris Convention requires “nondiscrimination” between nationals and non-nationals, Resp. Br. 42, *because* each country’s trademark laws apply exclusively within its own borders, Pet. Br. 28-29. And International’s position discriminates. See pp. 20-21, *infra*.

Const. art. VI, cl. 2; accord *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804).

### **B. The Act’s “Commerce” Definition Does Not Support Extraterritoriality**

The Lanham Act did not *sub silentio* discard venerable territoriality principles and treaty obligations.

1. International’s *only* putative textual hook for extending the Act extraterritorially is its “commerce” definition. Resp.Br.19-20, 23-25, 36, 38. But this Court has “emphatically rejected reliance on such language” to render laws extraterritorial, *RJR*, 579 U.S. at 353—even where, unlike here, statutes “‘expressly refer to “foreign commerce,””” *Morrison*, 561 U.S. at 263. Congress does not hide extraterritorial elephants in commerce-definition mouseholes. Cf. *Whitman v. American Trucking Ass’ns*, 531 U.S. 457, 468 (2001).

There is nothing “unique” about the Act’s commerce definition, Resp.Br.21, that would warrant a departure from that settled principle. Congress regularly invokes the “full extent” of the commerce power. Resp.Br.20. The Court has repeatedly held that the phrase “affecting commerce” evinces Congress’s intent to exercise its “full power under the Commerce Clause.” *Russell v. United States*, 471 U.S. 858, 859 & n.4 (1985). Such language musters “whatever power is constitutionally given to [Congress] to regulate commerce.” *NLRB v. Fainblatt*, 306 U.S. 601, 607 (1939); see *Scarborough v. United States*, 431 U.S. 563, 571 (1977); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 273-274 (1995) (“involving” commerce). Scores of statutes use “affecting commerce” language. App., *infra*, 1a-10a. Under International’s theory, *all* those statutes—covering everything from autographs, 15 U.S.C. § 7001(a), to zoos, 7 U.S.C. § 2132(c)(2), (h)—would apply extraterritorially.

This Court has already rejected the notion that language invoking the full commerce power gives a statute extraterritorial scope. In *NLRB v. Reliance Fuel Oil Corp.*, 371 U.S. 224 (1963) (*per curiam*), the Court held that the National Labor Relations Act, by reaching activities “affecting commerce,” encompasses “the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause.” *Id.* at 225-226 (emphasis omitted). But that was *not* sufficient to extend the statute extraterritorially, as the Court held six weeks later in *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 15, 19-22 (1963). Like *International* here, litigants there urged that “the language of the Act may be read literally as including” foreign conduct. *Id.* at 19; see Resp.Br.20-21. The Court rejected that argument: Absent “specific language” directing extraterritorial application, there was “no basis for a construction which would exert United States jurisdiction over and apply its laws” abroad. 372 U.S. at 19-20. So too here.

The presumption against extraterritoriality reflects that Congress “generally legislates with *domestic* concerns in mind.” *RJR*, 579 U.S. at 336 (emphasis added). Invoking the full commerce power serves an obvious *domestic* purpose: It ensures a statute reaches “intrastate” activities that, “viewed in the aggregate,” have a sufficient effect on commerce to justify federal regulation. *United States v. Lopez*, 514 U.S. 549, 559-561 (1995). Language deployed to reach conduct in Toledo, Ohio, does not imply intent to reach conduct in Toledo, Spain.<sup>3</sup>

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<sup>3</sup> Many “affecting commerce” statutes have express extraterritorial language. App., *infra*, 7a-10a. That language would be superfluous if invoking the full commerce power established extraterritoriality.

The statutes International concedes are indistinguishable from the Lanham Act, Resp. Br. 23 n.5, further undermine its position. It is implausible that Congress purported to regulate “the business of insurance” in foreign countries, 18 U.S.C. § 1033, or impose Hobbs Act liability on foreign officials acting “under color of official right,” § 1951(b)(2), simply by defining “commerce” broadly.<sup>4</sup>

2. The Lanham Act’s “bespoke” language, Resp. Br. 36, was tailored by its history. Congress’s first trademark law was invalidated because it reached intrastate commerce thought to be “beyond the control of Congress”—not “the kind of commerce which Congress is authorized to regulate.” *Trade-Mark Cases*, 100 U.S. 82, 96-97 (1879). The Lanham Act is accordingly cabined to “commerce within the control of Congress” that “may lawfully be regulated by Congress.” 15 U.S.C. § 1127; see Pet. Br. 26-27.

That earlier statutes identified categories of commerce Congress can regulate (foreign, interstate, and Indian), while the Lanham Act refers more generally to commerce Congress can regulate, Pet. Br. 3-4; Resp. Br. 23-24, does not show Congress intended to extend the Lanham Act extraterritorially. *Deleting* the express reference to “foreign” commerce would be an odd way of doing that. The Lanham Act’s wording ensured it would reflect this Court’s “[then-]recent decisions” on the commerce power, S. Rep. No. 79-1333, at 5-6 (1946), and reach commerce Congress can regulate on other grounds, such as local commerce in “the District of Columbia,” *Hearings on H.R.*

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<sup>4</sup> Whatever a 1991 Third Circuit decision said about extraterritorial application of the Hobbs Act, Resp. Br. 23 n.5, it predated this Court’s current extraterritoriality jurisprudence. Later decisions recognize that intervening “Supreme Court precedent dooms this argument.” *United States v. All Assets Held at Bank Julius*, 251 F. Supp. 3d 82, 100 (D.D.C. 2017).



9041, *Subcommittee on Trade-Marks, House Committee on Patents*, 75th Cong. 69 (1938) (E. Rogers); see U.S. Const. art. I, §8, cl. 17. The Lanham Act thus was described as “*national* legislation along *national* lines”—not *international* legislation crossing *international* lines. S. Rep. No. 79-1333, at 5 (emphasis added).

