575
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PRELIMINARY PRINT

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OFFICIAL REPORTS

OF

THE SUPREME COURT

MAY 4 THROUGH JUNE 5, 2015

AMENDMENTS TO FEDERAL RULES OF BANKRUPTCY PROCEDURE
AMENDMENTS TO FEDERAL RULES OF CIVIL PROCEDURE

END OF VOLUME

CHRISTINE LUCHOK FALLON
REPORTER OF DECISIONS

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Vol. 575 (Pp. 496–827; 993–1068)
UNITED STATES REPORTS
Part 2

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

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*Attorney General Lynch was presented to the Court on May 18, 2015. See *post*, p. III.

SUPREME COURT OF THE UNITED STATES

Allotment of Justices

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective September 28, 2010, viz.:

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

For the First Circuit, Stephen Breyer, Associate Justice.

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

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

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

For the Fifth Circuit, Antonin Scalia, Associate Justice.

For the Sixth Circuit, Elena Kagan, Associate Justice.

For the Seventh Circuit, Elena Kagan, Associate Justice.

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

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

For the Tenth Circuit, Sonia Sotomayor, Associate Justice.

For the Eleventh Circuit, Clarence Thomas, Associate Justice.

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

September 28, 2010.

(For next previous allotment, see 561 U. S., p. vi.)

PRESENTATION OF THE ATTORNEY GENERAL

Supreme Court of the United States

WEDNESDAY, MAY 18, 2015

Present: Chief Justice Roberts, Justice Scalia, Justice Kennedy, Justice Ginsburg, Justice Breyer, Justice Alito, and Justice Kagan.

The Chief Justice said:

The Court now recognizes the Solicitor General of the United States.

Solicitor General Verrilli said:

Mr. Chief Justice, and may it please the Court. I have the privilege to present to the Court the Eighty-third Attorney General of the United States, Loretta Lynch of New York.

The Chief Justice said:

General Lynch, on behalf of the Court, I welcome you as the Chief Legal Officer of the United States and as an officer of this Court. We recognize the very important responsibilities that are entrusted to you. Your commission as Attorney General of the United States will be noted on the records of the Court. We wish you well in the discharge of the duties of your new office.

Attorney General Lynch said:

Thank you MR. CHIEF JUSTICE.

THE CHIEF JUSTICE said:

Thank you General for coming to the Court.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2014

Syllabus

BULLARD *v.* BLUE HILLS BANK, FKA HYDE PARK SAVINGS BANK

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

No. 14–116. Argued April 1, 2015—Decided May 4, 2015

After filing for Chapter 13 bankruptcy, petitioner Bullard submitted a proposed repayment plan to the Bankruptcy Court. Respondent Blue Hills Bank, Bullard's mortgage lender, objected to the plan's treatment of its claim. The Bankruptcy Court sustained the Bank's objection and declined to confirm the plan. Bullard appealed to the First Circuit Bankruptcy Appellate Panel (BAP). The BAP concluded that the Bankruptcy Court's denial of confirmation was not a final, appealable order, see 28 U. S. C. § 158(a)(1), but heard the appeal under a provision permitting interlocutory appeals "with leave of the court," § 158(a)(3), and agreed with the Bankruptcy Court that Bullard's proposed plan was not allowed. Bullard appealed to the First Circuit, but it dismissed for lack of jurisdiction. It concluded that its jurisdiction depended on the finality of the BAP's order, which in turn depended on the finality of the Bankruptcy Court's order. And it found that the Bankruptcy Court's order denying confirmation was not final so long as Bullard remained free to propose another plan.

Held: A bankruptcy court's order denying confirmation of a debtor's proposed repayment plan is not a final order that the debtor can immediately appeal. Pp. 501–509.

(a) Congress has long treated orders in bankruptcy cases as immediately appealable "if they finally dispose of discrete disputes within the larger case," *Howard Delivery Service, Inc.* v. *Zurich American Ins. Co.*, 547 U. S. 651, 657, n. 3. This approach is reflected in the current statute, which provides that bankruptcy appeals as of right may be taken not only from final judgments in cases but from "final judgments, orders, and decrees . . . in cases and proceedings." 28 U. S. C. § 158(a). Bullard argues that a bankruptcy court conducts a separate proceeding each time it reviews a proposed plan, and therefore a court's order either confirming or denying a plan terminates the proceeding and is final and immediately appealable. But the relevant proceeding is the entire process of attempting to arrive at an approved plan that would allow the bankruptcy case to move forward. Only plan confirmation, or case dismissal, alters the status quo and fixes the parties' rights and obliga-

tions; denial of confirmation with leave to amend changes little and can hardly be described as final. Additional considerations—that the statute defining core bankruptcy proceedings lists "confirmations of plans," § 157(b)(2)(L), but omits any reference to denials; that immediate appeals from denials would result in delays and inefficiencies that requirements of finality are designed to constrain; and that a debtor's inability to immediately appeal a denial encourages the debtor to work with creditors and the trustee to develop a confirmable plan—bolster the conclusion that the relevant proceeding is the entire process culminating in confirmation or dismissal. Pp. 501–505.

(b) The Solicitor General suggests that because bankruptcy disputes are generally classified as either "adversary proceedings" or "contested matters," and because an order denying confirmation and an order granting confirmation both resolve a contested matter, both should be considered final. This argument simply assumes that confirmation is appealable because it resolves a contested matter, and that therefore anything else that resolves the contested matter must also be appealable. But one could just as easily contend that confirmation is appealable because it resolves the entire plan consideration process, while denial is not because it does not. Any asymmetry in denying the debtor an immediate appeal from a denial while allowing a creditor an immediate appeal from a confirmation simply reflects the fact that confirmation allows the bankruptcy to go forward and alters the legal relationships among the parties, while denial lacks such significant consequences. Nor is it clear that the asymmetry will always advantage creditors. Finally, Bullard contends that unless denial orders are final, a debtor will be required to choose between two untenable options: either accept dismissal of the case and then appeal, or propose an amended but unwanted plan and appeal its confirmation. These options will often be unsatisfying, but our litigation system has long accepted that certain burdensome rulings will be "only imperfectly reparable" by the appellate process. *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 872. That prospect is made tolerable by the Court's confidence that bankruptcy courts rule correctly most of the time and by the existence of several mechanisms for interlocutory review, *e. g.*, §§ 158(a)(3), (d)(2), which "serve as useful safety valves for promptly correcting serious errors" and resolving legal questions important enough to be addressed immediately. *Mohawk Industries, Inc.* v. *Carpenter*, 558 U. S. 100, 111. Pp. 505–509.

752 F. 3d 483, affirmed.

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

James A. Feldman argued the cause for petitioner. With him on the briefs were *Stephanos Bibas*, *Nancy Bregstein Gordon*, *David G. Baker*, and *Haneen Kutub.*

Zachary D. Tripp argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Verrilli*, *Acting Assistant Attorney General Branda*, *Deputy Solicitor General Stewart*, *Michael S. Raab*, *Ramona D. Elliott*, and *P. Matthew Sutko.*

Douglas Hallward-Driemeier argued the cause for respondent. With him on the brief were *Jonathan R. Ference-Burke*, *D. Ross Martin*, *Andrew E. Goloboy*, and *Ronald W. Dunbar, Jr.**

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Chapter 13 of the Bankruptcy Code affords individuals receiving regular income an opportunity to obtain some relief from their debts while retaining their property. To proceed under Chapter 13, a debtor must propose a plan to use future income to repay a portion (or in the rare case all) of his debts over the next three to five years. If the bankruptcy court confirms the plan and the debtor successfully carries it out, he receives a discharge of his debts according to the plan.

The bankruptcy court may, however, decline to confirm a proposed repayment plan because it is inconsistent with the Code. Although the debtor is usually given an opportunity to submit a revised plan, he may be convinced that the original plan complied with the Code and that the bankruptcy court was wrong to deny confirmation. The question presented is whether such an order denying confirmation is a

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*Briefs of *amici curiae* urging reversal were filed for Bank of America, N. A., by *Danielle Spinelli*, *Craig Goldblatt*, *Allison Hester-Haddad*, and *Matthew Guarnieri*; for the National Association of Consumer Bankruptcy Attorneys et al. by *Tara Twomey* and *Scott L. Nelson*; and for G. Eric Brunstad, Jr., by *Mr. Brunstad*, *pro se*, and *Kate M. O'Keeffe.*

"final" order that the debtor can immediately appeal. We hold that it is not.

I

In December 2010, Louis Bullard filed a petition for Chapter 13 bankruptcy in Federal Bankruptcy Court in Massachusetts. A week later he filed a proposed repayment plan listing the various claims he anticipated creditors would file and the monthly amounts he planned to pay on each claim over the five-year life of his plan. See 11 U. S. C. §§ 1321, 1322. Chief among Bullard's debts was the roughly $346,000 he owed to Blue Hills Bank, which held a mortgage on a multifamily house Bullard owned. Bullard's plan indicated that the mortgage was significantly "underwater": that is, the house was worth substantially less than the amount Bullard owed the Bank.

Before submitting his plan for court approval, Bullard amended it three times over the course of a year to more accurately reflect the value of the house, the terms of the mortgage, the amounts of creditors' claims, and his proposed payments. See § 1323 (allowing preconfirmation modification). Bullard's third amended plan—the one at issue here—proposed a "hybrid" treatment of his debt to the Bank. He proposed splitting the debt into a secured claim in the amount of the house's then-current value (which he estimated at $245,000), and an unsecured claim for the remainder (roughly $101,000). Under the plan, Bullard would continue making his regular mortgage payments toward the secured claim, which he would eventually repay in full, long after the conclusion of his bankruptcy case. He would treat the unsecured claim, however, the same as any other unsecured debt, paying only as much on it as his income would allow over the course of his five-year plan. At the end of this period the remaining balance on the unsecured portion of the loan would be discharged. In total, Bullard's plan called for him to pay only about $5,000 of the $101,000 unsecured claim.

The Bank (no surprise) objected to the plan and, after a hearing, the Bankruptcy Court declined to confirm it. *In re Bullard*, 475 B. R. 304 (Bkrtcy. Ct. Mass. 2012). The court concluded that Chapter 13 did not allow Bullard to split the Bank's claim as he proposed unless he paid the secured portion in full during the plan period. *Id.*, at 314. The court acknowledged, however, that other Bankruptcy Courts in the First Circuit had approved such arrangements. *Id.*, at 309. The Bankruptcy Court ordered Bullard to submit a new plan within 30 days. *Id.*, at 314.

