No. 25-1311

In the Supreme Court of the United States

APPLE INC., PETITIONER

v.

EPIC GAMES, INC.

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

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Whether a party may be held in contempt only when the injunction's text prohibits the precise conduct challenged, or also when a reasonable person reading the injunction's terms in light of its context and purposes would understand that conduct to be prohibited, including when the party seeks to circumvent the injunction through alternative means.

PARTIES TO THE PROCEEDING

Petitioner Apple Inc. (AAPL) was Defendant-Counter-Claimant-Appellant below.

Respondent Epic Games, Inc. was Plaintiff-Counter-Defendant-Appellee below.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, Respondent Epic Games, Inc. (Epic) states that it has no parent corporation and that each of Tencent Holdings Limited (SEHK: 700) and The Walt Disney Company (DIS) owns more than 10% of Epic stock.

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Other Authorities

1 Charles Fisk Beach Jr., *Commentaries on the Law of Injunctions* (1895) 23, 34
Black's Law Dictionary (12th ed. 2024) 37
4 William Blackstone, *Commentaries on the Laws of England* (1769) 18
1 Edward M. Dangel, *Contempt* (1939) 23, 34
Robert Henley Eden, *A Treatise on the Law of Injunctions* (1821) 34
2 James L. High, *A Treatise on the Law of Injunctions* (3d ed. 1890) 19, 23, 33
William Williamson Kerr, *A Treatise on the Law and Practice of Injunctions* (3d ed. 1889) 19
7 John D. Lawson, *Rights, Remedies, & Practice* (1890) 23
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11A *Wright & Miller's Federal Practice and Procedure* (3d ed. 2008) 33

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BRIEF FOR RESPONDENT

INTRODUCTION

Apple knew exactly what it was doing. For years, Apple blocked price competition on purchases of digital content—such as books, movies, and music subscriptions—made through iPhone apps. It did so by requiring that all such purchases be made through Apple's own payment system, where it charged a lucrative 30% commission. And it prohibited app developers from linking consumers to other payment systems on the web, or even telling consumers that they could make the same purchases elsewhere at lower cost.

The district court enjoined Apple's anti-steering practices: Apple could not prohibit developers from linking users to other payment systems, or from telling users that those options exist. The injunction's goal was clear: to permit linked-out purchases from

apps, which would allow price competition and provide meaningful consumer choice.

Apple's response was to adopt new restrictions designed to have the exact same purpose and effect as the old ones. First, it imposed a commission on linked-out purchases, at a rate so high that app developers would lose money if consumers used any payment system other than Apple's payment system. Significantly, this was the first time that Apple ever sought to tax transactions on the open web, as opposed to on its own platform. Second, Apple imposed design restrictions that made those links to external payment systems nearly impossible to find and painful to use. Apple took those steps to ensure that no developer would find it worthwhile to include links to web payment systems, and no user would ever use those links to complete an out-of-app purchase.

Apple then took it a step further, engaging in an elaborate cover-up of its scheme to circumvent the injunction. It hired a consultant to create a "sham" report to try to justify the new commission after the fact, then introduced that "entirely manufactured" evidence in court. Pet. App. 137a-138a. It made baseless claims of privilege to try to "hid[e] its decision-making process from the Court." *Id.* at 70a, 146a. And its Vice President of Finance "outright lied under oath" to try to cover up its evasive scheme. *Id.* at 52a.

The district court held Apple in contempt. It found that Apple's new restrictions were not a good-faith effort to comply with the injunction, but a calculated scheme to evade it, methodically planned and executed by Apple's top management. Apple's own documents and evidence showed that. Apple executives admitted that Apple intentionally set the commission at the rate where it would be uneconomical for developers to offer links to other payment systems,

and that the only reason for the design restrictions was to stifle competition. Apple's knowledge that its conduct violated the injunction, combined with its bad-faith cover-up, confirmed that Apple lacked any objectively reasonable belief that its conduct was allowed. The court of appeals affirmed the contempt holding.

Under *Taggart* v. *Lorenzen*, 587 U.S. 554 (2019), a party can be held in civil contempt if there is "no fair ground of doubt" that its conduct violated an injunction. There is no fair ground of doubt here. Apple deliberately adopted a scheme to circumvent the injunction; it repeatedly chose the most anticompetitive option available and brushed aside internal warnings that its new restrictions could violate the injunction; and it tried to cover its tracks by creating sham documents and lying to the district court. Apple's conduct both violated the injunction's terms (Apple was not allowed to "prohibit[]" linked-out purchases, Pet. App. 166a) and circumvented its purpose (which was to permit linked-out purchases to increase competition and consumer choice). Apple cannot credibly claim that it lacked fair notice here.

Apple attempts to avoid contempt by proposing an extreme legal standard. It argues that a court can find contempt only if an injunction spells out the exact practice at issue—so an injunction barring Apple's then-existing anti-steering rules left it free to implement new ones that prevent steering just as effectively. Nothing in this Court's precedents supports that approach, which would reduce injunctions to a never-ending game of whack-a-mole. The correct rule is the one this Court has long applied in cases such as *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187 (1949): A party has fair notice, and may be held in contempt, when a reasonable person reading the

order's terms in light of its context and purposes would understand the party's conduct to be prohibited—including when the party seeks to circumvent the injunction through alternative means.

Apple makes much of the court of appeals' reference to the "spirit" of the injunction. But the court of appeals' substantive analysis applied this Court's precedents, which reflect hundreds of years of equity practice. Notably, Apple identifies *no* authority endorsing the proposition that a defendant can escape contempt when it engages in conduct deliberately designed to circumvent an injunction. Instead, Apple largely ignores *McComb* and the settled historical understanding, as well as the district court's fact findings about Apple's knowledge and bad faith—all of which confirm that contempt is appropriate here.

The United States largely agrees with Epic's legal standard. It accepts that an injunction must be read in light of its context and purposes, and that a party may be held in contempt for conduct that has the effect of nullifying an injunction, even if the injunction does not name the precise practice at issue. And it does not address the district court's findings of knowledge and bad faith, or whether they support contempt here.

Apple's conduct violated the injunction's text and purposes. Apple could not prohibit developers from including links to external payment systems, but the effect of Apple's new restrictions was to do just that. Apple's commission on external purchases was cost-prohibitive, and its design restrictions made it effectively impossible for consumers to find and use those links. Further, there is no doubt as to why Apple adopted these restrictions—to prevent linked-out purchases. Notably, the United States agrees that Apple

should be held in contempt, at least with respect to some restrictions.

This Court thus should affirm. But if the Court chooses instead to clarify the legal standard, it should remand for the courts below to apply that standard in the first instance.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent provisions are reprinted in an appendix to this brief. App., *infra*, 1a.

STATEMENT

Apple's brief largely ignores the district court's fact findings. Yet the court of appeals affirmed them, and Apple does not argue that any is clearly erroneous. Thus, as the case comes to this Court, those findings are taken as true.

A. Apple Attempted To Limit Competition In The Purchase Of Digital Goods Through iPhone Apps

1. Consumers buy all kinds of digital goods, such as news and music subscriptions, e-books, movies, and virtual currency. See J.A. 31-32, 35-36. They can purchase those items in many different places, including on a seller's website, or in an app on a gaming console, tablet, or phone. J.A. 100, 181, 191, 204.

In the digital economy, that digital content typically is not tied to the device where the consumer bought it. See J.A. 311-312. A person who buys a music subscription on a laptop can access the music on a phone. A reader who subscribes to a newspaper on a website can read it on a laptop, tablet, or phone. And a person playing a game on a phone can buy virtual

currency there and spend it while playing on a computer. J.A. 98, 225, 417.

2. This case involves Apple's attempts to restrict how consumers purchase digital goods on iPhones.

Apple produces and sells the iPhone. J.A. 414-415. The iPhone's commercial success depends in significant part on third-party apps, which vastly expand the device's functionality and appeal. J.A. 87, 415. Third-party apps span virtually every category of consumer need and interest. They include music-streaming apps like Spotify, dating apps like Bumble, and gaming apps like Epic's Fortnite. See Pet. App. 72a; J.A. 107. Apple requires that all iPhone apps be distributed exclusively through its App Store. J.A. 416.

Epic is among the most respected and innovative companies in the global gaming industry. See J.A. 89-112. Fortnite is one of the most popular video games in the world, with hundreds of millions of players across gaming consoles, computers, smartphones, and tablets. J.A. 416. Fortnite uses a "freemium" model, where the game "is largely free to download and play" and users can purchase "additional in-game features," such as virtual currency and in-game challenges. J.A. 100. A person can play Fortnite across multiple platforms, maintaining progress and purchases on each platform. J.A. 98.

3. Recognizing that consumers often purchase digital content through third-party apps, Apple set out to capture as much of that revenue stream as possible, including by anticompetitive means.

Apple required that every purchase of digital content be processed through Apple's own in-app payment system (IAP), where Apple takes a commission, typically 30%. Pet. App. 2a-3a; J.A. 137, 416. In other words, Apple claimed a cut of every purchase of digital goods made through an app, even though it did not

develop the app where the sale took place or create the purchased content. See J.A. 284-285. The 30% commission rate has no discernible relationship to the value Apple provides to developers or to the value of its intellectual property; it is a toll Apple extracted by virtue of its gatekeeping power. See J.A. 141, 278.