International identifies *no* evidence—in the “sprawling legislative history” or elsewhere, Resp.Br.38—that the Lanham Act was expected to apply overseas. Even if International’s “proposed inference is possible,” “possible interpretations of statutory language do not override the presumption against extraterritoriality.” *Morrison*, 561 U.S. at 264.

3. If “commerce” encompassed foreign conduct, applicants could obtain U.S. registrations based on marks’ “us[e] in commerce” outside the U.S. 15 U.S.C. §1051(a). But the PTO has long rejected that view. Pet.Br.4. And those registrations would purport to reflect the “exclusive right to use the registered mark[s] in commerce.” §§1057(b), 1115(a)-(b). In International’s view, that exclusive right would extend globally. International never explains how Congress could grant the “exclusive right” to use marks *in foreign countries*.<sup>5</sup>

### C. *Steele* Is Not to the Contrary

*Steele* does not reach this case. From its first sentence, *Steele* makes clear that the “issue” it decided was whether a district court had “jurisdiction” over alleged trademark infringement “consummated in a foreign country *by a*

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<sup>5</sup> When examining trademark applications, moreover, the PTO considers potential confusion with non-U.S.-registered marks only if those marks were “previously used in the United States.” §1052(d). International would require the PTO to grant U.S. registrations based on foreign use, without considering previous *foreign* uses of the mark.

*citizen and resident of the United States.*” 344 U.S. at 281 (emphasis added). *Steele* repeatedly invoked Congress’s authority over “American citizens.” *Id.* at 282; see *id.* at 285, 286. Applying the Lanham Act to *foreign defendants* in foreign countries would require *extending Steele* beyond its self-imposed boundary.

1. This Court, moreover, properly “decline[s] to extend” decisions “at odds with [its] current extraterritoriality doctrine.” *RJR*, 579 U.S. at 353-354; see Pet. Br. 34-36 & n.13. Under current doctrine, *Steele* is a veritable roadmap of what *not* to do. *Steele*:

- Asked whether *Congress would have wanted* U.S. law to reach the facts at hand, not whether *the statute unmistakably commands* that it apply abroad.
- Invoked a general “commerce” definition.
- Overlooked conflicts between U.S. and foreign remedies.
- Disregarded heightened concerns raised by private lawsuits.
- Never considered trademarks’ territorial nature or relevant treaties.

Contrast *RJR*, 579 U.S. at 335, 347, 349, 353; Pet. Br. 34-35. Under current doctrine, the Lanham Act does not remotely overcome the presumption against extraterritoriality—especially as to *foreign defendants*, where the presumption has its oldest and greatest force. Pet. Br. 33-34.

2. International nowhere denies that *Steele* purported to decide only the Act’s application to “a citizen and resident of the United States.” 344 U.S. at 281. International suggests that dicta in *Aramco* and *Morrison* somehow expanded *Steele*’s holding. Resp. Br. 39. That dicta could have no such effect. Gov’t. Br. 13-14. *Aramco*, moreover,

described *Steele* as addressing “acts of a United States citizen,” *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 252 (1991), while *Morrison* simply cited *Aramco*, see 561 U.S. at 271 n.11. *Both* cases refused to extend *Steele*—as the Court should do here.

The government would disregard *Steele*’s reliance on the defendant’s “U.S. citizenship” because the “predicate” for considering citizenship was *Steele*’s “view that the question before it concerned the district court’s subject-matter jurisdiction.” Gov’t. Br. 30-31. But *all* of *Steele*’s analysis, not just its consideration of U.S. citizenship, was predicated on the view that the issue before it was “jurisdictional.” 344 U.S. at 281-283, 285-286. That is yet another aspect of *Steele* this Court has repudiated. See *Morrison*, 561 U.S. at 253-254. Under the government’s logic, *none* of *Steele*’s reasoning would be “binding” now that the “predicate” for its analysis—that the issue was jurisdictional—“has been abandoned.” Gov’t. Br. 31.

3. The Court may conclude *Steele* lacks vitality in *any* context, its “outmoded” reasoning having “fallen far out of step with” intervening precedent. *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 481 (1989); see Pet. Br. 34-37. Indeed, far from “reaffirm[ing]” *Steele*, Resp. Br. 25-28, 39-41, *Aramco* and *Morrison* *distinguish* and *refuse to extend* *Steele*. They hardly endorse its reasoning or its retention. Pet. Br. 36-37 nn.13-14. Nor does International contend that reliance interests warrant *Steele*’s retention.

While International invokes statutory *stare decisis*, the Court will “overrule an earlier decision” where, as here, “intervening development of the law” has “weakened the conceptual underpinnings from the prior decision.” *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989). Statutory *stare decisis*, moreover, is “most compelling”

where it ensures that “policymaking” remains “the province of the legislature,” not courts. A.C. Barrett, *Statutory Stare Decisis in the Courts of Appeals*, 73 Geo. Wash. L. Rev. 317, 325-327 (2005). *Steele* has had the *opposite* effect, leading *courts* to devise atextual, policy-laden tests in the international arena, where the political branches’ expertise is paramount. Pet.Br.19-21.

#### **D. Extraterritoriality Risks International Discord**

The European Union details the “ills” that extraterritorial application of the Lanham Act invites: It “threatens to upset the carefully balanced international trademark system”; “interfere with the legal authority of the European Union and its member countries”; “undermin[e]” treaties; impose “punitive damages or treble damages” in countries that reject such damages; and create a “risk of inconsistent judgments” and “incentives for potentially damaging forum shopping.” EU.Br.3-4, 21, 31, 33; see Pet.Br.30-32.