Bullard appealed to the Bankruptcy Appellate Panel (BAP) of the First Circuit. The BAP first addressed its jurisdiction under the bankruptcy appeals statute, noting that a party can immediately appeal only "final" orders of a bankruptcy court. *In re Bullard*, 494 B. R. 92, 95 (2013) (citing 28 U. S. C. § 158(a)(1)). The BAP concluded that the order denying plan confirmation was not final because Bullard was "free to propose an alternate plan." 494 B. R., at 95. The BAP nonetheless exercised its discretion to hear the appeal under a provision that allows interlocutory appeals "with leave of the court." § 158(a)(3). The BAP granted such leave because the confirmation dispute involved a "controlling question of law . . . as to which there is substantial ground for difference of opinion," and "an immediate appeal [would] materially advance the ultimate termination of the litigation." 494 B. R., at 95, and n. 5. On the merits, the BAP agreed with the Bankruptcy Court that Bullard's proposed treatment of the Bank's claim was not allowed. *Id.*, at 96–101.

Bullard sought review in the Court of Appeals for the First Circuit, but that court dismissed his appeal for lack of jurisdiction. *In re Bullard*, 752 F. 3d 483 (2014). The First Circuit noted that because the BAP had not certified the appeal under § 158(d)(2), the only possible source of Court of Appeals jurisdiction was § 158(d)(1), which allowed appeal of only a final order of the BAP. *Id.*, at 485, and n. 3. And

under First Circuit precedent "an order of the BAP cannot be final unless the underlying bankruptcy court order is final." *Id.*, at 485. The Court of Appeals accordingly examined whether a bankruptcy court's denial of plan confirmation is a final order, a question that it recognized had divided the Circuits. Adopting the majority view, the First Circuit concluded that an order denying confirmation is not final so long as the debtor remains free to propose another plan. *Id.*, at 486–490.

We granted certiorari. 574 U. S. 1058 (2014).

II

In ordinary civil litigation, a case in federal district court culminates in a "final decisio[n]," 28 U. S. C. § 1291, a ruling "by which a district court disassociates itself from a case," *Swint* v. *Chambers County Comm'n*, 514 U. S. 35, 42 (1995). A party can typically appeal as of right only from that final decision. This rule reflects the conclusion that "[p]ermitting piecemeal, prejudgment appeals . . . undermines 'efficient judicial administration' and encroaches upon the prerogatives of district court judges, who play a 'special role' in managing ongoing litigation." *Mohawk Industries, Inc.* v. *Carpenter*, 558 U. S. 100, 106 (2009) (quoting *Firestone Tire & Rubber Co.* v. *Risjord*, 449 U. S. 368, 374 (1981)).

The rules are different in bankruptcy. A bankruptcy case involves "an aggregation of individual controversies," many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor. 1 Collier on Bankruptcy ¶5.08[1][b], p. 5–42 (16th ed. 2014). Accordingly, "Congress has long provided that orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case." *Howard Delivery Service, Inc.* v. *Zurich American Ins. Co.*, 547 U. S. 651, 657, n. 3 (2006) (internal quotation marks and emphasis omitted). The current bankruptcy appeals statute reflects this approach: It authorizes appeals as of right not only from final

judgments in cases but from "final judgments, orders, and decrees . . . in cases and proceedings." § 158(a).

The present dispute is about how to define the immediately appealable "proceeding" in the context of the consideration of Chapter 13 plans. Bullard argues for a plan-by-plan approach. Each time the bankruptcy court reviews a proposed plan, he says, it conducts a separate proceeding. On this view, an order denying confirmation and an order granting confirmation both terminate that proceeding, and both are therefore final and appealable.

In the Bank's view Bullard is slicing the case too thin. The relevant "proceeding," it argues, is the entire process of considering plans, which terminates only when a plan is confirmed or—if the debtor fails to offer any confirmable plan—when the case is dismissed. An order denying confirmation is not final, so long as it leaves the debtor free to propose another plan.

We agree with the Bank: The relevant proceeding is the process of attempting to arrive at an approved plan that would allow the bankruptcy to move forward. This is so, first and foremost, because only plan confirmation—or case dismissal—alters the status quo and fixes the rights and obligations of the parties. When the bankruptcy court confirms a plan, its terms become binding on debtor and creditor alike. 11 U. S. C. § 1327(a). Confirmation has preclusive effect, foreclosing relitigation of "any issue actually litigated by the parties and any issue necessarily determined by the confirmation order." 8 Collier ¶1327.02[1][c], at 1327–6; see also *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U. S. 260, 275 (2010) (finding a confirmation order "enforceable and binding" on a creditor notwithstanding legal error when the creditor "had notice of the error and failed to object or timely appeal"). Subject to certain exceptions, confirmation "vests all of the property of the [bankruptcy] estate in the debtor," and renders that property "free and clear of any claim or interest of any creditor provided for by the plan."

§§ 1327(b), (c). Confirmation also triggers the Chapter 13 trustee's duty to distribute to creditors those funds already received from the debtor. § 1326(a)(2).

When confirmation is denied *and the case is dismissed as a result*, the consequences are similarly significant. Dismissal of course dooms the possibility of a discharge and the other benefits available to a debtor under Chapter 13. Dismissal lifts the automatic stay entered at the start of bankruptcy, exposing the debtor to creditors' legal actions and collection efforts. § 362(c)(2). And it can limit the availability of an automatic stay in a subsequent bankruptcy case. § 362(c)(3).

Denial of confirmation with leave to amend, by contrast, changes little. The automatic stay persists. The parties' rights and obligations remain unsettled. The trustee continues to collect funds from the debtor in anticipation of a different plan's eventual confirmation. The possibility of discharge lives on. "Final" does not describe this state of affairs. An order denying confirmation does rule out the specific arrangement of relief embodied in a particular plan. But that alone does not make the denial final any more than, say, a car buyer's declining to pay the sticker price is viewed as a "final" purchasing decision by either the buyer or seller. "It ain't over till it's over."

Several additional considerations bolster our conclusion that the relevant "proceeding" is the entire process culminating in confirmation or dismissal. First is a textual clue. Among the list of "core proceedings" statutorily entrusted to bankruptcy judges are "confirmations of plans." 28 U. S. C. § 157(b)(2)(L). Although this item hardly clinches the matter for the Bank—the provision's purpose is not to explain appealability—it does cut in the Bank's favor. The presence of the phrase "confirmations of plans," combined with the absence of any reference to denials, suggests that Congress viewed the larger confirmation process as the "proceeding," not the ruling on each specific plan.

In Bullard's view the debtor can appeal the denial of the first plan he submits to the bankruptcy court. If the court of appeals affirms the denial, the debtor can then revise the plan. If the new plan is also denied confirmation, another appeal can ensue. And so on. As Bullard's case shows, each climb up the appellate ladder and slide down the chute can take more than a year. Avoiding such delays and inefficiencies is precisely the reason for a rule of finality. It does not make much sense to define the pertinent proceeding so narrowly that the requirement of finality would do little work as a meaningful constraint on the availability of appellate review.

Bullard responds that concerns about frequent piecemeal appeals are misplaced in this context. Debtors do not typically have the money or incentives to take appeals over small beer issues. They will only appeal the relatively rare denials based on significant legal rulings—precisely the cases that should proceed promptly to the courts of appeals. Brief for Petitioner 43–46.

Bullard's assurance notwithstanding, debtors may often view, in good faith or bad, the prospect of appeals as important leverage in dealing with creditors. An appeal extends the automatic stay that comes with bankruptcy, which can cost creditors money and allow a debtor to retain property he might lose if the Chapter 13 proceeding turns out not to be viable. These concerns are heightened if the same rule applies in Chapter 11, as the parties assume. Chapter 11 debtors, often business entities, are more likely to have the resources to appeal and may do so on narrow issues. See Tr. of Oral Arg. 51. But even if Bullard is correct that such appeals will be rare, that does not much support his broader point that an appeal of right should be allowed in every case. It is odd, after all, to argue in favor of allowing more appeals by emphasizing that almost nobody will take them.

We think that in the ordinary case treating only confirmation or dismissal as final will not unfairly burden a debtor.

He retains the valuable exclusive right to propose plans, which he can modify freely. 11 U. S. C. §§ 1321, 1323. The knowledge that he will have no guaranteed appeal from a denial should encourage the debtor to work with creditors and the trustee to develop a confirmable plan as promptly as possible. And expedition is always an important consideration in bankruptcy.

III

Bullard and the Solicitor General present several arguments for treating each plan denial as final, but we are not persuaded.

The Solicitor General notes that disputes in bankruptcy are generally classified as either "adversary proceedings," essentially full civil lawsuits carried out under the umbrella of the bankruptcy case, or "contested matters," an undefined catchall for other issues the parties dispute. See Fed. Rule Bkrtcy. Proc. 7001 (listing ten adversary proceedings); Rule 9014 (addressing "contested matter[s] not otherwise governed by these rules"). An objection to a plan initiates a contested matter. See Rule 3015(f). Everyone agrees that an order resolving that matter by overruling the objection and confirming the plan is final. As the Solicitor General sees it, an order denying confirmation would also resolve that contested matter, so such an order should also be considered final. Brief for United States as *Amicus Curiae* 19–22.

The scope of the Solicitor General's argument is unclear. At points his brief appears to argue that an order resolving *any* contested matter is final and immediately appealable. That version of the argument has the virtue of resting on a general principle—but the vice of being implausible. As a leading treatise notes, the list of contested matters is "endless" and covers all sorts of minor disagreements. 10 Collier ¶9014.01, at 9014–3. The concept of finality cannot stretch to cover, for example, an order resolving a disputed request for an extension of time.

At other points, the Solicitor General appears to argue that because one possible resolution of this particular contested matter (confirmation) is final, the other (denial) must be as well. But this argument begs the question. It simply assumes that confirmation is appealable because it resolves a contested matter, and that therefore anything else that resolves the contested matter must also be appealable. But one can just as easily contend that confirmation is appealable because it resolves the entire plan consideration process, and that therefore the entire process is the "proceeding." A decision that does not resolve the entire plan consideration process—denial—is therefore not appealable.

Perhaps the Solicitor General's suggestion is that a separately appealable "proceeding" must coincide precisely with a particular "adversary proceeding" or "contested matter" under the Bankruptcy Rules. He does not, however, provide any support for such a suggestion. More broadly, it is of course quite common for the finality of a decision to depend on which way the decision goes. An order granting a motion for summary judgment is final; an order denying such a motion is not.

Bullard and the Solicitor General also contend that our rule creates an unfair asymmetry: If the bankruptcy court sustains an objection and denies confirmation, the debtor (always the plan proponent in Chapter 13) must go back to the drafting table and try again; but if the bankruptcy court overrules an objection and grants confirmation, a creditor can appeal without delay. But any asymmetry in this regard simply reflects the fact that confirmation allows the bankruptcy to go forward and alters the legal relationships among the parties, while denial does not have such significant consequences.