Apple also adopted "anti-steering" rules to stop iPhone users from making purchases using external payment systems. That is, it banned all linked-out purchases of digital content, meaning purchases where a consumer leaves an app to make a purchase using an external payment system, such as on the developer's website. J.A. 135; see Pet. App. 69a.

The anti-steering rules operated on two fronts. Within an app, Apple prohibited developers from providing "buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than" Apple's IAP. J.A. 135. Outside the app, Apple restricted developers from sending texts or emails to consumers informing them they could pay another way. J.A. 136. The goal was to keep consumers unaware of lower-priced alternatives, where the developer would not pay Apple a commission. J.A. 167, 286, 375. By doing so, Apple insulated its commission income from competition, and consumers paid higher prices. See J.A. 286.

The result: A Fortnite player on an iPhone could, in theory, have gone to Epic's website and bought the same in-game item at a lower price—a transaction where Apple would have no role and obtain no commission. But Epic could not link to that payment system through the Fortnite app, and it was muzzled from even telling the player that option existed. Apple's anti-steering rules thus ensured that all purchases on iPhones were made using IAP, subject to Apple's 30% commission—even though Epic, not

Apple, developed the game, created the content, and built the audience for it. See J.A. 285.

B. The District Court Enjoined Apple's Unlawful Conduct

1. Epic sued Apple, challenging Apple's anti-steering rules. J.A. 126-127. In a 180-page opinion, the district court concluded (among other things) that those rules violated California's Unfair Competition Law because they stifled competition in the pricing of in-app purchases, producing anticompetitive effects and supracompetitive margins. J.A. 370-379; see Cal. Bus. & Prof. Code § 17200.

Harm to consumers was central to the court's analysis. Apple's 30% commission on IAP purchases produced "extraordinarily high" operating margins for the App Store, as high as 75%. J.A. 154, 424. And Apple's anti-steering rules kept consumers from learning about opportunities to purchase the same content on the web, as well as the lower prices available there, "illegally stifl[ing] consumer choice." J.A. 85; see J.A. 286, 376.

2. To restore meaningful consumer choice, J.A. 380, the district court permanently enjoined Apple from enforcing its then-existing anti-steering rules: Apple could not "prohibit[] developers from (i) including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing and (ii) communicating with customers through points of contact obtained voluntarily from customers through account registration within the app," Pet. App. 166a; see J.A. 383.

Thus, Apple could continue to charge its 30% commission on IAP purchases, but it had to allow developers to link to, and tell consumers about, external

payment systems. J.A. 376, 378. The ultimate goal was lowering prices for IAP purchases: Permitting linked-out purchases would "increase competition, increase transparency, [and] increase consumer choice and information," J.A. 405, thus lowering prices, J.A. 375.

3. The court of appeals affirmed in relevant part, J.A. 413-499, and this Court denied certiorari, 144 S. Ct. 681 (2024) (No. 23-344); 144 S. Ct. 682 (2024) (No. 23-337).

C. Apple Devised A Plan To Circumvent The Injunction

1. As soon as the injunction was entered, Apple began developing a plan to evade it. Pet. App. 70a-71a. Apple's internal documents show a methodical scheme, conceived and approved at the highest levels of the company, to nullify the injunction while maintaining the appearance of compliance. *Id.* at 52a, 134a. As the district court found, Apple executives consistently picked "the most anticompetitive option" despite internal warnings that doing so could run afoul of the injunction. *Id.* at 74a-75a, 77a-78a. The goal was to "limit the [district court's] ruling" as much as possible. *Id.* at 89a (internal quotation marks omitted).

Apple adopted two types of new restrictions: a commission so high that no developer would find it worthwhile to offer links to external payment systems, and design restrictions so onerous that no user would ever leave the app to complete a purchase. Pet. App. 115a, 139a.

2. For the first time, Apple imposed a commission on transactions that consumers make *outside* apps, on the open web. Pet. App. 69a-70a. Since the release of the iPhone, consumers always had been able to make

purchases on websites without triggering a commission—until Apple decided to start taxing some of those transactions in response to the injunction. *Ibid.* Apple required developers to pay the new commission for any purchase made within seven days after a user followed a link, even if the user ultimately made the purchase independent of that link. *Id.* at 70a, 84a.

Apple chose a rate of 27% for the commission, knowing that, when combined with the developers' payment-handling costs (more than 3%), the rate for linked-out purchases would be higher than the rate for purchases using Apple's payment system. Pet. App. 75a, 77a-78a & n.25, 82a, 136a. As a result, developers actually would *lose* money by directing consumers to external payment systems. As an Apple executive admitted, every "linked-out transaction is going to be more expensive to any developer * * * than an IAP transaction at 30 percent." *Id.* at 82a (quoting 8 Tr. 1633:5-10). Apple simultaneously commissioned a "sham" report to try to provide an economic justification for the commission; the report contained an "entirely manufactured" rationale for the 27% rate. *Id.* at 85a, 135a, 137a.

Apple's new commission worked as intended. When called to account, Apple could not identify a single developer that "chose to direct customers to their own purchasing mechanisms and pay Apple's 27% commission." Pet. App. 20a.

3. Apple also adopted a set of new design restrictions to make linked-out purchases as painful as possible for consumers. The injunction requires Apple to allow "buttons, external links, or other calls to action" so users could access external payment systems. Pet. App. 166a. Apple's response was to nominally allow developers to include links, but to make them so

difficult to find and use that they would be meaningless. *Id.* at 139a-140a & n.66.

Apple imposed five design restrictions to deter users from ever making linked-out purchases: (1) It adopted a "plain button" requirement that made the button "invisible," as if there were "no button at all," Pet. App. 23a, 96a; (2) it barred developers from using "dynamic URLs," so that users would have to re-enter all of their information to make purchases on external websites, *id.* at 106a; (3) it limited "calls to action" to templates with specific approved language that made them sound unappealing, *id.* at 109a-110a; (4) it prohibited developers from putting external links anywhere in the purchase flow, where consumers would expect them, *id.* at 93a-94a; and (5) it required developers to display a full-page "scare screen" before allowing consumers to leave the apps, using language Apple specifically chose to prevent consumers from making linked-out purchases, *id.* at 99a, 102a; see J.A. 512.

Apple determined that each of these restrictions, standing alone, would impede steering, and that together they would effectively prevent steering to external payment systems—users just "wouldn[']t bother." Pet. App. 90a, 106a-108a & n.44.

D. Apple Tried To Cover Up Its Scheme To Circumvent The Injunction

Epic moved to enforce the injunction, J.A. 524, and the district court held an evidentiary hearing. As the hearing unfolded, the court "became increasingly concerned" that Apple was "withholding critical information about its business decision[s]" and providing "sham" evidence to the court. Pet. App. 66a-67a, 137a. The court ultimately found that Apple engaged in a

bad-faith cover-up to try to hide its knowing noncompliance with the injunction in three ways.

First, Apple made baseless claims of privilege to try to prevent the court from seeing its true motivations in adopting the new restrictions. Pet. App. 67a-68a. It asserted privilege over some 57,000 documents, which required the appointment of special masters and led to months of delay before Apple eventually lost or withdrew most of its privilege claims. *Id.* at 66a-68a & nn.7-9.

Second, Apple presented the "sham" report to the court to try to justify its new 27% commission. Pet. App. 137a. The court found that the "made-for-litigation" report did not reflect Apple's real reason for the commission. *Id.* at 135a, 137a-138a.

Third, Apple presented false and misleading testimony in court. Pet. App. 135a. One Apple executive "attempted to mislead the Court" by claiming that executives had relied on the "sham" report when they had not, *id.* at 86a, and two others "attempted * * * to mislead" the court by testifying that they expected developers to add external links even though "Apple knew it was choosing a course which would fail to stimulate any meaningful competition to Apple's IAP," *id.* at 114a-115a. Then its Vice President of Finance "outright lied under oath" when he testified about when Apple decided to impose the new commission. *Id.* at 52a, 87a-88a. Apple never corrected or withdrew that testimony, *id.* at 87a, and the court referred the matter to the United States Attorney, *id.* at 163a.

E. The District Court Held Apple In Contempt

The district court held Apple in civil contempt. Pet. App. 50a-165a. The court's 80-page opinion reviewed the injunction's terms, context, and purpose;

recounted the actions Apple took to evade the injunction; and documented Apple's knowledge that it was violating the injunction and its bad-faith cover-up attempt.

The district court understood that Apple could be held in contempt only if it had fair notice of what was proscribed. Pet. App. 130a. Here, "Apple knew it was violating the [i]njunction." *Id.* at 135a. "[A]t every step Apple considered whether its actions would comply, and at every step Apple chose to maintain its anticompetitive revenue stream over compliance." *Id.* at 134a-135a. Apple adopted the 27% commission on external purchases knowing that it "made all alternatives to IAP economically non-viable." *Id.* at 136a. And Apple imposed the design restrictions to create "precisely the amount of friction needed" to "dissuade customer usage of alternative purchase opportunities." *Id.* at 51a-52a, 139a.