Those warnings carry considerable weight. *RJR*, 579 U.S. at 347-348; *Morrison*, 561 U.S. at 269. Yet International insists its position “poses no danger” of friction, Resp.Br.44, without *mentioning* dangers catalogued by one of America’s closest trading partners.

Case-specific “comity” determinations, Resp.Br.32, 37-38, 43-44, are no answer. Comity (case-specific or otherwise) counsels respecting the EU’s objections to imposition of U.S. law within its territory. Regardless, “case-by-case” comity determinations cannot substitute for rigorously enforcing the presumption against extraterritoriality. *RJR*, 579 U.S. at 349. They shift sensitive foreign-policy judgments to courts and away from the political branches.

For example, the Ninth Circuit’s criticized test from *Trader Joe’s Co. v. Hallatt*, 835 F.3d 960, 972-973 (2016) (cited Resp.Br.30-31), weighs *seven non-dispositive, judge-made factors*, defying consistent application and paying “lip service” to comity, M. Chon, *Kondo-ing Steele v. Bulova*, 25 B.U. J. Sci. & Tech. L. 530, 565 (2019). International’s amicus insists comity should be *refused* if another country’s trademark-application procedures are insufficiently rigorous. Stussy.Br.17 n.5. Grading other countries’ laws would amplify, not alleviate, friction.

A desire to use U.S. courts as one-stop shops for trademark litigation, Resp.Br.31; Stussy.Br.28-30, cannot justify projecting U.S. law abroad. If rightsholders desire protection “in foreign countries,” their remedy “lies in obtaining and enforcing foreign” intellectual-property rights. *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 456 (2007). Multiple treaties (and Lanham Act provisions) exist for that purpose. EU.Br.7-15; pp. 4-5, *supra*. The PTO “assist[s] businesses with international IP protection” by “directly engaging with foreign government entities.” B. Stankovic & D. Keating, *Serving America: The USPTO’s IP Attaché Program*, 101 J. Pat. & Trademark Off. Soc’y 441, 442, 446-447 (2021). And International has extensively utilized foreign trademark protections. EU.Br.25-27 & n.10. There is no reason to “disrup[t]” the international trademark system by “apply[ing] the Lanham Act extraterritorially.” EU.Br.32-33.

## II. THE ACT DOES NOT APPLY “DOMESTICALLY” TO FOREIGN USES

### A. International Waived Any “Domestic Application” Argument

International’s argument that imposing liability for petitioners’ foreign sales can be reimagined as a “*domestic* application of the Act,” Resp.Br.44, is waived. The brief

in opposition *never* argued the Act reaches foreign conduct as a “domestic” application; it described that as an “extraterritoria[.]” application, even where foreign conduct causes “‘domestic consumer confusion.’” Pet.Br.38 (collecting citations). If International thought this case did not present “extraterritoria[.]” application of the Act, Pet. i, it had “an obligation to the Court to point [that] out in the brief in opposition, *and not later.*” This Court’s Rule 15.2 (emphasis added).<sup>6</sup>

## B. The Act Requires Domestic Use in Commerce

### 1. *The Act’s Text Requires Domestic Use*

The Lanham Act’s text reaches only *uses* of marks in the U.S., and not uses in foreign countries. The Act’s causes of action are triggered by marks’ “use in commerce.” 15 U.S.C. §§ 1114(1)(a), 1125(a)(1). As discussed above (pp. 6-9), the Act’s definition of “commerce” does not encompass commerce outside the U.S., given the presumption against extraterritoriality. The Act therefore encompasses only “use” in *domestic* commerce; the required use must occur “in the United States.” *Morrison*, 561 U.S. at 262-263 & n.7; see Pet.Br.39-40.

Neither International nor the government addresses that textual argument. Neither explains how a “commerce” definition that “do[es] not apply abroad,” *Morrison*, 561 U.S. at 263, could nevertheless extend the Act to “uses in commerce” occurring abroad. That alone defeats any effort to extend the Act to foreign uses.

### 2. *The Act’s “Focus” Is Marks’ Use in Commerce*

Examining the statute’s “focus” produces the same result, because the Act’s focus is marks’ “use in com-

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<sup>6</sup> International’s *supplemental* certiorari-stage brief, Resp.Br.50 n.15, thus was insufficient. Regardless, it *still* did not argue the Act applies “domestically” here.

merce.” Pet. Br. 40-41. Use in commerce is central to the Act: Marks must be “used in commerce” to *register* them under Section 1 (15 U.S.C. § 1051(a)(1)), *maintain* registrations for them under Section 8 (§ 1058(b)(1)(A)), and *infringe* them under Sections 32 and 43 (§§ 1114(1)(a), 1125(a)(1)). It makes sense that “use” is a trademark statute’s focus, because “use of a mark in the marketplace” is what “creates a trademark.” 3 McCarthy § 19:8.

Improperly “analyz[ing] the provision[s] at issue in a vacuum,” *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129, 2137 (2018), International and the government address only the provisions for *enforcing* trademark rights (Sections 32 and 43), while ignoring the provisions for *establishing* trademark rights (Sections 1 and 8). That is error: Because those provisions “wor[k] in tandem,” they “must be assessed in concert.” *Ibid.*

International and the government would give the same phrase different meanings in the same statute. They nowhere deny that, when Sections 1 and 8 require “use in commerce” to *register and maintain* U.S. trademarks, they require (and focus on) *domestic* uses. Pet. Br. 43. But when determining what *infringes* U.S. trademarks under Sections 32 and 43, International and the government would give “use in commerce” a different meaning, encompassing uses *outside the U.S.* That defies standard statutory-construction principles. Pet. Br. 41.