Moreover, it is not clear that this asymmetry will always advantage creditors. Consider a creditor who strongly supports a proposed plan because it treats him well. If the bankruptcy court sustains an objection from another credi-

tor—perhaps because the plan treats the first creditor too well—the first creditor might have as keen an interest in a prompt appeal as the debtor. And yet, under the rule we adopt, that creditor too would have to await further developments.

Bullard also raises a more practical objection. If denial orders are not final, he says, there will be no effective means of obtaining appellate review of the denied proposal. The debtor's only two options would be to seek or accept dismissal of his case and then appeal, or to propose an amended plan and appeal its confirmation.

The first option is not realistic, Bullard contends, because dismissal means the end of the automatic stay against creditors' collection efforts. Without the stay, the debtor might lose the very property at issue in the rejected plan. Even if a bankruptcy court agrees to maintain the stay pending appeal, the debtor is still risking his entire bankruptcy case on the appeal.

The second option is no better, says Bullard. An acceptable, confirmable alternative may not exist. Even if one does, its confirmation might have immediate and irreversible effects—such as the sale or transfer of property—and a court is unlikely to stay its execution. Moreover, it simply wastes time and money to place the debtor in the position of seeking approval of a plan he does not want.

All good points. We do not doubt that in many cases these options may be, as the court below put it, "unappealing." 752 F. 3d, at 487. But our litigation system has long accepted that certain burdensome rulings will be "only imperfectly reparable" by the appellate process. *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 872 (1994). This prospect is made tolerable in part by our confidence that bankruptcy courts, like trial courts in ordinary litigation, rule correctly most of the time. And even when they slip, many of their errors—wrongly concluding, say, that a debtor should pay unsecured creditors $400 a month rather

than $300—will not be of a sort that justifies the costs entailed by a system of universal immediate appeals.

Sometimes, of course, a question will be important enough that it should be addressed immediately. Bullard's case could well fit the bill: The confirmability of his hybrid plan presented a pure question of law that had divided bankruptcy courts in the First Circuit and would make a substantial financial difference to the parties. But there are several mechanisms for interlocutory review to address such cases. First, a district court or BAP can (as the BAP did in this case) grant leave to hear such an appeal. 28 U. S. C. § 158(a)(3). A debtor who appeals to the district court and loses there can seek certification to the court of appeals under the general interlocutory appeals statute, § 1292(b). See *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249 (1992).

Another interlocutory mechanism is provided in § 158(d)(2). That provision allows a bankruptcy court, district court, BAP, or the parties acting jointly to certify a bankruptcy court's order to the court of appeals, which then has discretion to hear the matter. Unlike § 1292(b), which permits certification only when three enumerated factors suggesting importance are all present, § 158(d)(2) permits certification when any one of several such factors exists, a distinction that allows a broader range of interlocutory decisions to make their way to the courts of appeals. While discretionary review mechanisms such as these "do not provide relief in every case, they serve as useful safety valves for promptly correcting serious errors" and addressing important legal questions. *Mohawk Industries*, 558 U. S., at 111 (internal quotation marks and brackets omitted).

Bullard maintains that interlocutory appeals are ineffective because lower courts have been too reticent in granting them. But Bullard did, after all, obtain one layer of interlocutory review when the BAP granted him leave to appeal under § 158(a)(3). He also sought certification to the Court of Appeals under § 158(d)(2), but the BAP denied his request

for reasons that are not entirely clear. See App. to Pet. for Cert. 17a. The fact that Bullard was not able to obtain further merits review in the First Circuit in this particular instance does not undermine our expectation that lower courts will certify and accept interlocutory appeals from plan denials in appropriate cases.

* * *

Because the Court of Appeals correctly held that the order denying confirmation was not final, its judgment is

Affirmed.

Syllabus

HARRIS *v.* VIEGELAHN, CHAPTER 13 TRUSTEE

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

No. 14–400. Argued April 1, 2015—Decided May 18, 2015

Individual debtors may seek discharge of their financial obligations under either Chapter 7 or Chapter 13 of the Bankruptcy Code. In a Chapter 7 proceeding, the debtor's assets are transferred to a bankruptcy estate. 11 U. S. C. § 541(a)(1). The estate's assets are then promptly liquidated, § 704(a)(1), and distributed to creditors, § 726. A Chapter 7 estate, however, does not include the wages a debtor earns or the assets he acquires *after* the bankruptcy filing. § 541(a)(1). Chapter 13, a wholly voluntary alternative to Chapter 7, permits the debtor to retain assets during bankruptcy subject to a court-approved plan for payment of his debts. Payments under a Chapter 13 plan are usually made from a debtor's "future income." § 1322(a)(1). The Chapter 13 estate, unlike a Chapter 7 estate, therefore includes both the debtor's property at the time of his bankruptcy petition, and any assets he acquires after filing. § 1306(a). Because many debtors fail to complete a Chapter 13 plan successfully, Congress accorded debtors a nonwaivable right to convert a Chapter 13 case to one under Chapter 7 "at any time." § 1307(a). Conversion does not commence a new bankruptcy case, but it does terminate the service of the Chapter 13 trustee. § 348(e).

Petitioner Harris, indebted to multiple creditors and $3,700 behind on his home mortgage payments to Chase Manhattan, filed a Chapter 13 bankruptcy petition. His court-confirmed plan provided that he would resume making monthly mortgage payments to Chase, and that $530 per month would be withheld from his postpetition wages and remitted to the Chapter 13 trustee, respondent Viegelahn. Trustee Viegelahn would make monthly payments to Chase to pay down Harris' mortgage arrears, and distribute remaining funds to Harris' other creditors. When Harris again fell behind on his mortgage payments, Chase foreclosed on his home. Following the foreclosure, Viegelahn continued to receive $530 per month from Harris' wages, but stopped making the payments earmarked for Chase. As a result, funds formerly reserved for Chase accumulated in Viegelahn's possession. Approximately a year after the foreclosure, Harris converted his case to Chapter 7. Ten days after this conversion, Viegelahn distributed $5,519.22 in Harris' withheld wages mainly to Harris' creditors. Asserting that Viegelahn lacked authority to disburse his postpetition wages to creditors postcon-

version, Harris sought an order from the Bankruptcy Court directing refund of the accumulated wages Viegelahn paid to his creditors. The Bankruptcy Court granted Harris' motion, and the District Court affirmed. The Fifth Circuit reversed, concluding that a former Chapter 13 trustee must distribute a debtor's accumulated postpetition wages to his creditors.

Held: A debtor who converts to Chapter 7 is entitled to return of any postpetition wages not yet distributed by the Chapter 13 trustee. Pp. 516–522.

(a) Absent a bad-faith conversion, § 348(f) limits a converted Chapter 7 estate to property belonging to the debtor "as of the date" the original Chapter 13 petition was filed. Because postpetition wages do not fit that bill, undistributed wages collected by a Chapter 13 trustee ordinarily do not become part of a converted Chapter 7 estate. Pp. 516–517.

(b) By excluding postpetition wages from the converted Chapter 7 estate (absent a bad-faith conversion), § 348(f) removes those earnings from the pool of assets that may be liquidated and distributed to creditors. Allowing a terminated Chapter 13 trustee to disburse the very same earnings to the very same creditors is incompatible with that statutory design. Pp. 518–519.

(c) This conclusion is reinforced by § 348(e), which "terminates the service of [the Chapter 13] trustee" upon conversion. One service provided by a Chapter 13 trustee is disbursing "payments to creditors." § 1326(c). The moment a case is converted from Chapter 13 to Chapter 7, a Chapter 13 trustee is stripped of authority to provide that "service." P. 519.

(d) Section 1327(a), which provides that a confirmed Chapter 13 plan "bind[s] the debtor and each creditor," and § 1326(a)(2), which instructs a trustee to distribute "payment[s] in accordance with the plan," ceased to apply once the case was converted to Chapter 7. § 103(i). Sections 1327(a) and 1326(a)(2), therefore, offer no support for Viegelahn's assertion that the Bankruptcy Code *requires* a terminated Chapter 13 trustee to distribute to creditors postpetition wages remaining in the trustee's possession. Continuing to distribute funds to creditors pursuant to a defunct Chapter 13 plan, moreover, is not one of the trustee's postconversion responsibilities specified by the Federal Rules of Bankruptcy Procedure. Pp. 519–521.

(e) Because Chapter 13 is a voluntary alternative to Chapter 7, a debtor's postconversion receipt of a fraction of the wages he earned and would have kept had he filed under Chapter 7 in the first place does not provide the debtor with a "windfall." A trustee who distributes payments regularly may have little or no accumulated wages to return,

while a trustee who distributes payments infrequently may have a sizable refund to make. But creditors may gain protection against the risk of excess accumulations in the hands of trustees by seeking to have a Chapter 13 plan include a schedule for regular disbursement of collected funds. Pp. 521–522.

757 F. 3d 468, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.

Matthew M. Madden argued the cause for petitioner. With him on the briefs were *Mark T. Stancil*, *Alan E. Untereiner*, *Eric A. White*, *J. Todd Malaise*, and *Steven G. Cennamo*.

Craig Goldblatt argued the cause for respondent. With him on the brief were *Mary Kathryn Viegelahn*, *pro se*, *Danielle Spinelli*, *Kelly P. Dunbar*, *Isley M. Gostin*, and *Vanessa DeLeon Guerrero*.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the disposition of wages earned by a debtor *after* he petitions for bankruptcy. The treatment of postpetition wages generally depends on whether the debtor is proceeding under Chapter 13 of the Bankruptcy Code (in which the debtor retains assets, often his home, during bankruptcy subject to a court-approved plan for the payment of his debts) or Chapter 7 (in which the debtor's assets are immediately liquidated and the proceeds distributed to creditors). In a Chapter 13 proceeding, postpetition wages are "[p]roperty of the estate," 11 U. S. C. § 1306(a), and may be collected by the Chapter 13 trustee for distribution to credi-

*Briefs of *amici curiae* urging reversal were filed for the National Association of Consumer Bankruptcy Attorneys by *Martin V. Totaro* and *Tara Twomey*; and for G. Eric Brunstad, Jr., by *Mr. Brunstad*, *pro se*, and *Kate M. O'Keeffe*.

Briefs of *amici curiae* urging affirmance were filed for the American Financial Services Association et al. by *Tyler P. Brown* and *Justin F. Paget*; and for the National Association of Chapter Thirteen Trustees by *Henry E. Hildebrand III*.

tors, § 1322(a)(1). In a Chapter 7 proceeding, those earnings are not estate property; instead, they belong to the debtor. See § 541(a)(1). The Code permits the debtor to convert a Chapter 13 proceeding to one under Chapter 7 "at any time," § 1307(a); upon such conversion, the service of the Chapter 13 trustee terminates, § 348(e).