The court found that the design restrictions violated the injunction's "literal text" and its purpose, which was to allow linked-out purchases. Pet. App. 132a-133a. For the latter point, the court relied (*id.* at 133a) on this Court's decision in *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 192-193 (1949), which held that contempt is appropriate when a party engages in conduct to circumvent an injunction, even if the particular means is not specified in the injunction.

The court then found that Apple's bad-faith attempts to hide its decision-making from the court confirmed its knowing violation of the injunction. Pet. App. 135a. "Given the repeated misrepresentations, the real-time business documents, and the proffer of a made-for-litigation expert 'report,' the Court reasonably conclude[d] that Apple knew it was violating the [i]njunction." *Ibid.*

As a remedy, the court enjoined Apple from charging any commission on linked-out purchases and from enforcing its design restrictions. Pet. App. 158a-161a.

F. The Court Of Appeals Affirmed Contempt

The court of appeals affirmed the contempt holding. Pet. App. 1a-49a. It explained that "[t]he standard for evaluating contempt 'is generally an *objective* one'"; civil contempt is appropriate when the defendant's actions reflect an "'objectively unreasonable'" view of the injunction. *Id.* at 14a (quoting *Taggart* v. *Lorenzen*, 587 U.S. 554, 561 (2019)). "[C]ivil contempt sanctions" also "may be warranted when a party acts in bad faith." *Id.* at 15a (quoting *Taggart*, 587 U.S. at 561-562).

To determine whether Apple violated the injunction, the court of appeals read the injunction's terms "in the light of the issues and the purpose for which the suit was brought." Pet. App. 11a (quoting *Terminal R.R. Ass'n of St. Louis* v. *United States*, 266 U.S. 17, 29 (1924)). It then noted that when a defendant engages in conduct "designed to evade the injunction's goals," it may be held in contempt even if the conduct does not violate the "strict letter" of the injunction. *Id.* at 12a, 20a-22a (citing *McComb*, 336 U.S. at 192; internal quotation marks omitted). In that instance, courts may "look to the spirit of the injunction" to decide if the defendant's "dubiously literal interpretation of the injunction" is reasonable. *Id.* at 12a (internal quotation marks omitted). The court also affirmed the district court's extensive fact findings and agreed that Apple's bad faith supports contempt here. *Id.* at 14a-17a (section titled "Apple's Bad Faith").

The court agreed that Apple was appropriately held in contempt. The 27% commission violated the injunction's plain text because it effectively

"prohibit[ed]" developers from steering users to external payment systems through buttons, links, or other calls to action. Pet. App. 20a. Two of the design restrictions, the "plain button" requirement and the template restriction, likewise violated the injunction's "strict letter." *Id.* at 22a-23a. For the remaining three—the static URL requirement, the placement prohibition, and the "scare screen"—the court "assume[d] *arguendo*" that the restrictions did not violate the injunction's text, but held that they violated the injunction's "implicit command to refrain from action designed to defeat it." *Ibid.* (quoting *NLRB* v. *Deena Artware, Inc.*, 361 U.S. 398, 413 (1960) (Frankfurter, J., concurring)).

The court reversed one part of the contempt remedy—the ban on charging any commission on linked-out purchases. Pet. App. 32a-34a. It remanded for further proceedings to determine an appropriate commission. *Id.* at 35a.

SUMMARY OF ARGUMENT

The courts below appropriately held Apple in contempt for violating the injunction. As the district court found, "Apple knew exactly what it was doing." Pet. App. 52a. Apple's conduct violated the injunction, Apple knew it violated the injunction, and Apple's bad-faith cover-up attempt confirms the point.

A. Under *Taggart* v. *Lorenzen*, 587 U.S. 554, 557 (2019), a party can be held in civil contempt if there is "no fair ground of doubt" that its conduct violates a court order. That is generally an objective standard that asks whether a reasonable person would understand the conduct to be unlawful. *Id.* at 561.

Three longstanding equitable principles guide that inquiry. First, a court reads an injunction in light of its context and purposes. See *Terminal R.R. Ass'n*

of St. Louis v. *United States*, 266 U.S. 17, 29 (1924). Second, the court interprets the injunction in light of the long-established anti-circumvention principle: Every injunction carries an "implicit command to refrain from action designed to defeat it." *NLRB* v. *Deena Artware, Inc.*, 361 U.S. 398, 413 (1960) (Frankfurter, J., concurring). Thus, as the Court explained in *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949), a defendant is not immune from contempt just because its conduct "was not specifically enjoined." Third, a party's bad faith can support contempt, *Taggart*, 587 U.S. at 561-562—specifically, the party's knowledge that it was violating the injunction, and bad-faith efforts to cover up that evasion, bear on whether its reading of the injunction was objectively reasonable. The United States basically agrees with these well-established principles, which ensure that injunctions provide effective relief to plaintiffs and that defendants that willfully seek to circumvent injunctions are appropriately sanctioned.

B. Apple proposes an extreme rule, where courts can look only within the injunction's "four corners" and must ignore context and purposes. No precedent of this Court requires that approach; in fact, the Court's precedents say the opposite. Rule 65(d) does not require Apple's rule, either. It governs how injunctions are written, not how later conduct is measured against them, and it incorporates longstanding equitable principles. Apple essentially ignores *McComb*'s anti-circumvention principle and the extensive findings about its own knowledge and bad faith, which confirm that contempt is appropriate here.

Apple makes much of the Ninth Circuit's use of the word "spirit," but that language merely mirrors the traditional language of equity. Apple's approach,

if adopted, would turn appropriately tailored injunctions into traps, forcing courts to engage in never-ending games of whack-a-mole and frustrating their ability to provide meaningful relief.

C. There is no fair ground of doubt that Apple violated the injunction. The injunction bars Apple from "prohibiting" developers from including buttons, links, and calls to action that direct customers to external payment systems. Apple's 27% commission on linked-out purchases effectively prohibited those links because it made them so expensive that no developer would ever offer them. And if a developer did offer them, Apple's design restrictions made finding and using the links so onerous that no consumer would ever make a linked-out purchase. The new restrictions thus violated both the injunction's text and its purpose. Apple's knowledge and bad-faith cover-up attempt confirm that Apple had no objectively reasonable basis for thinking its conduct was allowed.

D. The Court thus should affirm. If the Court decides instead to clarify the legal standard, it should follow its usual practice and remand for the courts below to apply the standard in the first instance.

ARGUMENT

APPLE WAS APPROPRIATELY HELD IN CONTEMPT FOR VIOLATING THE INJUNCTION

A. A Party May Be Held In Civil Contempt When There Is No Fair Ground Of Doubt That Its Conduct Violates A Court Order

Courts have the inherent power of contempt to compel compliance with their orders. *Gompers* v. *Buck's Stove & Range Co.*, 221 U.S. 418, 450 (1911); *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 510 (1874). This power is fundamental to the rule of law: Without

an effective threat of contempt, court orders are merely suggestions, and aggrieved parties cannot rely on the judicial process. See *Merrimack River Sav. Bank* v. *City of Clay Center*, 219 U.S. 527, 536 (1911).

The federal courts' contempt power derives from statute and the courts' own inherent authority. See U.S. Const. art. III; 18 U.S.C. 401; *Robinson*, 86 U.S. at 510; see also *United States ex rel. Shell Oil Co.* v. *Barco Corp.*, 430 F.2d 998, 1000-1001 (8th Cir. 1970) (18 U.S.C. 401 authorizes both civil and criminal contempt). The statutory authority dates back to the First Congress, which gave federal courts the power to "punish * * * all contempts of authority in any cause or hearing." Judiciary Act of 1789, ch. 20, § 17, 1 Stat. 73, 83. The courts' inherent authority traces back to England before the Founding. See *Young* v. *United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 795 (1987); see also Stewart Rapalje, *A Treatise on Contempt* § 1, at 1 (1890) (Rapalje). Blackstone described the contempt power as "ancient as the laws themselves," because without it, the laws "would be vain and nugatory." 4 William Blackstone, *Commentaries on the Laws of England* 282 (1769).

Under *Taggart* v. *Lorenzen*, 587 U.S. 554 (2019), a court may hold a party in civil contempt for violating an order "if there is *no fair ground of doubt* as to whether the order barred the [party's] conduct." *Id.* at 557. The touchstone is fair notice. See *Granny Goose Foods, Inc.* v. *Brotherhood of Teamsters & Auto Truck Drivers Loc. No. 70*, 415 U.S. 423, 444 (1974). Whether a party had fair notice of the wrongfulness of its actions depends on whether it had a "reasonable basis for concluding" that the conduct at issue "did not violate the order"—which is "generally an *objective*" inquiry. *Taggart*, 587 U.S. at 560, 561, 563.

In applying that standard, the Court relies on "traditional principles of equity practice." *Taggart*, 587 U.S. at 560. Three such principles are relevant here. First, a reasonable person reads an injunction's terms in light of its context and purposes. Second, every injunction is interpreted to prohibit circumvention of its terms. Third, a party's knowledge and bad faith can support contempt, including by confirming that its interpretation of the injunction was objectively unreasonable.