The government’s failure to address that incongruity is conspicuous. The PTO maintains that “use” for registration purposes must be “in the United States,” not “in a foreign country.” TMEP § 901.03; see Pet. Br. 4-5, 18, 41. The government’s brief (not signed by the PTO) never mentions that longstanding position. Nor does it explain why, if foreign use cannot *establish* U.S. trademark rights, foreign use can *violate* U.S. trademark rights.



### C. International's and the Government's "Effects" Tests Defy Extraterritoriality Principles

1. International and the government contend the Act applies "domestically" to foreign conduct when that conduct has a requisite "effect" in this country. Resp.Br.44-48; Gov't.Br.14-16. But those "effects" tests just slap a "domestic" label on extraterritorial applications. As International admits, applying U.S. law "to foreign conduct that \* \* \* produce[s] some substantial *effect* in the United States'" is an "*extraterritorial* application" of U.S. law. Resp.Br.48 (second emphasis added). "Effects" is not a test for determining whether a *non-extraterritorial* law is being applied *domestically*. Pet.Br.42.

An "effects" test would make the presumption against extraterritoriality a heads-I-win-tails-you-lose proposition: Either a statute *overcomes* the presumption and applies *extraterritorially* to foreign conduct based on effects here, or it does *not* overcome the presumption and applies *domestically* to foreign conduct based on effects here. A presumption so easily defanged "would be a craven watchdog indeed." *Morrison*, 561 U.S. at 266.

An "effects" test eviscerates the presumption's purpose: avoiding friction that arises "when U.S. law is applied to conduct in foreign countries," *RJR*, 579 U.S. at 335, and "transactions occurring within [other countries'] territorial jurisdiction," *Morrison*, 561 U.S. at 269. That friction is avoided by declining to impose U.S. law on foreign conduct—not by relabeling the imposition a "domestic" application.

*Morrison* (cited Resp.Br.48, Gov't.Br.16-17) *rejected* an "effects" test and *refused* to impose U.S. law on foreign markets, 561 U.S. at 257-259, 269. It adopted a "clear," conduct-based "transactional test" focused on the "transactions that the statute seeks to 'regulate.'" *Id.* at 267,



269. Here, the relevant “transactions” are uses in commerce. *Morrison*, moreover, rejected the notion that a statute is applied “domestic[ally]” “whenever *some* domestic activity is involved.” *Id.* at 266. It did not suggest U.S. law can be applied “domestically” where there is *no* domestic conduct, but at most domestic effects.

*RJR* (cited Resp.Br.48) involved a statute whose conduct-regulating provisions *applied extraterritorially*. 579 U.S. at 338-339. It nonetheless held the statute’s private right of action imposed an *additional* requirement of domestic injury. *Id.* at 346. It did not suggest a *non-extraterritorial* statute applies “domestically” to foreign conduct whenever there is some domestic impact.

2. International’s “effects” test is particularly untenable. It insists the Act’s “trademark-infringement provisions” have “two focuses”: consumer confusion and “protecting mark owners’ goodwill.” Resp.Br.46. The latter “focus,” however, does not appear in the Act’s “trademark-infringement provisions.” International draws it from a general statement of statutory “‘purposes.’” *Id.* at 45-46. But that statement refers to marks’ “use” in commerce *three times*. 15 U.S.C. § 1127. If the statement is relevant to the statute’s “focus,” it counsels a conduct-based approach.

International’s multi-focus proposal underscores the problems with tests based on “effects” or “purposes.” Statutes often address multiple purposes and effects. International would declare *all* of a statute’s putative purposes or effects its “focuses,” and have the statute regulate foreign conduct whenever doing so could advance those aims in this country. That would license a massive extension of U.S. law into foreign countries—all under the banner of “domestic application.”

Indeed, International argues the Act applies “domestic[ally]” any time a *U.S. plaintiff* claims it was harmed *abroad*, because that foreign harm is “necessarily felt at [the plaintiff’s] home in the United States.” Resp.Br.49. Allowing U.S. plaintiffs to wield U.S. law against competitors worldwide is the *opposite* of a “quintessential domestic application.” *Ibid.*

3. The government’s “domestic confusion” test is equally unpersuasive (if less outlandish). It disregards the Lanham Act’s structure and the government’s longstanding position that the Act does not reach foreign trademark *uses*. Pet.Br.40-43; pp. 14-15, *supra*. The government mentions neither.

A domestic-confusion test defies predictable application. Liability would turn on the *location* of the *mental state* of confusion—more precisely, the location of a *likelihood of confusion*—without any clear rule for how that location is determined or what conduct is then actionable. The government recognizes that a domestic-confusion test requires (a likelihood of) confusion of individuals located “in the United States.” Gov’t.Br.27. But it also suggests that its test covers Americans who encounter trademark uses abroad and are “likely to be confused and to remain confused once they retur[n] to the United States.” *Id.* at 33 n.5. *Foreign* confusion can become *domestic* when American travelers return home. Suppose a Scottish pizza parlor uses trademarks that a U.S. tourist confuses for a pizza joint back home. Cf. *IMAPizza, LLC v. At Pizza Ltd.*, 965 F.3d 871 (D.C. Cir. 2020). Is there a “likelihood of domestic confusion” justifying Lanham Act liability? Or is a certain *degree* of domestic confusion (or action based on that confusion) required? The government’s test quickly devolves into the “some/significant/substantial effect” standards the gov-

ernment accurately criticizes as “unmoored” and “unpredictable.’” CVSG.Br.21.

Exploiting the government’s (confusing) domestic-confusion test, International insists petitioners’ attendance at “international trade shows” in Germany results in “domestic” Lanham Act violations because some “U.S. consumers” attend those foreign expos. Resp.Br.51-52; see JA33. Indeed, International contends that *potential* confusion of some U.S. attendees makes “[a]ll of Petitioners’ profits” “subject to disgorgement,” even if *no one* was actually confused and *all* sales were to foreign buyers. Resp.Br.52-53, 55. That would be an aggressive *extraterritorial* application of U.S. law. To call it a *domestic* application blinks reality. Pet.Br.44 n.16; pp. 23-24, *infra*. International’s view illustrates the endless malleability of the “effects” tests it and the government promote.