When a debtor initially filing under Chapter 13 exercises his right to convert to Chapter 7, who is entitled to postpetition wages still in the hands of the Chapter 13 trustee? Not the Chapter 7 estate when the conversion is in good faith, all agree. May the trustee distribute the accumulated wage payments to creditors as the Chapter 13 plan required, or must she remit them to the debtor? That is the question this case presents. We hold that, under the governing provisions of the Bankruptcy Code, a debtor who converts to Chapter 7 is entitled to return of any postpetition wages not yet distributed by the Chapter 13 trustee.

I

A

The Bankruptcy Code provides diverse courses overburdened debtors may pursue to gain discharge of their financial obligations, and thereby a "fresh start." *Marrama* v. *Citizens Bank of Mass.*, 549 U. S. 365, 367 (2007) (quoting *Grogan* v. *Garner*, 498 U. S. 279, 286 (1991)). Two roads individual debtors may take are relevant here: Chapter 7 and Chapter 13 bankruptcy proceedings.

Chapter 7 allows a debtor to make a clean break from his financial past, but at a steep price: prompt liquidation of the debtor's assets. When a debtor files a Chapter 7 petition, his assets, with specified exemptions, are immediately transferred to a bankruptcy estate. § 541(a)(1). A Chapter 7 trustee is then charged with selling the property in the estate, § 704(a)(1), and distributing the proceeds to the debtor's creditors, § 726. Crucially, however, a Chapter 7 estate does not include the wages a debtor earns or the assets he ac-

quires *after* the bankruptcy filing. § 541(a)(1). Thus, while a Chapter 7 debtor must forfeit virtually all his prepetition property, he is able to make a "fresh start" by shielding from creditors his postpetition earnings and acquisitions.

Chapter 13 works differently. A wholly voluntary alternative to Chapter 7, Chapter 13 allows a debtor to retain his property if he proposes, and gains court confirmation of, a plan to repay his debts over a three- to five-year period. §§ 1306(b), 1322, 1327(b). Payments under a Chapter 13 plan are usually made from a debtor's "future earnings or other future income." § 1322(a)(1); see 8 Collier on Bankruptcy ¶1322.02[1] (A. Resnick & H. Sommer eds., 16th ed. 2014). Accordingly, the Chapter 13 estate from which creditors may be paid includes both the debtor's property at the time of his bankruptcy petition, and any wages and property acquired after filing. § 1306(a). A Chapter 13 trustee is often charged with collecting a portion of a debtor's wages through payroll deduction, and with distributing the withheld wages to creditors.

Proceedings under Chapter 13 can benefit debtors and creditors alike. Debtors are allowed to retain their assets, commonly their home or car. And creditors, entitled to a Chapter 13 debtor's "disposable" postpetition income, § 1325(b)(1), usually collect more under a Chapter 13 plan than they would have received under a Chapter 7 liquidation.

Many debtors, however, fail to complete a Chapter 13 plan successfully. See Porter, The Pretend Solution: An Empirical Study of Bankruptcy Outcomes, 90 Texas L. Rev. 103, 107–111 (2011) (only one in three cases filed under Chapter 13 ends in discharge). Recognizing that reality, Congress accorded debtors a nonwaivable right to convert a Chapter 13 case to one under Chapter 7 "at any time." § 1307(a). To effectuate a conversion, a debtor need only file a notice with the bankruptcy court. Fed. Rule Bkrtcy. Proc. 1017(f)(3). No motion or court order is needed to render the conversion effective. See *ibid.*

Conversion from Chapter 13 to Chapter 7 does not commence a new bankruptcy case. The existing case continues along another track, Chapter 7 instead of Chapter 13, without "effect[ing] a change in the date of the filing of the petition." § 348(a). Conversion, however, immediately "terminates the service" of the Chapter 13 trustee, replacing her with a Chapter 7 trustee. § 348(e).

B

In February 2010, petitioner Charles Harris III filed a Chapter 13 bankruptcy petition. At the time of filing, Harris was indebted to multiple creditors, and had fallen $3,700 behind on payments to Chase Manhattan, his home mortgage lender.

Harris' court-confirmed Chapter 13 plan provided that he would immediately resume making monthly mortgage payments to Chase. The plan further provided that $530 per month would be withheld from Harris' postpetition wages and remitted to the Chapter 13 trustee, respondent Mary Viegelahn. Viegelahn, in turn, would distribute $352 per month to Chase to pay down Harris' outstanding mortgage debt. She would also distribute $75.34 per month to Harris' only other secured lender, a consumer-electronics store. Once those secured creditors were paid in full, Viegelahn was to begin distributing funds to Harris' unsecured creditors.

Implementation of the plan was short lived. Harris again fell behind on his mortgage payments, and in November 2010, Chase received permission from the Bankruptcy Court to foreclose on Harris' home. Following the foreclosure, Viegelahn continued to receive $530 per month from Harris' wages, but stopped making the payments earmarked for Chase. As a result, funds formerly reserved for Chase accumulated in Viegelahn's possession.

On November 22, 2011, Harris exercised his statutory right to convert his Chapter 13 case to one under Chapter 7. By that time, Harris' postpetition wages accumulated

by Viegelahn amounted to $5,519.22. On December 1, 2011—ten days after Harris' conversion—Viegelahn disposed of those funds by giving $1,200 to Harris' counsel, paying herself a $267.79 fee, and distributing the remaining money to the consumer-electronics store and six of Harris' unsecured creditors.

Asserting that Viegelahn lacked authority to disburse funds to creditors once the case was converted to Chapter 7, Harris moved the Bankruptcy Court for an order directing refund of the accumulated wages Viegelahn had given to his creditors. The Bankruptcy Court granted Harris' motion, and the District Court affirmed.

The Fifth Circuit reversed. *In re Harris*, 757 F. 3d 468 (2014). Finding "little guidance in the Bankruptcy Code," *id.*, at 478, the Fifth Circuit concluded that "considerations of equity and policy" rendered "the creditors' claim to the undistributed funds . . . superior to that of the debtor," *id.*, at 478, 481. Notwithstanding a Chapter 13 debtor's conversion to Chapter 7, the Fifth Circuit held, a former Chapter 13 trustee must distribute a debtor's accumulated postpetition wages to his creditors.

The Fifth Circuit acknowledged that its decision conflicted with the Third Circuit's decision in *In re Michael*, 699 F. 3d 305 (2012), which held that a debtor's undistributed postpetition wages "are to be returned to the debtor at the time of conversion [from Chapter 13 to Chapter 7]." *Id.*, at 307. We granted certiorari to resolve this conflict, 574 U. S. 1058 (2014), and now reverse the Fifth Circuit's judgment.

II

A

Prior to the Bankruptcy Reform Act of 1994, courts divided three ways on the disposition of a debtor's undistributed postpetition wages following conversion of a proceeding from Chapter 13 to Chapter 7. Some courts concluded that undistributed postpetition wages reverted to the debtor.

E. g., *In re Boggs*, 137 B. R. 408, 411 (Bkrtcy. Ct. WD Wash. 1992). Others ordered a debtor's undistributed postpetition earnings disbursed to creditors pursuant to the terms of the confirmed (albeit terminated) Chapter 13 plan. *E. g.*, *In re Waugh*, 82 B. R. 394, 400 (Bkrtcy. Ct. WD Pa. 1988). Still other courts, including several Courts of Appeals, held that, upon conversion, all postpetition earnings and acquisitions became part of the new Chapter 7 estate, thus augmenting the property available for liquidation and distribution to creditors. *E. g.*, *In re Calder*, 973 F. 2d 862, 865–866 (CA10 1992); *In re Lybrook*, 951 F. 2d 136, 137 (CA7 1991).

Congress addressed the matter in 1994 by adding § 348(f) to the Bankruptcy Code. Rejecting the rulings of several Courts of Appeals, § 348(f)(1)(A) provides that in a case converted from Chapter 13, a debtor's postpetition earnings and acquisitions do not become part of the new Chapter 7 estate:

> "[P]roperty of the [Chapter 7] estate in the converted case shall consist of property of the estate, as of the date of filing of the [initial Chapter 13] petition, that remains in the possession of or is under the control of the debtor on the date of conversion."

In § 348(f)(2), Congress added an exception for debtors who convert in bad faith:

> "If the debtor converts a case [initially filed] under chapter 13 . . . in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of the conversion."

Section 348(f), all agree, makes one thing clear: A debtor's postpetition wages, including undisbursed funds in the hands of a trustee, ordinarily do not become part of the Chapter 7 estate created by conversion. Absent a bad-faith conversion, § 348(f) limits a converted Chapter 7 estate to property belonging to the debtor "as of the date" the original Chapter 13 petition was filed. Postpetition wages, by definition, do not fit that bill.

B

With this background, we turn to the question presented: What happens to postpetition wages held by a Chapter 13 trustee at the time the case is converted to Chapter 7? Does the Code require return of the funds to the debtor, or does it require their distribution to creditors? We conclude that postpetition wages must be returned to the debtor.

By excluding postpetition wages from the converted Chapter 7 estate, § 348(f)(1)(A) removes those earnings from the pool of assets that may be liquidated and distributed to creditors. Allowing a terminated Chapter 13 trustee to disburse the very same earnings to the very same creditors is incompatible with that statutory design. We resist attributing to Congress, after explicitly exempting from Chapter 7's liquidation-and-distribution process a debtor's postpetition wages, a plan to place those wages in creditors' hands another way.

Section 348(f)(2)'s exception for bad-faith conversions is instructive in this regard. If a debtor converts in bad faith—for example, by concealing assets in "unfair manipulation of the bankruptcy system," *In re Siegfried*, 219 B. R. 581, 586 (Bkrtcy. Ct. Colo. 1998)—the converted Chapter 7 estate "consist[s] of the property of the [Chapter 13] estate *as of the date of conversion*." § 348(f)(2) (emphasis added). Section 348(f)(2) thus penalizes bad-faith debtors by making their postpetition wages available for liquidation and distribution to creditors. Conversely, when the conversion to Chapter 7 is made in *good* faith, no penalty is exacted. Shielding a Chapter 7 debtor's postpetition earnings from creditors enables the "honest but unfortunate debtor" to make the "fresh start" the Bankruptcy Code aims to facilitate. *Marrama*, 549 U. S., at 367 (internal quotation marks omitted). Bad-faith conversions apart, we find nothing in the Code denying debtors funds that would have been theirs had the case proceeded under Chapter 7 from the start. In sum, § 348(f) does not say, expressly: On conversion, accumu-

lated wages go to the debtor. But that is the most sensible reading of what Congress did provide.