1. Injunctions are read in light of their contexts and purposes

a. A reasonable person reads an injunction's "terms" "in the light of the issues and the purpose for which the suit was brought." *Terminal R.R. Ass'n of St. Louis* v. *United States*, 266 U.S. 17, 29 (1924); see *Milk Wagon Drivers Union, Loc. 753* v. *Meadowmoor Dairies, Inc.*, 312 U.S. 287, 298 (1941) (an "injunction must be read in the context of its circumstances"). That is, the "nature and extent" of an injunction "is not to be determined by seizing upon isolated parts of it," but instead is determined in light of "the issues made and * * * submitted" to the court and "what the decree was really designed to accomplish." *Mayor of Vicksburg* v. *Henson*, 231 U.S. 259, 273 (1913).

The principle that an injunction must be read in light of its context and purposes is long-settled. "In deciding whether there has been an actual breach of an injunction it is important to observe the objects for which the relief was granted." 2 James L. High, *A Treatise on the Law of Injunctions* § 1446, at 1117 (3d ed. 1890) (High). Courts of equity historically considered "the circumstances under which, and the objects for which, the injunction was obtained" in determining whether it was violated. William Williamson

Kerr, *A Treatise on the Law and Practice of Injunctions* 579 (3d ed. 1889).

The courts of appeals routinely apply that principle. They "construe injunctions in light of the circumstances that produced them, which may include the nature of the original claim, the relief that was sought, the evidence presented at any hearing or trial, the issues actually decided by the earlier tribunal, and the mischief the injunction was designed to eradicate." *Youakim* v. *McDonald*, 71 F.3d 1274, 1283 (7th Cir. 1995).[1]

The United States agrees: An injunction "must be 'read in the light of the issues and the purpose for which the suit was brought.'" U.S. Br. 13-14 (quoting *Terminal R.R. Ass'n*, 266 U.S. at 29).

b. In interpreting an injunction, there is no need to guess the court's purposes, because the court has explained the legal violation and its remedy in a written opinion. The court's opinion provides the context for determining whether the injunction has been violated.

Here, the district court provided a lengthy opinion explaining why Apple's anti-steering rules were unlawful (they suppressed price competition by preventing consumers from using external payment systems) and what remedy was appropriate (enjoining Apple from prohibiting linked-out purchases and communication about them). J.A. 374-383. The purpose of the injunction was clear: to permit linked-out purchases, in order to "bring[] transparency to the marketplace"

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[1] See, *e.g.*, *AngioDynamics, Inc.* v. *Biolitec AG*, 823 F.3d 1, 10 n.7 (1st Cir. 2016); *Harris* v. *City of Philadelphia*, 47 F.3d 1342, 1353 (3d Cir. 1995); *United States* v. *Christie Indus., Inc.*, 465 F.2d 1002, 1007 (3d Cir. 1972).

for digital content and permit price competition. J.A. 375, 380-381.

Apple's response was to nominally allow linked-out purchases, but to make them so difficult and uneconomical that no developer would ever offer them. Pet. App. 134a-139a. To decide whether those new restrictions violate the injunction's terms—which bar Apple from "prohibiting" developers from offering or promoting linked-out purchases, *id.* at 166a—a court would necessarily consider how Apple's new restrictions compare to its old ones, in terms of their operation, purpose, and effects. Indeed, in the district court, Apple itself tried to justify its new restrictions as "consistent with the [i]njunction's purpose." J.A. 515-516, 518.

2. Every injunction is read to forbid circumvention

a. "Every affirmative order in equity carries with it the implicit command to refrain from action designed to defeat it." *NLRB* v. *Deena Artware, Inc.*, 361 U.S. 398, 413 (1960) (Frankfurter, J., concurring). A party that deliberately schemes to nullify an injunction cannot claim compliance simply because the injunction fails to list the particular method of evasion. *NLRB* v. *Express Publ'g Co.*, 312 U.S. 426, 437 (1941) (an "injunction of a court[] is not to be evaded by indirections or formal observances which in fact defy it"). The reason is obvious: No court can foresee every scheme a determined defendant might devise to evade an injunction.

The Court recognized this anti-circumvention principle in *McComb* v. *Jacksonville Paper Co.,* 336 U.S. 187 (1949). There, the employer was found liable for violating the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq*. 336 U.S. at 189. The injunction

barred the employer from (1) paying nonexempt employees less than the minimum wage; (2) requiring them to work more than 40 hours a week without time-and-a-half pay; and (3) failing to keep records of their hours and wages. *Id.* at 189; see 3 R. at 1111-1119, *McComb*, 336 U.S. 187 (No. 110) (injunction's text).

The employer engaged in practices designed to evade the injunction. It fired and rehired its employees under contracts listing a fake hourly rate; gave employees a raise but called it a "bonus" to avoid paying overtime; falsely labeled some employees as executives or administrators to avoid paying overtime; and required piece-rate employees to work beyond the maximum hours without overtime pay. *McComb*, 336 U.S. at 190; see *Walling* v. *Jacksonville Paper Co.*, 69 F. Supp. 599, 603-607 (S.D. Fla. 1947). Because the injunction had not "specifically referred to or condemned the practices," the lower courts declined to hold the employer in contempt. *McComb*, 336 U.S. at 191.

This Court reversed. 336 U.S. at 192-195. It expressly rejected the employer's argument that it "[has] an immunity from civil contempt because the plan or scheme which [it] adopted was not specifically enjoined." *Id.* at 192. That argument, if accepted, "would give tremendous impetus to the program of experimentation with disobedience of the law." *Ibid.* Each time a creative defendant came up with a new way to evade an injunction, the court would have to enter "a new decree" to "enjoin[] that particular plan," and then the defendant could "work out a[nother] plan that was not specifically enjoined" and escape contempt. *Ibid.* "[A] whole series of wrongs" would be "perpetrated," and the "decree of enforcement" would "go[] for naught." *Id.* at 192-193.

b. *McComb* is no outlier. English and American courts applied this anti-circumvention principle long before *McComb* was decided, and federal courts have applied it consistently since. As many early treatises explain, courts will not "permit defendants to evade responsibility for violating an injunction by doing through subterfuge that which, while not in terms a violation, yet produces the same effect by accomplishing substantially that which they were enjoined from doing." High § 1433, at 1110; see 1 Edward M. Dangel, *Contempt* § 243, at 127 (1939) (Dangel) (same).[2]

Decisions over the past two centuries show the variety of evasions the anti-circumvention principle has reached. In *Gibbs* v. *Morgan*, 39 N.J. Eq. 79 (Ch. 1884), a court enjoined a county collector from paying a deputy clerk's salary under a particular law. *Id.* at 80. The county enacted a new law to pay him nearly the same amount for the same work. *Id.* at 81-82. This "manifest, palpable and confessed subterfuge" violated the injunction. *Id*. at 82-83.

In *Grand Junction Canal Co.* v. *Dimes* (1849) 60 Eng. Rep. 1041, a landowner was enjoined from stopping, impeding, or obstructing the passage of boats along a canal. *Id.* at 1041. The landowner found a different way to obstruct them: He filed fifteen trespass actions against the canal company. *Ibid.* The court held him in contempt. *Ibid.*

In *Stodder* v. *Rosen Talking Machine Co.*, 141 N.E. 569 (Mass. 1923), a court enjoined a record store from loudly playing a "talking machine, victrola,

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[2] See also 1 Charles Fisk Beach Jr., *Commentaries on the Law of Injunctions* § 258, at 269 (1895) (Beach) ("[A]ny scheme, however skillfully devised, to thwart its orders, will be treated by the court as a violation."); 7 John D. Lawson, *Rights, Remedies, & Practice* § 3703, at 5783 (1890) ("[N]o mere subterfuge * * * will be permitted in excuse of its violation.").

graphophone, phonograph, or grafonola." *Id.* at 569. The store then used a radiophone to project the same loud noise into the plaintiffs' premises. *Id.* at 571. The court held the store in contempt for its "palpable invasion of the spirit, if not of the letter, of the decree." *Ibid.* Many other decisions are to the same effect.[3]

The modern federal cases are no different. In *John B. Stetson Co.* v. *Stephen L. Stetson Co.*, 128 F.2d 981 (2d Cir. 1942), the injunction allowed a hatmaker to use the "Stetson" name only if accompanied by a notice that the company was not connected with the famous Philadelphia hatter. *Id.* at 982-983 & n.1. The defendant then ran ads with "Stephen L. Stetson" in headline type, shrinking the notice and burying it "in the body of the advertisement." *Id.* at 983. The Second Circuit rejected the defendant's argument that it had "complied literally with the terms of the decree," holding that by playing up the name and hiding the disclaimer, the defendant "defeated [the decree's] purpose." *Id.* at 983-984.