For what? The only situation the government identifies where foreign conduct may actually affect U.S. consumers is where foreign-sold goods are later imported or resold *in the U.S.* Gov’t.Br.21-22. But it concedes *domestic importation or resale* would be independently actionable. *Ibid.*; Pet.Br.44. It merely objects that treble and statutory damages might be unavailable. Gov’t.Br.22. But other countries *reject* such damages. They are a poor justification for extending U.S. law into foreign territory.

### III. THE “DIVERSION OF FOREIGN SALES” THEORY MUST BE REJECTED

Even if the Lanham Act could extend to *some* foreign sales, it would lack the extreme reach International urges.

#### A. International Distorts the Lanham Act

1. The Tenth Circuit upheld 97% of the Lanham Act judgment here—encompassing €75 million of petitioners’ €77 million worldwide sales—on a diversion-of-foreign-

sales theory. Pet. Br. 45; Pet. App. 44a-47a. The court did not deny those sales were purely foreign: made in foreign countries, between foreign companies, for equipment used abroad. Nor did the court find those foreign sales were likely to cause confusion in the U.S. It nonetheless held U.S. law should “‘protec[t]” an “‘American plaintiff”” from losing foreign sales to foreign competitors, because the plaintiff otherwise could have repatriated revenues from foreign sales “into the U.S. economy.” Pet. App. 44a-45a.

That theory would transform the Lanham Act into a global unfair-competition code, letting U.S. plaintiffs assert the Act’s entire regulatory regime against foreign competitors in foreign markets. It would even have U.S. law dictate the content of orange-juice labels in Bratislava. Pet. Br. 47. Rather than deny that result, International expands on it. Resp. Br. 46-49. In International’s conception, U.S. plaintiffs could sue in the U.S. based on foreign competitors’ advertising in foreign countries, by alleging that “reputational harm” incurred abroad is “felt” at the plaintiffs’ home here. Resp. Br. 47. U.S. law would rule the world.

But only for U.S. plaintiffs. *U.S.* plaintiffs with U.S. trademarks could attack foreign competitors’ conduct in foreign countries, on the theory that harm experienced abroad “flows” back to the plaintiffs’ U.S. residence. *Foreign* plaintiffs with U.S. trademarks could not invoke that theory; harm they experience abroad would “flow” back to their own countries. Pet. Br. 46-47.

International concedes that discriminatory result would violate the Paris Convention. See Paris Convention art. 2(1)-(2); Resp. Br. 42. It tries to dodge the problem by declaring “foreign plaintiff[s]” could invoke the diversion-of-foreign-sales theory. Resp. Br. 43 n.13, 47 n.14. That is

nonsensical. A theory based on the notion that harm is “necessarily felt at [the plaintiff’s] home in the United States,” Resp.Br.49, is necessarily limited to plaintiffs with homes in the United States. Courts describe the theory as one available to “‘American plaintiff[s].’” Pet.App.44a. And extending the theory to foreign nationals *with U.S. homes or businesses* would violate the bar on requiring rightsholders to have “domicile or establishment in the country where protection is claimed.” Paris Convention art. 2(2).

2. The Act’s “commerce” definition, Resp.Br.28-29, cannot justify International’s extreme position. Under the Constitution’s text, commerce Congress may “lawfully” regulate, 15 U.S.C. § 1127, is “Commerce *with* foreign Nations”—not “among” or “within” foreign Nations. U.S. Const. art. I, § 8, cl. 3 (emphasis added). It does not mean commerce in foreign countries between foreign citizens. Pet.Br.46.

International dismisses that textual approach as “outdated.” Resp.Br.34. But it cites no decision of this Court holding the Foreign Commerce Clause allows Congress to regulate foreign transactions between foreign parties involving goods that never reached the U.S. It cites (Resp.Br.29) cases involving shipping containers “physically present” in California, *Japan Line, Ltd. v. Los Angeles County*, 441 U.S. 434, 437 (1979), Congress’s “plenary power” over D.C., *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 434 (1932), and state dental regulation, *N.C. State Bd. of Dental Examiners v. FTC*, 574 U.S. 494 (2015).

International would graft post-*Wickard* conceptions of the *interstate* commerce power onto the *foreign* commerce power—essentially allowing Congress to regulate as freely in Athens, Greece, as it can in Athens, Georgia. Even if

one could *argue* that the Constitution extends so far, but see *Boston v. United States*, 137 S. Ct. 850, 853 (2017) (Thomas, J., dissenting from denial of certiorari), there is no reason to construe the Lanham Act—and other statutes invoking Congress’s full commerce power—to raise such grave constitutional concerns.

**B. The Judgment Cannot Be Sustained Under Any Plausible View**

1. *If* the Lanham Act could apply to foreign uses—and it cannot—it would apply only to uses likely to cause confusion in this country. Pet. Br. 47-49; Gov’t. Br. 27-28. While still impermissibly extraterritorial, looking to U.S. “confusion” has at least some toehold in statutory text, 15 U.S.C. §§ 1114(1)(a), 1125(a)(1)(A), and would limit the Act to foreign conduct with “trademark-impairing effects upon American commerce,” *Sterling Drug, Inc. v. Bayer AG*, 14 F.3d 733, 746 (2d Cir. 1994).