Section 348(e) also informs our ruling that undistributed postpetition wages must be returned to the debtor. That section provides: "Conversion [from Chapter 13 to Chapter 7] terminates the service of [the Chapter 13] trustee." A core service provided by a Chapter 13 trustee is the disbursement of "payments *to creditors*." § 1326(c) (emphasis added). The moment a case is converted from Chapter 13 to Chapter 7, however, the Chapter 13 trustee is stripped of authority to provide that "service." § 348(e).

Section 348(e), of course, does not require a terminated trustee to hold accumulated funds in perpetuity; she must (as we hold today) return undistributed postpetition wages to the debtor. Returning funds to a debtor, however, is not a Chapter 13 trustee service as is making "paymen[t] to creditors." § 1326(c). In this case, illustratively, Chapter 13 trustee Viegelahn continued to act in that capacity after her tenure ended. Eight days after the case was converted to Chapter 7, she filed with the Bankruptcy Court a document titled "Trustee's Recommendations Concerning Claims," recommending distribution of the funds originally earmarked for Chase to the remaining secured creditor and six of the 13 unsecured creditors. No. 10–50655 (Bkrtcy. Ct. WD Tex., Nov. 30, 2011), Doc. 34. She then acted on that recommendation. She thus provided a Chapter 13 trustee "service," although barred from doing so by § 348(e). Returning undistributed wages to the debtor, in contrast, renders no Chapter 13-authorized "service."

C

Viegelahn cites two Chapter 13 provisions in support of her argument that the Bankruptcy Code *requires* a terminated Chapter 13 trustee "to distribute undisbursed funds to creditors." Brief for Respondent 21. The first, § 1327(a), provides that a confirmed Chapter 13 plan "bind[s] the debtor and each creditor." The second, § 1326(a)(2), instructs a

trustee to distribute "payment[s] in accordance with the plan," and that, Viegelahn observes, is just what she did. But the cited provisions had no force here, for they ceased to apply once the case was converted to Chapter 7.

When a debtor exercises his statutory right to convert, the case is placed under Chapter 7's governance, and no Chapter 13 provision holds sway. § 103(i) ("Chapter 13 . . . applies only in a case under [that] chapter."). Harris having converted the case, the Chapter 13 plan was no longer "bind[ing]." § 1327(a). And Viegelahn, by then the *former* Chapter 13 trustee, lacked authority to distribute "payment[s] in accordance with the plan." § 1326(a)(2); see § 348(e).

Nor can we credit the suggestion that a confirmed Chapter 13 plan gives creditors a vested right to funds held by a trustee. "[N]o provision in the Bankruptcy Code classifies any property, including post-petition wages, as belonging to creditors." *Michael*, 699 F. 3d, at 312–313.

Viegelahn alternatively urges that a terminated Chapter 13 trustee's "duty" to distribute funds to creditors is a facet of the trustee's obligation to "wind up" the affairs of the Chapter 13 estate following conversion. Brief for Respondent 25 (internal quotation marks omitted). The Federal Rules of Bankruptcy Procedure, however, specify what a terminated Chapter 13 trustee must do postconversion: (1) She must turn over records and assets to the Chapter 7 trustee, Rule 1019(4); and (2) she must file a report with the United States bankruptcy trustee, Rule 1019(5)(B)(ii). Continuing to distribute funds to creditors pursuant to the defunct Chapter 13 plan is not an authorized "wind-up" task.

Finally, Viegelahn homes in on a particular feature of this case. Section 1327(b) states that "[e]xcept as otherwise provided in the [Chapter 13] plan . . . the confirmation of a plan vests all of the property of the estate in the debtor." Harris' plan "otherwise provided": It stated that "[u]pon confirmation of the plan, all property of the estate shall not vest

in the Debto[r], but shall remain as property *of the estate*." App. 31 (emphasis added). That plan language does not change the outcome here. Harris' wages may have been "property of the estate" while his case proceeded under Chapter 13, but estate property does not become property of creditors until it is distributed to them. See *Michael*, 699 F. 3d, at 313. Moreover, the order confirming Harris' plan provided that upon conversion to Chapter 7, "[s]uch property as may revest in the debtor shall so revest." App. 48. Pursuant to that provision, property formerly in the Chapter 13 estate that did not become part of the Chapter 7 estate revested in Harris; here, Harris' postpetition wages so revested.

D

The Fifth Circuit expressed concern that debtors would receive a "windfall" if they could reclaim accumulated wages from a terminated Chapter 13 trustee. 757 F. 3d, at 478–481. As explained, however, see *supra*, at 513–514, Chapter 13 is a voluntary proceeding in which debtors endeavor to discharge their obligations using postpetition earnings that are off limits to creditors in a Chapter 7 proceeding. We do not regard as a "windfall" a debtor's receipt of a fraction of the wages he earned and would have kept had he filed under Chapter 7 in the first place.

We acknowledge the "fortuit[y]," as the Fifth Circuit called it, that a "debtor's chance of having funds returned" is "dependent on the trustee's speed in distributing the payments" to creditors. 757 F. 3d, at 479, and n. 10. A trustee who distributes payments regularly may have little or no accumulated wages to return. When a trustee distributes payments infrequently, on the other hand, a debtor who converts to Chapter 7 may be entitled to a sizable refund. These outcomes, however, follow directly from Congress' decisions to shield postpetition wages from creditors in a converted Chapter 7 case, § 348(f)(1)(A), and to give Chapter 13 debtors a right to convert to Chapter 7 "at any time,"

§ 1307(a). Moreover, creditors may gain protection against the risk of excess accumulations in the hands of Chapter 13 trustees by seeking to include in a Chapter 13 plan a schedule for regular disbursement of funds the trustee collects.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

TIBBLE ET AL. *v.* EDISON INTERNATIONAL ET AL.

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

No. 13–550. Argued February 24, 2015—Decided May 18, 2015

In 2007, petitioners, beneficiaries of the Edison 401(k) Savings Plan (Plan), sued Plan fiduciaries, respondents Edison International and others, to recover damages for alleged losses suffered by the Plan from alleged breaches of respondents' fiduciary duties. As relevant here, petitioners argued that respondents violated their fiduciary duties with respect to three mutual funds added to the Plan in 1999 and three mutual funds added to the Plan in 2002. Petitioners argued that respondents acted imprudently by offering six higher priced retail-class mutual funds as Plan investments when materially identical lower priced institutional-class mutual funds were available. Because the Employee Retirement Income Security Act of 1974 (ERISA) requires a breach of fiduciary duty complaint to be filed no more than six years after "the date of the last action which constituted a part of the breach or violation" or "in the case of an omission the latest date on which the fiduciary could have cured the breach or violation," 29 U. S. C. § 1113, the District Court held that petitioners' complaint as to the 1999 funds was untimely because they were included in the Plan more than six years before the complaint was filed, and the circumstances had not changed enough within the 6-year statutory period to place respondents under an obligation to review the mutual funds and to convert them to lower priced institutional-class funds. The Ninth Circuit affirmed, concluding that petitioners had not established a change in circumstances that might trigger an obligation to conduct a full due-diligence review of the 1999 funds within the 6-year statutory period.

Held: The Ninth Circuit erred by applying § 1113's statutory bar to a breach of fiduciary duty claim based on the initial selection of the investments without considering the contours of the alleged breach of fiduciary duty. ERISA's fiduciary duty is "derived from the common law of trusts," *Central States, Southeast & Southwest Areas Pension Fund* v. *Central Transport, Inc.*, 472 U. S. 559, 570, which provides that a trustee has a continuing duty—separate and apart from the duty to exercise prudence in selecting investments at the outset—to monitor, and remove imprudent, trust investments. So long as a plaintiff's claim alleging breach of the continuing duty of prudence occurred within six

years of suit, the claim is timely. This Court expresses no view on the scope of respondents' fiduciary duty in this case, *e. g.*, whether a review of the contested mutual funds is required, and, if so, just what kind of review. A fiduciary must discharge his responsibilities "with the care, skill, prudence, and diligence" that a prudent person "acting in a like capacity and familiar with such matters" would use. § 1104(a)(1). The case is remanded for the Ninth Circuit to consider petitioners' claims that respondents breached their duties within the relevant 6-year statutory period under § 1113, recognizing the importance of analogous trust law. Pp. 527–531.

729 F. 3d 1110, vacated and remanded.

BREYER, J., delivered the opinion for a unanimous Court.

David C. Frederick argued the cause for petitioners. With him on the briefs were *Jerome J. Schlichter*, *Michael A. Wolff*, and *Brendan J. Crimmins*.

Nicole A. Saharsky argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Verrilli*, *Deputy Solicitor General Kneedler*, *M. Patricia Smith*, and *Nathaniel I. Spiller*.

Jonathan D. Hacker argued the cause for respondents. With him on the brief were *Walter Dellinger*, *Brian D. Boyle*, *Meaghan VerGow*, *Anna-Rose Mathieson*, and *Sergey Trakhtenberg*.*

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*Briefs of *amici curiae* urging reversal were filed for AARP by *Jay E. Sushelsky*; for Cambridge Fiduciary Services by *Brian Glasser*; for Law Professors by *Lynn L. Sarko*; and for the Pension Rights Center by *Karen L. Handorf*, *Michelle C. Yau*, and *Karen W. Ferguson*.

Briefs of *amici curiae* urging affirmance were filed for DRI—The Voice of the Defense Bar by *Scott Burnett Smith*, *Mary Ann Couch*, *John Parker Sweeney*, and *Edmund S. Sauer*; for the ESOP Association by *Brian D. Netter* and *Nancy G. Ross*; for the National Association of Manufacturers et al. by *Mark A. Perry*, *William J. Kilberg*, *Jason Mendro*, *Paul Blankenstein*, *Kate Comerford Todd*, and *Annette Guarisco Fildes*; and for the Securities Industry and Financial Markets Association by *Abigail K. Hemani*, *James O. Fleckner*, *Alison V. Douglass*, *William M. Jay*, and *Kevin Carroll*.

JUSTICE BREYER delivered the opinion of the Court.

Under the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829 *et seq.*, as amended, a breach of fiduciary duty complaint is timely if filed no more than six years after "the date of the last action which constituted a part of the breach or violation" or "in the case of an omission the latest date on which the fiduciary could have cured the breach or violation." 29 U. S. C. § 1113. The question before us concerns application of this provision to the timeliness of a fiduciary duty complaint. It requires us to consider whether a fiduciary's allegedly imprudent retention of an investment is an "action" or "omission" that triggers the running of the 6-year limitations period.

In 2007, several individual beneficiaries of the Edison 401(k) Savings Plan (Plan) filed a lawsuit on behalf of the Plan and all similarly situated beneficiaries (collectively, petitioners) against Edison International and others (collectively, respondents). Petitioners sought to recover damages for alleged losses suffered by the Plan, in addition to injunctive and other equitable relief based on alleged breaches of respondents' fiduciary duties.