In *Schering Corp.* v. *Illinois Antibiotics Corp.*, 62 F.3d 903 (7th Cir. 1995), an injunction barred the defendants from selling a drug "in solution form." *Id.* at 906. The defendants then sold the same drug as a

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[3] See, *e.g.*, *Bolt* v. *Stanway* (1795) 145 Eng. Rep. 965 (defendant enjoined from collecting a judgment from plaintiff held in contempt for suing the sheriff who had seized the plaintiff's money); *Mayor of N.Y.* v. *New York & Staten Island Ferry Co.*, 64 N.Y. 622, 623-624 (1876) (ferry company enjoined from running its ferry held in contempt when its president sold the boat to himself for $1 and kept running it); *Société Anonyme de la Distillerie de la Liqueur Benedictine* v. *Western Distilling Co.*, 42 F. 96, 97 (C.C.E.D. Mo. 1890) (distiller enjoined from selling knockoff Benedictine held in contempt for having a third party fulfill its customers' orders); *Stahl* v. *Ertel*, 62 F. 920, 923 (C.C.S.D. Ill. 1893) (company enjoined from making a machine with infringing parts held in contempt for having a local shop do it).

powder, with instructions to dissolve it in water. *Id.* at 905. The Seventh Circuit held that the defendants could be held in contempt for making a "trivial" "change in form" of the drug to "evade" the injunction. *Id.* at 906-907. The defendants' "narrow literalism," if accepted, would cause injunctions to "spring loopholes" that courts constantly would have to "plug." *Id.* at 906.

In *Institute of Cetacean Research* v. *Sea Shepherd Conservation Society*, 774 F.3d 935, 941 (9th Cir. 2014), an anti-whaling group was enjoined from approaching or attacking the plaintiffs' ships. The group then gave away its ships to foreign affiliates, which approached and attacked the whaling ships. *Id.* at 942-943, 946, 948. The Ninth Circuit held that the group could not escape contempt by "hewing to the narrow letter of the injunction while simultaneously ignoring its spirit." *Id.* at 954-955. The courts below relied on *Sea Shepherd*, Pet. App. 11a-12a, 130a-131a, and neither Apple nor the federal government argues that it was wrongly decided. Many other federal decisions reflect this anti-circumvention principle.[4]

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[4] See, *e.g.*, *AmBrit, Inc.* v. *Kraft, Inc.*, 812 F.2d 1531, 1548 & n.89 (11th Cir. 1986) (Kraft, enjoined from using a polar bear image on a five-ounce bar, could not "sell[] a 4.9 ounce bar"); *Scandia Down Corp.* v. *Euroquilt, Inc.*, 772 F.2d 1423, 1425, 1431-1432 (7th Cir. 1985) (bedding retailer enjoined from using its logo "or any colorable imitation" held in contempt for new, slightly different logos); *NLRB* v. *Union Nacional de Trabajadores*, 611 F.2d 926, 929-930 (1st Cir. 1979) (union required to publish a notice disavowing violence and threats held in contempt for publishing that notice with a "side notice" that "destroyed the substance and purpose of the required notice"); *Christie Indus.*, 465 F.2d at 1006-1009 (defendant enjoined from selling fireworks kits violated injunction by selling the components for easy assembly into kits); *SEC* v. *Okin*, 137 F.2d 862, 864 (2d Cir. 1943) (defendant enjoined from mailing false or misleading statements to

The anti-circumvention principle is necessary to preserve the authority of the federal courts and ensure that their orders have meaning. An injunction is designed to provide effective relief from conduct a court has found unlawful. See *Ford Motor Co.* v. *United States*, 405 U.S. 562, 575 (1972). Allowing a defendant to avoid contempt by engaging in new conduct that circumvents the injunction's purpose but is not precisely mentioned in its terms would make the relief promised by an injunction illusory.

c. The United States articulates a more limited view of *McComb*, but ultimately agrees that new conduct that effectively nullifies an injunction supports contempt.

The United States contends (Br. 14-15, 19) that in *McComb,* the employer's practices violated the injunction's "express text." That is mistaken. The injunction did not simply order the employer to follow the FLSA's minimum-wage, overtime, and recordkeeping provisions. See 3 R. at 1114-1118, *McComb*, 336 U.S. 187 (No. 110). Instead, it prohibited three practices, and the employer's challenged conduct was not "specifically enjoined." *McComb*, 336 U.S. at 192; accord *Jacksonville Paper Co.* v. *McComb*, 167 F.2d 448, 449 (5th Cir. 1948); *Walling*, 69 F. Supp. at 601.[5] Notably, the *dissent* in *McComb* argued that the employer could not be held in contempt because the injunction "did not forbid with explicitness" the challenged

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stockholders held in contempt for mailing a groundless "opinion" on a covered subject, even though the injunction did not "explicitly" forbid "opinions").

[5] For example, the employer gave employees a raise and called it a bonus to avoid paying overtime—but the injunction did not reference bonuses. *McComb*, 336 U.S. at 189-190.

practices, 336 U.S. at 197 (Frankfurter, J., dissenting)—but this Court disagreed, *id.* at 192.

The United States suggests that *McComb*'s anti-circumvention principle applies only where there is a "record of continuing and persistent violations." U.S. Br. 18 (internal quotation marks omitted). But the Court invoked the employer's "persistent contumacy" to explain why the court entered the injunction in the first place, not why contempt was appropriate. 336 U.S. at 192-193. The Court certainly did not adopt a rule that only repeat offenders may be held in contempt for evading injunctions.

Citing *California Artificial Stone Paving Co.* v. *Molitor*, 113 U.S. 609 (1885), the United States suggests (Br. 19-20) that a defendant that evades an injunction's purpose through different "*means*" does not violate the injunction. But *Stone Paving* involved a *process* patent, so whether the defendant violated the injunction depended on the precise means used. See 113 U.S. at 613. That means/ends distinction does not apply in cases outside the process-patent context; if it did, *McComb* would be incorrect—and the United States does not argue that.

Ultimately, the United States agrees that conduct that effectively nullifies an injunction can support contempt. One issue in this case is whether Apple's commission on linked-out purchases violated the injunction. The United States asserts that the 27% rate does not violate the injunction, but an "exorbitant commission (say, 300%)" could—not because the injunction expressly mentions commissions, but because a 300% commission would be "functional[ly] equivalent" to a prohibition on linked-out purchases. U.S. Br. 10, 23; see pp. 39-40, *infra*. By conceding that some commission level is contemptuous, the United

States necessarily accepts the *McComb* anti-circumvention principle.

3. The defendant's knowledge and bad faith bear on whether there is a fair ground of doubt of the wrongfulness of its conduct

a. Although the standard for civil contempt "is generally an *objective* one," "contempt sanctions may be warranted when a party acts in bad faith." *Taggart*, 587 U.S. at 561-562; see *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 50 (1991). In particular, if the defendant "fully understands" what the injunction requires, but "chooses to ignore" it, contempt may lie. *International Longshoremen's Ass'n, Loc. 1291* v. *Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967).

A party's beliefs about what the injunction requires, and its bad-faith scheming to evade those requirements, bear on whether it had an objectively reasonable basis to believe its conduct would comply. And when a party "acts in bad faith," "the burden of any uncertainty in the decree" is "on [the enjoined party's] shoulders." *Taggart*, 587 U.S. at 562 (internal quotation marks omitted).

The courts of appeals have routinely considered an enjoined party's knowledge and bad faith. In *Schering Corp.*, the case about selling a drug as a powder rather than in solution, the Seventh Circuit explained that the defendant's "elaborate efforts" to evade the injunction showed "consciousness" of wrongdoing, which supported contempt. 62 F.3d at 907. In *Sea Shepherd*, the case about attacks on whaling boats, the Ninth Circuit relied on the organization's knowledge of the "very high risk" that other parties would use the ships to violate the injunction, as

well as the founder's intent to evade the injunction, as supporting contempt. 774 F.3d at 945-946, 949.

Other areas of law likewise reflect the commonsense principle that a party's own knowledge and bad faith matter to whether its belief is objectively reasonable. In antitrust cases, this Court looks to the "purpose or end sought to be attained" by colluding firms because that "may help the court to interpret facts and to predict consequences." *Board of Trade of Chi.* v. *United States*, 246 U.S. 231, 238 (1918); see *United States* v. *Microsoft Corp.*, 253 F.3d 34, 59 (D.C. Cir. 2001). Under 28 U.S.C. 1927, sanctions require "*objective* bad faith," but courts "may still rely on evidence of subjective bad faith to make this showing," because "an act done in subjective bad faith is also more likely to be objectively unreasonable." *Hyde* v. *Irish*, 962 F.3d 1306, 1310 (11th Cir. 2020).

Further, when a party misrepresents or conceals its reasons for acting, a court may infer that the party knew its conduct was unlawful. See, *e.g.*, *Reeves* v. *Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000) (in employment-discrimination cases, a factfinder that disbelieves the employer's stated reason for a decision may conclude that it is "dissembling to cover up a discriminatory purpose"); *Wilson* v. *United States*, 162 U.S. 613, 621 (1896) (in criminal case where the defendant gave false explanations for possessing the victim's property, the jury could treat those statements as "themselves tending to show guilt"). The same inferences apply here: When a party creates sham documents and provides false testimony to hide its conduct, that supports the conclusion that the party lacked an "objectively reasonable basis," *Taggart*, 587 U.S. at 560, for believing its conduct was allowed.

b. The United States "takes no position on whether [Apple] engaged in bad-faith conduct" (even though two courts found that Apple did) or "whether that conduct would support any of the sanctions imposed." U.S. Br. 28-29. But Apple's willful violation of the injunction plainly is relevant, because it shows that Apple had fair notice of what the injunction required but chose not to comply. Pet. App. 51a.