Here, 97% of petitioners’ sales never reached the U.S. The Tenth Circuit found no evidence those wholly foreign sales involved a likelihood of U.S. confusion. Pet. App. 41a-44a. Nor could one reasonably infer that, *e.g.*, German sales to Norwegian companies of equipment used in Iceland, JA8, JA10, are likely to cause confusion here. As to that 97% (representing \$88 million of the \$90 million award), petitioners are entitled to judgment even if the Lanham Act could apply extraterritorially.

Even as to the 3% of foreign sales that may have reached the U.S., petitioners are entitled to judgment (or a new trial). There was no evidence connecting particular uses to likely U.S. confusion, and cross-examination on the issue was erroneously limited. Pet. Br. 48-49.<sup>7</sup>

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<sup>7</sup> Because the district court had “definitively ruled” against petitioners on “[e]xtraterritorial application of the Lanham Act,” JA107;

2. International’s insistence that “[a]ll” petitioners’ worldwide sales resulted from uses likely to confuse U.S. consumers, Resp.Br.51-52, misapprehends the record and reality. For example, International cites evidence about a product sold “in 2003,” JA23 (cited Resp.Br.11), when petitioners’ and International’s predecessors were under common ownership, Pet.Br.8. More fundamentally, nothing in the Lanham Act supports global liability—including for foreign sales to foreign buyers of goods used abroad—based on foreign conduct that might *sometimes* confuse U.S. customers, but in the relevant instances did not. Gov’t.Br.26-27.

Consider the letters informing petitioners’ customers of the Abitron name-change. Resp.Br.52. Those letters did not claim “Abitron was the real Hetronic,” Resp.Br.7; they *disclaimed* the “Hetronic” name, JA15-16, JA26-27. More important, the letters were not sent to “[International’s] U.S. customers.” Resp.Br.52. They were sent to petitioners’ then-current customers; at the time, petitioners’ only U.S. customers were *International and its affiliates*. JA4-5, JA26. International does not claim it was confused, and it identifies no other U.S. customers that received letters. Letters to *foreign* recipients would not be likely to confuse customers in the U.S. Only letters to U.S. customers could. And only sales resulting from those (hypothetical) “violation[s]”—*i.e.*, sales to U.S. buyers—could be the basis for relief. §1117(a).

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Pet.App.33a, 163a-164a, petitioners were not required to make a futile jury-instruction objection, see *Asbill v. Hous. Auth. of Choctaw Nation of Okla.*, 726 F.2d 1499, 1502 n.3 (10th Cir. 1984). Resp.Br.54. Regardless, legal sufficiency is judged under the “properly formulated” standard, even if defendants “failed to object to jury instructions.” *Boyle v. United Techs. Corp.*, 487 U.S. 500, 513-514 (1988).



Foreign trade shows, Resp.Br.51-52, cannot justify global liability simply because Americans attend them (alongside countless others). Even as to Americans, any confusion at *foreign* shows would occur *outside the U.S.*; it would be *foreign* confusion, not domestic. And only sales *resulting from likely confusion of U.S. customers*—sales to *U.S.* buyers—could qualify for relief.

Same with websites. Resp.Br.51. Abitron’s websites—*abitron.de* and *abitron.at*—were designed to reach “German and Austrian customers.” JA106-108.<sup>8</sup> There is no evidence they confused, or resulted in sales to, *U.S.* customers. Regardless, all agree International can recover for any actual sales to buyers in the U.S.<sup>9</sup>

At bottom, International insists that foreign uses in foreign trade shows or foreign-targeted websites support disgorgement of *all* global sales, including foreign sales to non-Americans. That overreach confirms the wisdom of the presumption against extraterritoriality: Courts do not read statutes to globalize U.S. law and trample other countries’ sovereign prerogatives absent *unmistakable* legislative direction. Because the Lanham Act provides no such direction, it does not “apply to foreign conduct.” *RJR*, 579 U.S. at 335.

## CONCLUSION

The judgment should be reversed.

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<sup>8</sup> If metatags affected “Google search rankings,” they did so “in Bavaria.” JA81. But see 5 McCarthy § 25A:3 & nn.27-29 (Google stopped considering metatags in 2009).

<sup>9</sup> International erroneously asserts that *petitioners* must prove which of their sales were *not* caused by violations of the Act. Resp.Br.54-55. The *plaintiff* must “establis[h]” a “violation” *and* “prove defendant’s sales” were caused by the violation. § 1117(a). The only burden *defendants* bear is to show any “cost or deduction” needed to convert those sales’ proceeds into “profits.” *Ibid.*



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## APPENDIX A

### STATUTORY PROVISIONS WITH “AFFECTING COMMERCE” OR SIMILAR LANGUAGE

1. Agricultural Adjustment Act, 7 U.S.C. § 608b(a).
2. Agricultural Adjustment Act, 7 U.S.C. § 608c(1), (6)(A), (6)(C), (6)(G)(i).
3. Agricultural Adjustment Act, 7 U.S.C. § 852.
4. Agricultural Adjustment Act, 7 U.S.C. § 854.
5. Animal Welfare Act, 7 U.S.C. §§ 2132(c)(2), (h), 2134.
6. Animal Welfare Act, 7 U.S.C. § 2160(b)(1).
7. Plant Variety Protection Act, 7 U.S.C. § 2541(a).
8. Food, Conservation, and Energy Act, 7 U.S.C. § 8772(c)(1)(B).
9. Gambling Devices Transportation Act, 15 U.S.C. § 1173(a)(1).
10. Fair Credit Reporting Act, 15 U.S.C. § 1644(a), (f).
11. Electronic Fund Transfer Act, 15 U.S.C. § 1693n(b)(1), (b)(6).
12. Consumer Product Safety Act, 15 U.S.C. §§ 2052(a)(3), 2057.
13. Danny Keysar Child Product Safety Notification Act, 15 U.S.C. §§ 2056a(c)(2), 2203(8).
14. Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, 15 U.S.C. §§ 2301(14), 2302.
15. Toxic Substances Control Act, 15 U.S.C. §§ 2602(3), 2603-2607.