The Plan is a defined-contribution plan, meaning that participants' retirement benefits are limited to the value of their own individual investment accounts, which is determined by the market performance of employee and employer contributions, less expenses. Expenses, such as management or administrative fees, can sometimes significantly reduce the value of an account in a defined-contribution plan.

As relevant here, petitioners argued that respondents violated their fiduciary duties with respect to three mutual funds added to the Plan in 1999 and three mutual funds added to the Plan in 2002. Petitioners argued that respondents acted imprudently by offering six higher priced retail-class mutual funds as Plan investments when materially

identical lower priced institutional-class mutual funds were available (the lower price reflects lower administrative costs). Specifically, petitioners claimed that a large institutional investor with billions of dollars, like the Plan, can obtain materially identical lower priced institutional-class mutual funds that are not available to a retail investor. Petitioners asked, how could respondents have acted prudently in offering the six higher priced retail-class mutual funds when respondents could have offered them effectively the same six mutual funds at the lower price offered to institutional investors like the Plan?

As to the three funds added to the Plan in 2002, the District Court agreed. It wrote that respondents had "not offered any credible explanation" for offering retail-class, *i. e.*, higher priced mutual funds that "cost the Plan participants wholly unnecessary [administrative] fees," and it concluded that, with respect to those mutual funds, respondents had failed to exercise "the care, skill, prudence and diligence under the circumstances" that ERISA demands of fiduciaries. No. CV 07–5359 (CD Cal., July 8, 2010), App. to Pet. for Cert. 65, 130, 142, 109.

As to the three funds added to the Plan in 1999, however, the District Court held that petitioners' claims were untimely because, unlike the other contested mutual funds, these mutual funds were included in the Plan more than six years before the complaint was filed in 2007. 639 F. Supp. 2d 1074, 1119–1120 (CD Cal. 2009). As a result, the 6-year statutory period had run.

The District Court allowed petitioners to argue that, despite the 1999 selection of the three mutual funds, their complaint was nevertheless timely because these funds underwent significant changes *within* the 6-year statutory period that should have prompted respondents to undertake a full due-diligence review and convert the higher priced retail-class mutual funds to lower priced institutional-class mutual funds. App. to Pet. for Cert. 142–150.

The District Court concluded, however, that petitioners had not met their burden of showing that a prudent fiduciary would have undertaken a full due-diligence review of these funds as a result of the alleged changed circumstances. According to the District Court, the circumstances had not changed enough to place respondents under an obligation to review the mutual funds and to convert them to lower priced institutional-class mutual funds. *Ibid.*

The Ninth Circuit affirmed the District Court as to the six mutual funds. 729 F. 3d 1110 (2013). With respect to the three mutual funds added in 1999, the Ninth Circuit held that petitioners' claims were untimely because petitioners had not established a change in circumstances that might trigger an obligation to review and to change investments within the 6-year statutory period. Petitioners filed a petition for certiorari asking us to review this latter holding. We agreed to do so.

Section 1113 reads, in relevant part, that "[n]o action may be commenced . . . with respect to a fiduciary's breach of any responsibility, duty, or obligation" after the earlier of "six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation." Both clauses of that provision require only a "breach or violation" to start the 6-year period. Petitioners contend that respondents breached the duty of prudence by offering higher priced retail-class mutual funds when the same investments were available as lower priced institutional-class mutual funds.

The Ninth Circuit, without considering the role of the fiduciary's duty of prudence under trust law, rejected petitioners' claims as untimely under § 1113 on the basis that respondents had selected the three mutual funds more than six years before petitioners brought this action. The Ninth Circuit correctly asked whether the "last action which constituted a part of the breach or violation" of respondents'

duty of prudence occurred *within* the relevant 6-year period. It focused, however, upon the act of "designating an investment for inclusion" to start the 6-year period. 729 F. 3d, at 1119. The Ninth Circuit stated that "[c]haracterizing the mere continued offering of a plan option, without more, as a subsequent breach would render" the statute meaningless and could even expose present fiduciaries to liability for decisions made decades ago. *Id.*, at 1120. But the Ninth Circuit jumped from this observation to the conclusion that *only* a significant change in circumstances could engender a new breach of a fiduciary duty, stating that the District Court was "entirely correct" to have entertained the "possibility" that "significant changes" occurring "within the limitations period" might require "'a full due diligence review of the funds,'" equivalent to the diligence review that respondents conduct when adding new funds to the Plan. *Ibid.*

We believe the Ninth Circuit erred by applying a statutory bar to a claim of a "breach or violation" of a fiduciary duty without considering the nature of the fiduciary duty. The Ninth Circuit did not recognize that under trust law a fiduciary is required to conduct a regular review of its investment with the nature and timing of the review contingent on the circumstances. Of course, after the Ninth Circuit considers trust-law principles, it is possible that it will conclude that respondents did indeed conduct the sort of review that a prudent fiduciary would have conducted absent a significant change in circumstances.

An ERISA fiduciary must discharge his responsibility "with the care, skill, prudence, and diligence" that a prudent person "acting in a like capacity and familiar with such matters" would use. § 1104(a)(1); see also *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U. S. 409 (2014). We have often noted that an ERISA fiduciary's duty is "derived from the common law of trusts." *Central States, Southeast & Southwest Areas Pension Fund* v. *Central Transport, Inc.*, 472 U. S. 559, 570 (1985). In determining the contours of an ERISA

fiduciary's duty, courts often must look to the law of trusts. We are aware of no reason why the Ninth Circuit should not do so here.

Under trust law, a trustee has a continuing duty to monitor trust investments and remove imprudent ones. This continuing duty exists separate and apart from the trustee's duty to exercise prudence in selecting investments at the outset. The Bogert treatise states that "[t]he trustee cannot assume that if investments are legal and proper for retention at the beginning of the trust, or when purchased, they will remain so indefinitely." A. Hess, G. Bogert, & G. Bogert, Law of Trusts and Trustees § 684, pp. 145–146 (3d ed. 2009) (Bogert 3d). Rather, the trustee must "systematic[ally] conside[r] all the investments of the trust at regular intervals" to ensure that they are appropriate. *Id.*, § 684, at 147–148; see also *In re Stark's Estate*, 15 N. Y. S. 729, 731 (Surr. Ct. 1891) (stating that a trustee must "exercis[e] a reasonable degree of diligence in looking after the security after the investment had been made"); *Johns* v. *Herbert*, 2 App. D. C. 485, 499 (1894) (holding trustee liable for failure to discharge his "duty to watch the investment with reasonable care and diligence"). The Restatement (Third) of Trusts states the following:

> "[A] trustee's duties apply not only in making investments but also in monitoring and reviewing investments, which is to be done in a manner that is reasonable and appropriate to the particular investments, courses of action, and strategies involved." § 90, Comment *b*, p. 295 (2007).

The Uniform Prudent Investor Act confirms that "[m]anaging embraces monitoring" and that a trustee has "continuing responsibility for oversight of the suitability of the investments already made." § 2, Comment, 7B U. L. A. 21 (1995) (internal quotation marks omitted). Scott on Trusts implies as much by stating that, "[w]hen the trust estate includes

assets that are inappropriate as trust investments, the trustee is ordinarily under a duty to dispose of them within a reasonable time." 4 A. Scott, W. Fratcher, & M. Ascher, Scott and Ascher on Trusts § 19.3.1, p. 1439 (5th ed. 2007). Bogert says the same. Bogert 3d § 685, at 156–157 (explaining that if an investment is determined to be imprudent, the trustee "must dispose of it within a reasonable time"); see, *e. g.*, *State Street Trust Co.* v. *DeKalb*, 259 Mass. 578, 583, 157 N. E. 334, 336 (1927) (trustee was required to take action to "protect the rights of the beneficiaries" when the value of trust assets declined).

In short, under trust law, a fiduciary normally has a continuing duty of some kind to monitor investments and remove imprudent ones. A plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones. In such a case, so long as the alleged breach of the continuing duty occurred within six years of suit, the claim is timely. The Ninth Circuit erred by applying a 6-year statutory bar based solely on the initial selection of the three funds without considering the contours of the alleged breach of fiduciary duty.

The parties now agree that the duty of prudence involves a continuing duty to monitor investments and remove imprudent ones under trust law. Brief for Petitioners 24 ("Trust law imposes a duty to examine the prudence of existing investments periodically and to remove imprudent investments"); Brief for Respondents 3 ("All agree that a fiduciary has an ongoing duty to monitor trust investments to ensure that they remain prudent"); Brief for United States as *Amicus Curiae* 7 ("The duty of prudence under ERISA, as under trust law, requires plan fiduciaries with investment responsibility to examine periodically the prudence of existing investments and to remove imprudent investments within a reasonable period of time"). The parties disagree, however, with respect to the scope of that responsibility. Did it require a review of the contested mutual funds here, and if so,

just what kind of review did it require? A fiduciary must discharge his responsibilities "with the care, skill, prudence, and diligence" that a prudent person "acting in a like capacity and familiar with such matters" would use. § 1104(a)(1). We express no view on the scope of respondents' fiduciary duty in this case. We remand for the Ninth Circuit to consider petitioners' claims that respondents breached their duties within the relevant 6-year period under § 1113, recognizing the importance of analogous trust law.

A final point: Respondents argue that petitioners did not raise the claim below that respondents committed new breaches of the duty of prudence by failing to monitor their investments and remove imprudent ones absent a significant change in circumstances. We leave any questions of forfeiture for the Ninth Circuit on remand. The Ninth Circuit's judgment is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

COLEMAN, AKA COLEMAN-BEY *v.* TOLLEFSON ET AL.

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

No. 13–1333. Argued February 23, 2015—Decided May 18, 2015*

Ordinarily, a federal litigant who is too poor to pay court fees may proceed *in forma pauperis*. This means that the litigant may commence a civil action without prepaying fees or paying certain expenses. See 28 U. S. C. § 1915(a). But a special "three strikes" provision prevents a court from affording *in forma pauperis* status to a prisoner who "has, on 3 or more prior occasions, while incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." § 1915(g).

Petitioner Coleman, a state prisoner, filed three federal lawsuits that were dismissed on grounds enumerated in § 1915(g). While the third dismissal was pending on appeal, he filed four additional federal lawsuits, moving to proceed *in forma pauperis* in each. The District Court refused to permit him to proceed *in forma pauperis* in any of those lawsuits, holding that a prior dismissal is a strike under § 1915(g) even if it is pending on appeal. The Sixth Circuit agreed with the District Court.

Held: A prior dismissal on one of § 1915(g)'s statutorily enumerated grounds counts as a strike, even if the dismissal is the subject of an ongoing appeal. Pp. 537–541.