The United States asserts in passing that bad faith cannot "negate[] the defense that [petitioner]'s interpretation of the [i]njunction is reasonable." U.S. Br. 18 (internal quotation marks omitted; second and third alterations in original). The point is not that bad faith "negate[s]" a "defense" of objective reasonableness; it is that a party's knowledge and bad faith shed light on how the injunction reasonably was understood in the first place. The United States also suggests that bad faith matters only for "other litigation conduct" outside of compliance with injunctions, *ibid.*—but *Taggart* itself was about an injunction. It would be an odd rule to allow a party to engage in a bad-faith scheme to hide its violation of an injunction, including through perjury, and then bar a court from considering that conduct when ruling on contempt. See *ABF Freight Sys., Inc.* v. *NLRB*, 510 U.S. 317, 323 (1994) ("[f]alse testimony" is "intolerable" and should be "neither reward[ed] nor condone[d]"). Ultimately, though, the federal government punts on the issue of bad faith.

B. Apple's Proposed Rule Is Extreme And Inconsistent With This Court's Precedents

Apple proposes a narrow, myopic approach, where a court looks only within the injunction's "four corners" and ignores everything else the court has written to explain the legal violation and the relief

entered. Br. 22-24 (internal quotation marks omitted). That approach flies in the face of this Court's precedents and (if accepted) would seriously undermine the rule of law.

1. No decision of this Court endorses Apple's approach

No decision of this Court requires a court to ignore an injunction's context and purposes when interpreting its terms. And no decision requires a court to allow deliberate circumvention of its orders. In fact, the Court has held the exact opposite. *E.g.*, *McComb*, 336 U.S. at 192-193; *Terminal R.R. Ass'n*, 266 U.S. at 29.

Apple cites (Br. 22, 25, 28-29) the Court's statement in *Schmidt* v. *Lessard*, 414 U.S. 473 (1974) (per curiam), that an injunction must provide "explicit notice" of what it prohibits. *Id.* at 476. But the question there was compliance with Federal Rule of Civil Procedure 65(d), not whether contempt was appropriate. *Ibid.* And the injunction did not specify the prohibited conduct *at all*. *Id.* at 474-475. *International Longshoremen's* (cited in Pet. Br. 22, 24-25) had the same problem—the injunction "contain[ed] only an abstract conclusion of law" and did not prohibit *any* specific conduct. 389 U.S. at 74, 76. Neither decision forbade courts from looking to an injunction's context and purposes; to the contrary, *Schmidt* looked to "the accompanying opinion," 414 U.S. at 476, and *International Longshoremen's* examined "subsequent events," 389 U.S. at 74, to try to understand the injunctions' scope.

Of course the contempt power is a "potent" one—but as this Court recognized, it must be available to address "a violation of a court order by one who fully understands its meaning but chooses to ignore its mandate." *International Longshoremen's*, 389 U.S. at 76. A party can have fair notice even if the injunction

does not specify every possible means of evasion. See *Schering Corp.*, 62 F.3d at 906-907 (enjoined party had "clear notice" it could not "evade" injunction through "trivial" "change in form"); *Christie Indus.*, 465 F.2d at 1007 (enjoined party had "fair warning" it could not evade injunction "through a mere change of terminology"). The standard is "*no fair*" ground of doubt, not "*no*" ground of doubt. *Taggart*, 587 U.S. at 557.

Apple cites (Br. 23) *United States* v. *Armour & Co.*, 402 U.S. 673 (1971), but that case involved a consent decree. Consent decrees are different from injunctions. They are "entered into by parties to a case after careful negotiation has produced agreement on their precise terms," so their four corners mark the limits of the bargain. *Id.* at 681-682. A litigated injunction is the court's own remedy for adjudicated wrongdoing; its terms and purpose come from the violation found, not from a bargain. See *McComb*, 336 U.S. at 191. And unlike a party bound by a contract, an enjoined party unsure of an injunction's reach may freely ask the issuing court for clarification before acting. *Id.* at 192; *Regal Knitwear Co.* v. *NLRB*, 324 U.S. 9, 15 (1945). *Armour*'s approach thus does not carry over to injunctions.[6]

Apple's *amici* argue that injunctions cannot be read in light of their context and purposes because statutes are not interpreted that way. CCIA *Amicus* Br. 8-11. But statutes *are* read in light of their context and purposes. *E.g.*, *Fischer* v. *United States*, 603 U.S.

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[6] *Perez* v. *Danbury Hosp.*, 347 F.3d 419, 424 (2d Cir. 2003), and *NBA Properties, Inc.* v. *Gold*, 895 F.2d 30, 31 (1st Cir. 1990), also involve consent decrees and thus likewise are inapposite. Although *United States* v. *Saccoccia*, 433 F.3d 19, 28-29 (1st Cir. 2005), involved an injunction, it relied on *Perez* and *NBA Properties*.

480, 486 (2024); *Truck Ins. Exch.* v. *Kaiser Gypsum Co.*, 602 U.S. 268, 280-281 (2024). And judicial decisions are not read like statutes. *Brown* v. *Davenport*, 596 U.S. 118, 141 (2022). Statutes necessarily reflect a legislative compromise, *Henson* v. *Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017), and the views of one legislator or even a committee may not accurately state the statute's purpose, *Zedner* v. *United States*, 547 U.S. 489, 510-511 (2006) (Scalia, J., concurring in part). An injunction comes from a single court that has identified the wrong and fashioned relief to remedy it. There is no guesswork involved.

2. Rule 65 does not support Apple's approach

Apple contends (Br. 25) that Rule 65(d)(1) forbids looking to an injunction's context and purposes. But the rule governs how an injunction is written, not how later conduct is measured against it. The rule requires an injunction to "state the reasons why it issued," "state its terms specifically," and "describe in reasonable detail" the acts restrained. Fed. R. Civ. P. 65(d)(1). Thus, injunctions must inform parties "what they are forbidden to do" only "as accurately as the case permits." *Swift & Co.* v. *United States*, 196 U.S. 375, 401 (1905). That is why Rule 65(d) requires enjoined acts to be described in "reasonable detail"—not every possible detail.

Further, Rule 65 reflects longstanding equitable practice, 11A *Wright & Miller's Federal Practice and Procedure* § 2955 (3d ed. 2008), and equity has never required that an injunction list and prospectively veto every device for evading a decree, see High § 1433, at 1110; pp. 21-28, *supra*. Nor does the rule forbid a court from interpreting an injunction's terms by reference to its context or purposes. See *Schering Corp.*,

62 F.3d at 906. The Court thus should not interpret Rule 65(d) to hamstring a court's ability to ensure effective relief through contempt.

3. Apple has no response to McComb*'s anti-circumvention principle*

Apple largely ignores *McComb* and the vast weight of authority applying its anti-circumvention principle. Apple instead insists that unless an injunction names the precise practice at issue, contempt cannot lie. See Br. 21-26. But *McComb* forecloses that approach; the Court approved contempt even though the employer's "plan or scheme * * * was not specifically enjoined." 336 U.S. at 192. Apple never argues that *McComb* was wrongly decided. If *McComb* is right, Apple is wrong.

Apple makes much of the court of appeals' references to the "spirit" of the injunction. Br. 1-2, 26-29, 34-38. If the Court wishes to correct what it views as loose language in the court's opinion, it should do so. But the court's analysis is substantively correct; it applied this Court's precedents, including *McComb* and *Terminal Railroad*. Pet. App. 11a-12a, 20a-21a. The court's reference to the injunction's "spirit" simply invoked the traditional language of equity.[7] The court

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[7] See Robert Henley Eden, *A Treatise on the Law of Injunctions* 75 (1821) (conduct may "breach [an] injunction" "in sense and spirit"); Rapalje § 40, at 53 ("[I]t is the spirit and not the letter of the command to which obedience is required."); Beach § 251, at 263 ("An injunction must be obeyed in its spirit as well as its letter."); Dangel § 242, at 125 ("[I]t is the spirit and not the letter of the command to which obedience is required, and it must be obeyed in good faith according to its spirit."); see also, *e.g.*, *Economist Furnace Co.* v. *Wrought-Iron Range Co.*, 86 F. 1010, 1011 (C.C.D. Ind. 1898) ("[T]he duty of the defendants was obedience not only to the letter, but to the spirit, of the order."); *Blair* v.

correctly concluded that Apple's deliberate scheme to nullify the injunction supports contempt.

4. Apple ignores knowledge and bad faith

Apple repeats (Br. 46) that the contempt inquiry is generally an "objective" one, but completely ignores *Taggart*'s statement that "contempt sanctions may be warranted when a party acts in bad faith," 587 U.S. at 562—precisely the situation here.[8]

The district court made extensive factual findings about Apple's knowledge and bad faith, and the court of appeals upheld them. Pet. App. 14a-17a. Apple now says (Br. 46) that it "strongly * * * disagrees" with those findings, but it does not challenge them on clear-error review, and it provides no reason for this Court to disregard the work of the courts below. See *Exxon Co., U.S.A.* v. *Sofec, Inc.*, 517 U.S. 830, 841 (1996) (Court "cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error"). Those findings confirm that contempt was appropriate here. See *Taggart*, 587 U.S. at 561-562.