16. Petroleum Marketing Practices Act, 15 U.S.C. §§2801(18)(B), 2802.

17. Petroleum Marketing Practices Act, 15 U.S.C. §§2821(13), 2822.

18. Petroleum Marketing Practices Act, 15 U.S.C. §2823(e).

19. Intimate Imagery and Privacy Protection Act, 15 U.S.C. §6851(b)(1)(A).

20. Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001(a), (c), (d)(1), (d)(3), (e), (g), (h).

21. Lacey Act Amendments, 16 U.S.C. §3372(e)(1)(A).

22. Semiconductor Chip Protection Act, 17 U.S.C. §910(a).

23. Health Insurance Portability and Accountability Act, 18 U.S.C. §24(b).

24. Fraud Enforcement and Recovery Act, 18 U.S.C. §§27, 1014.

25. Safe, Accountable, Flexible, Efficient Transportation Equity Act, 18 U.S.C. §39(a).

26. Wild Horse Annie Act, 18 U.S.C. §48(a).

27. Amber Hagerman Child Protection Act, 18 U.S.C. §116(d)(3)-(4), (7).

28. USA PATRIOT Act, 18 U.S.C. §175b(a)(1)(A).

29. Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, 18 U.S.C. §220(a).

30. Civil Disobedience Act, 18 U.S.C. §231(a)(1), (a)(3).

31. Federal Criminal Code, 18 U.S.C. §247(b).

32. Federal Criminal Code, 18 U.S.C. § 249(a)(2)(B)(iv)(II).
33. Federal Criminal Code, 18 U.S.C. § 513(c)(4).
34. Violent Crime Control and Law Enforcement Act, 18 U.S.C. § 521(a).
35. Organized Crime Control Act, 18 U.S.C. § 842(i).
36. Bomb Threats Act, 18 U.S.C. § 844(e), (i).
37. Brady Handgun Violence Prevention Act, 18 U.S.C. § 922(g)(9), (h)(1).
38. Bipartisan Safer Communities Act, 18 U.S.C. § 932(b).
39. Bipartisan Safer Communities Supplemental Appropriations Act, 18 U.S.C. § 933(a)(1)-(2).
40. False Identification Crime Control Act, 18 U.S.C. § 1028(c)(3)(A).
41. Counterfeit Access Device and Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(6)(A), (e)(2).
42. Violent Crime Control and Law Enforcement Act, 18 U.S.C. § 1033(a)(1), (f)(3).
43. Emergency and Disaster Assistance Fraud Penalty Enhancement Act, 18 U.S.C. § 1040(b)(1).
44. Federal Anti-Tampering Act, 18 U.S.C. § 1365(a)-(c).
45. Child Protection and Obscenity Enforcement Act, 18 U.S.C. § 1465.
46. Partial-Birth Abortion Ban Act, 18 U.S.C. § 1531(a).
47. Hobbs Act, 18 U.S.C. § 1951.
48. Violent Crimes in Aid of Racketeering Activity Statute, 18 U.S.C. § 1959(b)(2).

49. Annunzio-Wylie Anti-Money Laundering Act, 18 U.S.C. § 1960(b)(1).
50. Anti-Drug Abuse Act, 18 U.S.C. § 2251A(c)(1)-(2).
51. Effective Child Pornography Prosecution Act, 18 U.S.C. § 2252(a).
52. Effective Child Pornography Prosecution Act, 18 U.S.C. § 2252A(a).
53. Allow States and Victims To Fight Online Sex Trafficking Act, 18 U.S.C. § 2421A(a), (b).
54. Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§ 2510(1), (12), 2511, 2512.
55. Video Privacy Protection Act, 18 U.S.C. § 2710(a)(4).
56. Controlled Substances Act, 21 U.S.C. § 854(a).
57. Labor-Management Relations Act, 29 U.S.C. § 142.
58. National Labor Relations Act, 29 U.S.C. § 152(6), (7).
59. National Labor Relations Act, 29 U.S.C. § 160(a).
60. Labor-Management Relations Act, 29 U.S.C. § 173(a)-(b).
61. Labor-Management Relations Act, 29 U.S.C. § 174(a).
62. Labor-Management Relations Act, 29 U.S.C. § 185(a)-(b).
63. Labor-Management Relations Act, 29 U.S.C. § 186(a)(1)-(4).
64. Labor-Management Relations Act, 29 U.S.C. § 187(a).
65. Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 402(e), (i), (j).
66. Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 504(a).

67. Employee Polygraph Protection Act, 29 U.S.C. § 2002.

68. Family and Medical Leave Act, 29 U.S.C. §§ 2611(4), 2612-2615.

69. Federal Mine Safety and Health Act, 30 U.S.C. § 803.

70. Money and Finance Code, 31 U.S.C. § 5301(a).

71. William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, 31 U.S.C. § 5335(a)(1).

72. National Institutes of Health Revitalization Act, 42 U.S.C. § 289g-2(a), (b), (e)(2).

73. Title II of Civil Rights Act, 42 U.S.C. § 2000a(b)-(c).

74. Government Employee Rights Act, 42 U.S.C. §§ 2000e(b), (d), (e)(2), (e)(5), (h), 2000e-2.

75. Privacy Protection Act, 42 U.S.C. § 2000aa(a)-(b).

76. Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc(a)(2).