(a) Coleman suggests that a dismissal should count as a strike only once appellate review is complete. But the word "dismissed" does not normally include subsequent appellate activity. See, *e. g.*, *Heintz* v. *Jenkins*, 514 U. S. 291, 294. And § 1915 itself describes dismissal as an action taken by a single court, not as a sequence of events involving multiple courts. See § 1915(e). Coleman further contends that the phrase "prior occasions" creates ambiguity. But nothing about that phrase transforms a dismissal into a dismissal-plus-appellate-review. In the context of § 1915(g), a "prior occasion" merely means a previous

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*Together with *Coleman, aka Coleman-Bey* v. *Bowerman et al.*; *Coleman, aka Coleman-Bey* v. *Dykehouse et al.*; and *Coleman, aka Coleman-Bey* v. *Vroman et al.*, also on certiorari to the same court (see this Court's Rule 12.4).

instance in which a "prisoner has . . . brought an action or appeal . . . that was dismissed on" statutorily enumerated grounds.

A literal reading of the "three strikes" provision is consistent with the statute's treatment of the trial and appellate states of litigation as distinct. See §§ 1915(a)(2), (a)(3), (b)(1), (e)(2), (g). It is also supported by the way in which the law ordinarily treats trial court judgments, *i. e.*, a judgment normally takes effect despite a pending appeal, see Fed. Rule Civ. Proc. 62; Fed. Rule App. Proc. 8(a), and its preclusive effect is generally immediate, notwithstanding any appeal, see *Clay* v. *United States*, 537 U. S. 522, 527.

Finally, the statute's purpose favors this Court's interpretation. The "three strikes" provision was "designed to filter out the bad claims and facilitate consideration of the good," *Jones* v. *Bock*, 549 U. S. 199, 204. To refuse to count a prior dismissal because of a pending appeal would produce a leaky filter, because a prisoner could file many new lawsuits before reaching the end of the often lengthy appellate process. By contrast, the Court perceives no great risk that an erroneous trial court dismissal might wrongly deprive a prisoner of *in forma pauperis* status in a subsequent lawsuit. Pp. 537–540.

(b) Coleman also argues that if the dismissal of a third complaint counts as a third strike, a litigant will lose the ability to appeal *in forma pauperis* from that strike itself. He believes this is a result that Congress could not possibly have intended. Because Coleman is not appealing from a third-strike trial-court dismissal here, the Court declines to address that question. Pp. 540–541.

733 F. 3d 175, affirmed.

BREYER, J., delivered the opinion for a unanimous Court.

Kannon K. Shanmugam argued the cause for petitioner. With him on the brief were *Allison B. Jones* and *Julia H. Pudlin*.

Aaron D. Lindstrom, Solicitor General of Michigan, argued the cause for respondents. With him on the brief were *Bill Schuette*, Attorney General, and *Kevin R. Himebaugh*, Assistant Attorney General.

Allon Kedem argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Verrilli*, *Acting Assistant Attorney*

General Branda, *Deputy Solicitor General Gershengorn*, *Barbara L. Herwig*, and *Lowell V. Sturgill, Jr.*†

JUSTICE BREYER delivered the opinion of the Court.

Ordinarily, a federal litigant who is too poor to pay court fees may proceed *in forma pauperis*. This means that the litigant may commence a civil action without prepaying fees or paying certain expenses. See 28 U. S. C. § 1915. But a special "three strikes" provision prevents a court from affording *in forma pauperis* status where the litigant is a prisoner and he or she "has, on 3 or more prior occasions, while incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." § 1915(g).

Prior to this litigation, a Federal District Court had dismissed on those grounds three actions brought by a state prisoner. While the third dismissal was pending on appeal, the prisoner sought to bring several additional actions in the federal courts. The question before us is whether the prisoner may litigate his new actions *in forma pauperis*. Where an appeals court has not yet decided whether a prior dismissal is legally proper, should courts count, or should they ignore, that dismissal when calculating how many qualifying dismissals the litigant has suffered?

We conclude that the courts must count the dismissal even though it remains pending on appeal. The litigant here has accumulated three prior dismissals on statutorily enumerated grounds. Consequently, a court may not afford him *in forma pauperis* status with respect to his additional civil actions.

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†Briefs of *amici curiae* urging reversal were filed for the Constitutional Accountability Center by *Douglas T. Kendall*, *Elizabeth B. Wydra*, and *Brianne J. Gorod*; for the National Association of Criminal Defense Lawyers by *Catherine M. A. Carroll* and *David M. Porter*; and for Thirty-three Professors by *Matthew A. Fitzgerald*.

I

A

Congress first enacted an *in forma pauperis* statute in 1892. See Act of July 20, ch. 209, 27 Stat. 252. Congress recognized that "no citizen sh[ould] be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because his poverty makes it impossible for him to pay or secure the costs." *Adkins* v. *E. I. DuPont de Nemours & Co.*, 335 U. S. 331, 342 (1948) (internal quotation marks omitted). It therefore permitted a citizen to "commence and prosecute to conclusion any such . . . action without being required to prepay fees or costs, or give security therefor before or after bringing suit." § 1, 27 Stat. 252. The current statute permits an individual to litigate a federal action *in forma pauperis* if the individual files an affidavit stating, among other things, that he or she is unable to prepay fees "or give security therefor." 28 U. S. C. § 1915(a)(1).

Even in 1892, "Congress recognized . . . that a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Neitzke* v. *Williams*, 490 U. S. 319, 324 (1989). And as the years passed, Congress came to see that prisoner suits in particular represented a disproportionate share of federal filings. *Jones* v. *Bock*, 549 U. S. 199, 202–203 (2007). It responded by "enact[ing] a variety of reforms designed to filter out the bad claims [filed by prisoners] and facilitate consideration of the good." *Id.*, at 204. Among those reforms was the "three strikes" rule here at issue. The rule, which applies to *in forma pauperis* status, reads in its entirety as follows:

> "In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding [*in forma pauperis*] if the prisoner has, on 3 or more prior occa-

> sions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." § 1915(g).

B

The petitioner, André Lee Coleman, is incarcerated at the Baraga Correctional Facility in Michigan. By 2010, three federal lawsuits filed by Coleman during his incarceration had been dismissed as frivolous (or on other grounds enumerated in § 1915(g)). Nonetheless, when Coleman filed four new federal lawsuits between April 2010 and January 2011, he moved to proceed *in forma pauperis* in each. He denied that his third dismissed lawsuit counted as a strike under § 1915(g). That is because he had appealed the dismissal, and the appeals court had not yet ruled. Thus, in Coleman's view, he had fewer than three qualifying dismissals, and was eligible for *in forma pauperis* status under the statute.

The District Court rejected Coleman's argument. It held that "a dismissal counts as a strike even if it is pending on appeal at the time that the plaintiff files his new action." No. 10–cv–337 (WD Mich., Apr. 12, 2011), App. to Pet. for Cert. 21a, 24a. It thus refused to permit Coleman to proceed *in forma pauperis* in any of his four suits.

On appeal, a divided panel of the Sixth Circuit agreed with the District Court. 733 F. 3d 175 (2013). It resolved the four cases using slightly different procedures. In one of the four cases, the Sixth Circuit affirmed the District Court's judgment. In the remaining three cases, it denied Coleman's request to proceed *in forma pauperis* on appeal. It subsequently dismissed the three cases for want of prosecution after Coleman failed to pay the appellate filing fees.

In contrast to the Sixth Circuit, the vast majority of the other Courts of Appeals have held that a prior dismissal on

a statutorily enumerated ground does not count as a strike while an appeal of that dismissal remains pending. See *Henslee* v. *Keller*, 681 F. 3d 538, 541 (CA4 2012) (listing, and joining, courts that have adopted the majority view). In light of the division of opinion among the Circuits, we granted Coleman's petition for certiorari.

II

A

In our view, the Sixth Circuit majority correctly applied § 1915(g). A prior dismissal on a statutorily enumerated ground counts as a strike even if the dismissal is the subject of an appeal. That, after all, is what the statute literally says. The "three strikes" provision applies where a prisoner "has, on 3 or more prior occasions . . . brought an action or appeal . . . *that was dismissed* on" certain grounds. § 1915(g) (emphasis added). Coleman believes that we should read the statute as if it referred to an "affirmed dismissal," as if it considered a trial court dismissal to be provisional, or as if it meant that a dismissal falls within the statute's scope only when the litigant has no further chance to secure a reversal. But the statute itself says none of these things.

Instead, the statute refers to whether an action or appeal "was dismissed." § 1915(g). The linguistic term "dismiss," taken alone, does not normally include subsequent appellate activity. See, *e. g.*, *Heintz* v. *Jenkins*, 514 U. S. 291, 294 (1995) ("[T]he District Court dismissed [the] lawsuit for failure to state a claim. . . . However, the Court of Appeals for the Seventh Circuit reversed the District Court's judgment"); *Gray* v. *Netherland*, 518 U. S. 152, 158 (1996) ("The Suffolk Circuit Court dismissed petitioner's state petition for a writ of habeas corpus. The Virginia Supreme Court affirmed the dismissal"). Indeed, § 1915 itself describes dismissal as an action taken by a single court, not as a sequence of events involving multiple courts. See § 1915(e)(2) ("*[T]he*

court shall dismiss the case at any time if *the court* determines that—(A) the allegation of poverty is untrue; or (B) the action or appeal—(i) is frivolous or malicious; [or] (ii) fails to state a claim on which relief may be granted" (emphasis added)).

Coleman insists that § 1915(g) is not so clear. Even if the term "dismissed" is unambiguous, contends Coleman, the phrase "prior occasions" creates ambiguity. Coleman observes that the phrase " 'may refer to a single moment or to a continuing event: to an appeal, independent of the underlying action, or to the continuing claim, inclusive of both the action and its appeal.' " Brief for Petitioner 17 (quoting *Henslee*, *supra*, at 542). Coleman believes that a "prior occasion" in the context of § 1915(g) may therefore include both a dismissal on an enumerated ground and any subsequent appeal.

We find it difficult to agree. Linguistically speaking, we see nothing about the phrase "prior occasions" that would transform a dismissal into a dismissal-plus-appellate-review. An "occasion" is "a particular occurrence," a "happening," or an "incident." Webster's Third New International Dictionary 1560 (3d ed. 1993). And the statute provides the content of that occurrence, happening, or incident: It is an instance in which a "prisoner has . . . brought an action or appeal in a court of the United States that was dismissed on" statutorily enumerated grounds. § 1915(g). Under the plain language of the statute, when Coleman filed the suits at issue here, he had already experienced three such "prior occasions."