5. Apple's standard would seriously undermine the rule of law

Adopting Apple's contempt standard would severely hamper district courts' ability to ensure effective injunctive relief. A court may not simply order a

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Nelson, 67 Tenn. 1, 5 (1874) ("[I]t is the spirit and not the mere letter of the injunction that must be obeyed."); *Magennis* v. *Parkhurst*, 4 N.J. Eq. 433, 435 (Ch. 1844) ("The command of the injunction must be implicitly obeyed but it is the spirit, and not the letter of the command, to which obedience is required.").

[8] Apple cites (Br. 46) *McComb*, but the Court there said only that *good faith* does not absolve a party of contempt, not that *bad faith* is irrelevant. 336 U.S. at 191.

defendant to obey the law, *Express Publ'g Co.*, 312 U.S. at 435, or describe the prohibited conduct vaguely, *International Longshoremen's*, 389 U.S. at 76. And it must "aim to ensure the framing of relief no broader than required by the precise facts." *Friends of the Earth, Inc.* v. *Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 193 (2000) (internal quotation marks omitted).

Under Apple's rule, those sound limits would become a trap. A court that tailors its decree to the violation, as this Court requires, leaves the defendant free to exploit "loopholes" the decree did not anticipate. *Schering Corp.*, 62 F.3d at 906. That is exactly what Apple did here, devising new restrictions that prevented linked-out purchases just as well as an outright ban.

C. The Court Of Appeals Correctly Affirmed The Contempt Holding

There is no fair ground of doubt that Apple's new restrictions violated the injunction. The injunction bars Apple from "prohibiting developers from * * * including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms" other than Apple's own. Pet. App. 166a. The court expressly stated the injunction's purpose: to allow developers to steer users to external payment systems, in order to "increase competition, increase transparency, [and] increase consumer choice and information." J.A. 374-375, 405.

Apple's response was to impose new restrictions with the exact same effect as the old ones—to prohibit linked-out purchases. Pet. App. 51a. Because those restrictions were designed as a package, *id.* at 138a-139a, a court should review their combined (rather than individual) effect.

As both courts below found, those restrictions both violated the injunction's text and evaded its stated purpose. Pet. App. 19a-25a, 132a-141a. This was a knowing, bad-faith violation: "Apple knew exactly what it was doing." *Id.* at 52a.

1. Apple's new commission violated the injunction

a. Apple charges a 30% commission on purchases through its own payment system—so it made sure linked-out purchases would cost more than that. Pet. App. 5a-6a. It set the commission rate for linked-out purchases at 27%, knowing that developers would have to pay more than 3% in payment-handling costs. *Id.* at 5a, 20a, 77a-78a & n.25, 82a, 136a. As one executive confirmed, Apple knew that every "linked-out transaction is going to be more expensive to any developer * * * than an IAP transaction at 30 percent." *Id.* at 82a (quoting 8 Tr. 1633:5-10).[9]

The courts below correctly found that this "prohibitive commission" violated the injunction's text. Pet. App. 20a-22a. The injunction bars Apple from "prohibiting" developers from including in their apps "buttons, external links, or other calls to action that direct customers to purchasing mechanisms" other than Apple's IAP. *Id.* at 166a. To "prohibit" something is to "prevent," "preclude," or "severely hinder" it. *Id.* at 19a (quoting *Prohibit*, *Black's Law Dictionary* (12th ed. 2024)). When the cost of something is so high that no one would do it, that cost is "prohibitive." See, *e.g.*, *Broderick* v. *Rosner*, 294 U.S. 629, 640 & n.1 (1935).

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[9] Apple mentions (Br. 39) a 12% commission rate, but that applies only to small-business developers. J.A. 518. Those developers pay a 15% commission through IAP, J.A. 237, so the 12% rate for linked-out purchases likewise is cost-prohibitive for them.

Here, the 27% commission on linked-out purchases effectively prohibited the use of buttons, links, and calls to action, as if those design elements did not even exist. Pet. App. 20a.

Contempt also is appropriate because Apple adopted the commission to circumvent the injunction's purpose. When the injunction issued, Apple charged *no* commission on purchases made on the open web. Pet. App. 134a. That is why developers could offer lower prices on their websites. J.A. 286, 486. The district court enjoined Apple's anti-steering rules to permit linked-out purchases and "force Apple to compete" on price. J.A. 286. In response, "Apple willfully set a commission rate that in practice made all alternatives to IAP economically non-viable." Pet. App. 136a. That is precisely the kind of evasion *McComb* condemns. 336 U.S. at 190, 192-195.

b. Apple's defense (Br. 32-33) is that it did not actually "prohibit" buttons, links, and calls to action, because developers still could include them in apps. But as Apple itself recognizes, "prevent[ing]" or "effectively stop[ping]" something *does* "prohibit" it. Br. 31 (quoting *Ysleta del Sur Pueblo* v. *Texas*, 596 U.S. 685, 697 (2022)). The commission worked as intended: Apple could not identify a single developer that "chose to direct customers to their own purchasing mechanisms and pay Apple's 27% commission." Pet. App. 20a.

Apple notes (Br. 32-33) that the injunction does not expressly bar the commission. But it does not need to do so, because the 27% commission is the functional equivalent of a prohibition. See Pet. App. 20a-21a (citing *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 372 (1819) (the "power to tax" is the "power to destroy")). Apple's argument (Br. 39-40) depends on a

version of the facts that the district court rejected, Pet. App. 136a-137a, and that it did not appeal.[10]

Apple contends (Br. 33-34) that the new commission does not violate the injunction's purpose because the district court cared only about providing information to consumers about how to make external purchases, and not about whether customers actually could make those purchases. But the court required that users be informed for a reason—so they could exercise "consumer choice" and competition could erode the "anticompetitive effects" of Apple's anti-steering rules. J.A. 374, 380. Whether users could make linked-out purchases is not merely about a "downstream or secondary effect[]" of the injunction, Pet. Br. 38; it goes to the injunction's "central mandate," which was to foster "competitive alternatives" to Apple's payment system, Pet. App. 140a. And Apple's argument fails on its own terms, because the result of Apple's restrictions was that developers still did not include the information (the buttons, links, and calls to action).

c. The United States asserts (Br. 23) that while a 27% commission on linked-out purchases does not violate the injunction, a "300% commission" could. But the factual record conclusively establishes that those rates have the same effect—both are prohibitive. Pet. App. 20a, 22a, 34a n.9.

The United States tries to reimagine the court of appeals' decision, stating that the court "did not purport to find that a 27% commission * * * had the

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[10] For example, Apple argues (Br. 39) that because the commission only applied to purchases made within seven days of a user following an external link, the effective commission rate was closer to 18%, but the district court rejected that view. Pet. App. 77a n.25.

effect of a prohibition." U.S. Br. 23. But that is exactly what the court found. Pet. App. 20a ("[C]harging a 27% commission has a prohibitive effect, in violation of the [i]njunction."); *id.* at 22a ("Apple did not charge *any* commission; it charged a prohibitive commission."); *id.* at 34a n.9 (commission "violated the [i]njunction because it was prohibitive").

The United States suggests that the court of appeals' concern was that the 27% rate "was not sufficiently discounted" as compared to the 30% rate applicable to IAP purchases. U.S. Br. 23-24. That is incorrect: Apple did not come up with the 27% commission for linked-out purchases based on the value Apple provided or differences between IAP and external payment systems; it "reverse engineer[ed]" the 27% rate because that rate would effectively prohibit linked-out purchases. Pet. App. 20a, 51a, 81a-82a, 136a-137a. That is in name, purpose, and effect a prohibition on steering.

The United States' retailer analogy is inapt. U.S. Br. 25. It imagines an injunction barring a manufacturer from "prohibiting retailers from stocking its rival's products," and says that the manufacturer could still price "its goods so low that it 'has a prohibitive effect' on the rival's ability to compete." *Ibid.* But Apple did not cut the price of its own product to win consumers. It imposed, for the first time, a 27% tax on every purchase made through a rival payment system, set high enough that the rival could not afford a place on the shelf. See Pet. App. 136a. That *is* a prohibition on stocking the rival's product.

2. Apple's new design restrictions violated the injunction

Apple paired the commission with design restrictions that violated both the injunction's terms

and its purpose. Pet. App. 22a-23a. "[T]he record shows that Apple designed the purchasing experience to make external links as hard to use as possible." *Id.* at 24a-25a. Because this "ensemble of requirements" was designed as a package to effectively prohibit linked-out transactions, the restrictions should be analyzed together. *Ibid.*

The "Plain Button" Requirement. The injunction required Apple to permit "buttons" to link to external payment systems, and Apple understood that. Pet. App. 95a, 166a. Apple limited developers to what it called a "Plain Button style," which is "no button at all." *Id.* at 23a, 96a. The "plain button" could not be enclosed in a visible shape and had to "match the background of [the] app's page," rendering it invisible. *Id.* at 96a-97a (picture of plain button). An Apple executive admitted that he "could think of no other reason to require developers to use a plain-link-style 'button' other than to stifle competition." *Id.* at 98a & n.38.