77. Noise Control Act, 42 U.S.C. §§ 4902, 4905.

78. National Manufactured Housing Construction and Safety Standard Act, 42 U.S.C. § 5409(a)(1).

79. Energy Policy and Conservation Act, 42 U.S.C. § 6276(b).

80. Energy Policy and Conservation Act, 42 U.S.C. §§ 6291(17)(A), 6294.

81. Energy Policy and Conservation Act, 42 U.S.C. § 6303(c).

82. Americans with Disabilities Act, 42 U.S.C. §§ 12181(2)(B), (7), 12182.



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83. Americans with Disabilities Act, 42 U.S.C. § 12184(a).

84. Transportation Equity Act for the 21st Century, 49 U.S.C. §§ 31101(3), 31105.

85. Natural Gas Pipeline Safety Act, 49 U.S.C. §§ 60101 (a)(22)(A)(i), 60115.

86. Natural Gas Pipeline Safety Act, 49 U.S.C. § 60123(b).

**APPENDIX B****STATUTORY PROVISIONS WITH “AFFECTING  
COMMERCE” OR SIMILAR LANGUAGE AND  
EXPRESS EXTRATERRITORIAL SCOPE**

1. Wendell H. Ford Aviation Investment and Reform Act, 18 U.S.C. § 38(a); § 38(f) (“This section also applies to conduct occurring outside the United States if—”).

2. Animal Crush Video Prohibition Act, 18 U.S.C. § 48(a)(1); § 48(b) (“Extraterritorial Application.”).

3. Intelligence Reform and Terrorism Prevention Act, 18 U.S.C. § 175c(b)(1); § 175c(b)(2)-(4) (“Conduct prohibited \* \* \* is within the jurisdiction of the United States if— \* \* \* (2) the offense occurs outside of the United States and is committed by a national of the United States; (3) the offense is committed against a national of the United States while the national is outside the United States; (4) the offense is committed against any property that is owned, leased, or used by the United States \* \* \* whether the property is within or outside the United States”).

4. Credit Card Fraud Act, 18 U.S.C. § 1029(a); § 1029(h) (“Any person who, outside the jurisdiction of the United States \* \* \*”).

5. Victims of Trafficking and Violence Protection Act, 18 U.S.C. § 1591(a)(1); § 1596 (“the courts of the United States have extra-territorial jurisdiction over any offense \* \* \*”).

6. Money Laundering Control Act, 18 U.S.C. § 1956(c)(4); § 1956(f) (“There is extraterritorial jurisdiction over the conduct prohibited by this section if—”).

7. Protection of Children Against Sexual Exploitation Act, 18 U.S.C. §2251(a)-(b), (d)(2); §2251(c)(1) (“Any person who \* \* \* employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions \* \* \*”).

8. Antiterrorism Act, 18 U.S.C. §2332b(b)(1); §2332b(a)(1) (“Whoever, involving conduct transcending national boundaries \* \* \*”).

9. Intelligence Reform and Terrorism Prevention Act, 18 U.S.C. §2332g(b)(1); §2332g(b)(2)-(4) (“Conduct prohibited \* \* \* is within the jurisdiction of the United States if— \* \* \* (2) the offense occurs outside of the United States and is committed by a national of the United States; (3) the offense is committed against a national of the United States while the national is outside the United States; (4) the offense is committed against any property that is owned, leased, or used by the United States \* \* \* whether the property is within or outside the United States”).

10. Intelligence Reform and Terrorism Prevention Act, 18 U.S.C. §2332h(b)(1); §2332h(b)(2)-(4) (“Conduct prohibited \* \* \* is within the jurisdiction of the United States if— \* \* \* (2) the offense occurs outside of the United States and is committed by a national of the United States; (3) the offense is committed against a national of the United States while the national is outside the United States; (4) the offense is committed against any property that is owned, leased, or used by the United States \* \* \* whether the property is within or outside the United States”).

11. Antiterrorism and Effective Death Penalty Act, 18 U.S.C. § 2339B(d)(1)(E); § 2339B(d)(2) (“There is extraterritorial Federal jurisdiction over an offense under this section.”).

12. Suppression of the Financing of Terrorism Convention Implementation Act, 18 U.S.C. § 2339C(b)(1)(G); § 2339C(b)(2) (“the offense takes place outside the United States and—”).

13. Intelligence Reform and Terrorism Prevention Act, 18 U.S.C. § 2339D(b)(5); § 2339D(b) (“There is extraterritorial Federal jurisdiction over an offense under this section.”).

14. USA PATRIOT Improvement and Reauthorization Act, 21 U.S.C. § 960a(b)(2); § 960a(b)(3)-(5) (“There is jurisdiction over an offense under this section if— \* \* \* (3) an offender provides anything of pecuniary value for a terrorist offense that causes or is designed to cause death or seriously bodily injury to a national of the United States while that national is outside the United States, or substantial damage to the property \* \* \* while that property is outside the United States; (4) the offense or the prohibited drug activity occurs in whole or in part outside of the United States \* \* \*; or (5) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States”).

15. Age Discrimination in Employment Act, 29 U.S.C. §§ 623, 630(b), (d), (e); § 630(f) (“The term ‘employee’ includes any individual who is a citizen of the United States employed by an employer in a workplace in a foreign country.”).

16. Atomic Energy Act, 42 U.S.C. §2122(b)(1); §2122(a) (“It shall be unlawful \* \* \* for any person, inside or outside of the United States \* \* \* ”); §2122(b)(1)-(3) (“Conduct prohibited \* \* \* is within the jurisdiction of the United States if— (1) \* \* \* the offense occurs outside of the United States and is committed by a national of the United States; (2) the offense is committed against a national of the United States while the national is outside the United States; (3) the offense is committed against any property that is owned, leased, or used by the United States \* \* \* whether the property is within or outside the United States”).

17. Americans with Disabilities Act, 42 U.S.C. §§ 12111(5)(A), (7), 12112; §12111(4) (“With respect to employment in a foreign country, [the term ‘employee’] includes an individual who is a citizen of the United States.”).