The Static URL Requirement. Apple barred "dynamic URLs," which carry user information from apps to external purchasing websites. Pet. App. 106a. Without them, users who follow links must re-enter their credentials on the websites. *Ibid.* Notably, Apple has no objection to dynamic URLs "for any other purpose," and they are ubiquitous. *Id.* at 107a-108a ("[A]ny app that's connected to the internet doing anything nontrivial is going to have to use dynamic URLs."). Apple banned them here for one reason—to "reduce the efficacy of external link-outs." *Id.* at 108a.

The Template Restriction. Under the injunction, Apple cannot prohibit "other calls to action," Pet. App. 166a, meaning language that informs users about external payment options rather than Apple's payment system, see J.A. 552. Apple provided five templates

with the exact words developers must use for calls to action, each attached to a link, and barred developers from using any other messaging. Pet. App. 109a (reproducing the templates). Thus, "[i]f a developer wanted to compete * * * by offering other products or benefits" not contemplated by Apple's templates, it had "no way to communicate that to a user." *Ibid.*

The Placement Prohibition. Apple dictated where external purchase links could appear, and it kept them away from the place they mattered most. Apple barred those links "on any page that is part of an in-app flow to merchandise." Pet. App. 93a-94a. If an app has a "shop where a user could purchase a digital product," no link could appear there. *Ibid.* Apple excluded links there precisely because "the most useful time for a user to know their purchase options is when the user is in the in-app store reviewing prices." *Id.* at 94a. Further, even outside the purchase flow, the link could "[b]e displayed no more than once in app, on no more than one app page." *Id.* at 6a.

The "Scare Screen." If a user overcame all of those obstacles, the user would face a full-page warning (a "scare screen") before leaving the app to make a purchase. Pet. App. 100a (picture of required scare screen). The goal was to make leaving the app "sound[] scary." *Id.* at 102a, 104a. Apple's design team required developers to use particular language that was specifically designed to deter users from making external purchases—and it was encouraged to make the language sound even more dire by then-CEO Tim Cook. *Id.* at 102a-106a.

Those restrictions collectively violated the injunction's terms because they effectively "prohibit[ed]" use of the buttons, links, and other calls to action. Pet. App. 23a-24a. As the United States agrees, the plain-button restriction violated the injunction's plain text,

because the injunction requires Apple to allow "both 'links' and 'buttons,'" yet a "plain button" is indistinguishable from a link. *Id.* at 23a; see U.S. Br. 27-28.[11] Apple's contrary view (Br. 41-43) again relies on a version of the facts that the courts below rejected. Similarly, the template restriction violated the injunction's express requirement that Apple permit links *and* "other calls to action," because it collapsed calls to action into links—so it did not allow "other" calls to action, such as a developer saying "buy cool new stuff over here" or "unlock new and special subscription content only when you [subscribe] on our website." Pet. App. 23a, 109a. The combined effect of the five restrictions was to prohibit effective links. Indeed, the district court made just that fact finding, which Apple has not challenged on appeal: "[T]he overall effect" of the design restrictions "is quite literally, intentional *de facto* prohibition." *Id.* at 140a n.66.

Further, Apple adopted the design restrictions to "defeat" the injunction: "Apple was modeling precisely the amount of friction needed in a transaction to ensure that link-out transactions were not viable for a developer." Pet. App. 24a. As the district court explained, the design restrictions circumvented the injunction's purposes by hampering "developers' ability to compete with Apple's IAP," and "Apple knew it." *Id.* at 93a. The courts below thus appropriately held that the design restrictions both violated the injunction's terms and evaded its purpose.

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[11] The United States does not address the other four restrictions, except to urge this Court to "remand" on them. U.S. Br. 28.

3. Apple's knowledge and bad faith confirm that contempt is appropriate

Apple's knowledge and bad faith confirm that no fair ground of doubt exists here. As the district court found and the court of appeals affirmed, Apple acted in bad faith both in scheming to evade the injunction and in attempting to cover up that scheme. Pet. App. 16a-17a. "Apple knew it was choosing a course which would fail to stimulate any meaningful competition to Apple's IAP." *Id.* at 115a. "[A]t every turn," Apple "chose the most anticompetitive option" to "thwart[] the [i]njunction's goals" and "continue[] its anticompetitive conduct solely to maintain its revenue stream." *Id.* at 51a-52a. Apple's contemporaneous creation of false evidence to hide its decision-making underscores that it *knew* it was violating the injunction. *Id.* at 85a-86a.

A defendant whose own decision-makers concluded in real time that its conduct violated an injunction, and then tried to cover it up with sham documents and perjury, cannot claim that the injunction left room for fair doubt. See *Schering Corp.*, 62 F.3d at 907. And even if some genuine ambiguity remained, Apple's bad faith would mean that Apple would bear the risk of it. See *Taggart*, 587 U.S. at 562; *McComb*, 336 U.S. at 193.

Apple's brief largely ignores the district court's extensive fact findings documenting its deliberate disregard for the injunction and for the court. The United States, for its part, declines to address Apple's bad faith. U.S. Br. 28-29. But the record is clear: Apple knew "at every step" that its approach would not comply with the injunction, yet pressed forward anyway. Pet. App. 16a.

D. If The Court Reverses, It Should Remand For The Courts Below To Apply The Law To The Facts

1. If the Court concludes that the court of appeals applied the correct legal standard, it should affirm. But if the Court chooses instead to clarify the legal standard, it should follow its normal practice and remand for the courts below to apply that standard in the first instance. *Hunter* v. *United States*, 608 U.S. 713, 730 (2026) ("[W]e are * * * a court of review, not of first view.").

Apple asks the Court to decide for itself that its conduct cannot support contempt. Br. 47. Yet it provides no sound reason to depart from the Court's ordinary practice. *E.g.*, *Golan* v. *Saada*, 596 U.S. 666, 683 (2022). And doing so would not make sense in the particular circumstances here. The court of appeals believed that it could affirm contempt based on a violation of the injunction's terms or a deliberate circumvention of them by alternative means. Pet. App. 10a-12a, 22a. If this Court disagrees and accepts Apple's approach, it should permit the courts below to determine, in the first instance, whether Apple's commission and design restrictions violate the injunction's terms because they qualify as a "prohibit[ion]" on including "buttons, external links, or other calls to action." *Id.* at 166a. That is an intensely factual question, which depends on how the particular restrictions operate, including how users respond to buttons, templates, warning screens, and login friction, and whether any rational developer would steer under the combined weight of Apple's restrictions. See pp. 37-43, *supra*. The courts below would be best positioned to do that work if the Court reverses on the legal standard.

The United States urges the Court to assess the facts for itself, but only with respect to some restrictions. U.S. Br. 20-28. And it conspicuously ignores a key feature of this case that bears on contempt—Apple's knowledge and bad faith. *Id.* at 28-29. Further, the federal government acknowledges that a "prohibitive" commission could violate the injunction, but says 27% is not enough. *Id.* at 23. Not only does that assertion rest on a view of the facts the courts below rejected, see pp. 39-40, *supra*, but it confirms that the inquiry is a fact-intensive one that depends on payment-handling costs, developer response, and user behavior.

2. Apple's final request (Br. 47-49) is that the Court vacate the Ninth Circuit's remand instructions and limit the district court's authority going forward.

If the Court vacates the Ninth Circuit's contempt holding, the Court also should vacate the remand instructions. But there is no basis for the Court to go further and opine on what may or may not happen on remand. The district court has not decided what the appropriate course would be on remand, and the court of appeals has not reviewed any such decision. The Court does not ordinarily decide issues outside the question presented and that were "neither raised nor resolved below." *Glover* v. *United States*, 531 U.S. 198, 205 (2001). It should not issue what would amount to an advisory opinion constraining a district court's equitable discretion before that court has exercised it.

In particular, the Court should not limit the district court's modification authority on remand. Even if the district court erred by holding Apple in contempt, it would retain its power to modify the injunction prospectively in light of Apple's conduct. *System Fed'n No. 91* v. *Wright*, 364 U.S. 642, 646-647 (1961).

Apple and the United States agree that the court has broad modification power. See Pet. 23 ("[N]othing prohibits a district court from modifying and enlarging an injunction if new circumstances arise or it becomes clear that an existing order is insufficient to remedy a violation."); see also U.S. Br. 16.[12]

Further, the more stringent a standard for contempt, the more important it is for a court to have the ability to modify an injunction. That is, if a court is limited to a "four corners" approach, it must have the ability to modify the injunction to address new evasive conduct. See *McComb*, 336 U.S. at 192; see also Morley & Hessick *Amicus* Br. 11. Otherwise, a district court would never be able to provide effective relief.

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[12] Apple suggests (Br. 48) that the court of appeals erred in permitting the district court to resolve its contempt finding either by entering a purgeable contempt sanction or by modifying the injunction prospectively. But how to best address contemptuous conduct is within the discretion of the district court, and so long as the court tailors the injunction to the violation found, see Pet. App. 34a n.9, there is no reason the court could not choose to modify the injunction in response to Apple's conduct.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

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1. U.S. Const. art. III provides, in pertinent part:

Section 1

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

* * *

2. 18 U.S.C. 401 provides:

Power of Court

A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.