Our literal reading of the phrases "prior occasions" and "was dismissed" is consistent with the statute's discussion of actions and appeals. The *in forma pauperis* statute repeatedly treats the trial and appellate stages of litigation as distinct. See §§ 1915(a)(2), (a)(3), (b)(1), (e)(2), (g). Related provisions reflect a congressional focus upon trial court dismissal as an important separate element of the statutory scheme. See § 1915A (requiring a district court to screen

certain prisoner complaints "as soon as practicable" and to dismiss any portion of the complaint that "is frivolous, malicious, or fails to state a claim upon which relief may be granted"); 42 U. S. C. § 1997e(c)(1) (similar). We have found nothing in these provisions indicating that Congress considered a trial court dismissal and an appellate court decision as if they were a single entity—or that Congress intended the former to take effect only when affirmed by the latter.

Our literal reading of the "three strikes" provision also is supported by the way in which the law ordinarily treats trial court judgments. Unless a court issues a stay, a trial court's judgment (say, dismissing a case) normally takes effect despite a pending appeal. See Fed. Rule Civ. Proc. 62; Fed. Rule App. Proc. 8(a). And a judgment's preclusive effect is generally immediate, notwithstanding any appeal. See *Clay* v. *United States*, 537 U. S. 522, 527 (2003) ("Typically, a federal judgment becomes final for . . . claim preclusion purposes when the district court disassociates itself from the case, leaving nothing to be done at the court of first instance save execution of the judgment"). The ordinary rules of civil procedure thus provide additional support for our interpretation of the statute. See *Jones*, 549 U. S., at 211–216 (applying the ordinary rules of civil procedure where the procedural requirements for prison litigation do not call for an alternative).

Finally, the statute's purpose favors our interpretation. The "three strikes" provision was "designed to filter out the bad claims and facilitate consideration of the good." *Id.*, at 204. To refuse to count a prior dismissal because of a pending appeal would produce a leaky filter. Appeals take time. During that time, a prisoner could file many lawsuits, including additional lawsuits that are frivolous, malicious, or fail to state a claim upon which relief may be granted. Indeed, Coleman filed these four cases after he suffered his third qualifying dismissal, in October 2009, and before the affirmance of that order, in March 2011.

We recognize that our interpretation of the statute may create a different risk: An erroneous trial court dismissal might wrongly deprive a prisoner of *in forma pauperis* status with respect to lawsuits filed after a dismissal but before its reversal on appeal. But that risk does not seem great. For one thing, the Solicitor General informs us that he has been able to identify only two instances in which a Court of Appeals has reversed a District Court's issuance of a third strike. Brief for United States as *Amicus Curiae* 22, n. 5. For another, where a court of appeals reverses a third strike, in some instances the prisoner will be able to refile his or her lawsuit after the reversal, seeking *in forma pauperis* status at that time. Further, if the statute of limitations governing that lawsuit has run out before the court of appeals reverses the third strike, the Solicitor General assures us that prisoners will find relief in Federal Rule of Civil Procedure 60(b). According to the Solicitor General, a prisoner may move to reopen his or her interim lawsuits (reinstating the cases as of the dates originally filed) and may then seek *in forma pauperis* status anew. In any event, we believe our interpretation of the statute hews more closely to its meaning and objective than does Coleman's alternative.

B

Coleman makes an additional argument. He poses a hypothetical: What if this litigation had involved an attempt to appeal from the trial court's dismissal of his third complaint instead of an attempt to file several additional complaints? If the dismissal were counted as his third strike, Coleman asserts, he would lose the ability to appeal *in forma pauperis* from that strike itself. He believes that this result, which potentially could deprive him of appellate review, would be unfair. He further believes that it would be such a departure from the federal courts' normal appellate practice that Congress could not possibly have intended it.

The Solicitor General, while subscribing to our interpretation of the statute, supports Coleman on this point. The Solicitor General says that we can and should read the statute to afford a prisoner *in forma pauperis* status with respect to an appeal from a *third* qualifying dismissal—even if it does not allow a prisoner to file a *fourth* case during that time. He believes that the statute, in referring to dismissals "on 3 or more *prior* occasions," 28 U. S. C. § 1915(g) (emphasis added), means that a trial court dismissal qualifies as a strike only if it occurred in a prior, *different*, lawsuit.

We need not, and do not, now decide whether the Solicitor General's interpretation (or some other interpretation with the same result) is correct. That is because Coleman is not here appealing from a third-strike trial court dismissal. He is appealing from the denial of *in forma pauperis* status with respect to several separate suits filed after the trial court dismissed his earlier third-strike suit. With respect to those suits, the earlier dismissals certainly took place on "prior occasions." If and when the situation that Coleman hypothesizes does arise, the courts can consider the problem in context.

* * *

For the reasons stated, we hold that a prisoner who has accumulated three prior qualifying dismissals under § 1915(g) may not file an additional suit *in forma pauperis* while his appeal of one such dismissal is pending. The judgments of the Court of Appeals are

Affirmed.

Syllabus

COMPTROLLER OF THE TREASURY OF MARYLAND *v.* WYNNE ET UX.

CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

No. 13–485. Argued November 12, 2014—Decided May 18, 2015

Maryland's personal income tax on state residents consists of a "state" income tax, Md. Tax-Gen. Code Ann. § 10–105(a), and a "county" income tax, §§ 10–103, 10–106. Residents who pay income tax to another jurisdiction for income earned in that other jurisdiction are allowed a credit against the "state" tax but not the "county" tax. § 10–703. Nonresidents who earn income from sources within Maryland must pay the "state" income tax, §§ 10–105(d), 10–210, and nonresidents not subject to the county tax must pay a "special nonresident tax" in lieu of the "county" tax, § 10–106.1.

Respondents, Maryland residents, earned pass-through income from a Subchapter S corporation that earned income in several States. Respondents claimed an income tax credit on their 2006 Maryland income tax return for taxes paid to other States. The Maryland State Comptroller of the Treasury, petitioner here, allowed respondents a credit against their "state" income tax but not against their "county" income tax and assessed a tax deficiency. That decision was affirmed by the Hearings and Appeals Section of the Comptroller's Office and by the Maryland Tax Court, but the Circuit Court for Howard County reversed on the ground that Maryland's tax system violated the Commerce Clause of the Federal Constitution. The Court of Appeals of Maryland affirmed and held that the tax unconstitutionally discriminated against interstate commerce.

Held: Maryland's personal income tax scheme violates the dormant Commerce Clause. Pp. 548–571.

(a) The Commerce Clause, which grants Congress power to "regulate Commerce . . . among the several States," Art. I, § 8, cl. 3, also has "a further, negative command, known as the dormant Commerce Clause," *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U. S. 175, 179, which precludes States from "discriminat[ing] between transactions on the basis of some interstate element," *Boston Stock Exchange* v. *State Tax Comm'n*, 429 U. S. 318, 332, n. 12. Thus, *inter alia*, a State "may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State," *Armco Inc.* v. *Hardesty*, 467 U. S. 638, 642, or "impose a tax which discriminates against interstate commerce either by providing a direct commercial advantage to

local business, or by subjecting interstate commerce to the burden of 'multiple taxation,'" *Northwestern States Portland Cement Co.* v. *Minnesota*, 358 U. S. 450, 458. Pp. 548–550.

(b) The result in this case is all but dictated by this Court's dormant Commerce Clause cases, particularly *J. D. Adams Mfg. Co.* v. *Storen*, 304 U. S. 307, 311, *Gwin, White & Prince, Inc.* v. *Henneford*, 305 U. S. 434, 439, and *Central Greyhound Lines, Inc.* v. *Mealey*, 334 U. S. 653, 662, which all invalidated state tax schemes that might lead to double taxation of out-of-state income and that discriminated in favor of intrastate over interstate economic activity. Pp. 550–551.

(c) This conclusion is not affected by the fact that these three cases involved a tax on gross receipts rather than net income, and a tax on corporations rather than individuals. This Court's decisions have previously rejected the formal distinction between gross receipts and net income taxes. And there is no reason the dormant Commerce Clause should treat individuals less favorably than corporations; in addition, the taxes invalidated in *J. D. Adams* and *Gwin, White* applied to the income of both individuals and corporations. Nor does the right of the individual to vote in political elections justify disparate treatment of corporate and personal income. Thus the Court has previously entertained and even sustained dormant Commerce Clause challenges by individual residents of the State that imposed the alleged burden on interstate commerce. See *Department of Revenue of Ky.* v. *Davis*, 553 U. S. 328, 336; *Granholm* v. *Heald*, 544 U. S. 460, 469 (2005). Pp. 551–556.

(d) Maryland's tax scheme is not immune from dormant Commerce Clause scrutiny simply because Maryland has the jurisdictional power under the Due Process Clause to impose the tax. "[W]hile a state may, consistent with the Due Process Clause, have the authority to tax a particular taxpayer, imposition of the tax may nonetheless violate the Commerce Clause." *Quill Corp.* v. *North Dakota*, 504 U. S. 298, 305. Pp. 556–558.

(e) Maryland's income tax scheme discriminates against interstate commerce. The "internal consistency" test, which helps courts identify tax schemes that discriminate against interstate commerce, assumes that every State has the same tax structure. Maryland's income tax scheme fails the internal consistency test because if every State adopted Maryland's tax structure, interstate commerce would be taxed at a higher rate than intrastate commerce. Maryland's tax scheme is inherently discriminatory and operates as a tariff, which is fatal because tariffs are "[t]he paradigmatic example of a law discriminating against interstate commerce." *West Lynn Creamery, Inc.* v. *Healy*, 512 U. S. 186, 193. Petitioner emphasizes that by offering residents who earn income in interstate commerce a credit against the "state" portion of

the income tax, Maryland actually receives less tax revenue from residents who earn income from interstate commerce rather than intrastate commerce, but this argument is a red herring. The critical point is that the total tax burden on interstate commerce is higher. Pp. 561–569.

431 Md. 147, 64 A. 3d 453, affirmed.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, and SOTOMAYOR, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined as to Parts I and II, *post*, p. 571. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined except as to the first paragraph, *post*, p. 578. GINSBURG, J., filed a dissenting opinion, in which SCALIA and KAGAN, JJ., joined, *post*, p. 581.

William F. Brockman, Acting Solicitor General of Maryland, argued the cause for petitioner. With him on the briefs were *Douglas F. Gansler*, Attorney General, *Steven M. Sullivan*, Chief of Litigation, *Julia Doyle Bernhardt*, Deputy Chief of Litigation, *Brian L. Oliner*, Assistant Attorney General, and *H. Bartow Farr III*.

Eric J. Feigin argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Delery*, *Acting Assistant Attorney General Ashford*, *Deputy Solicitor General Stewart*, *Johnathan S. Cohen*, and *Damon W. Taaffe*.

Dominic F. Perella argued the cause for respondents. With him on the brief were *Neal Kumar Katyal*, *Frederick Liu*, and *Sean Marotta*.*

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*Briefs of *amici curiae* urging reversal were filed for the International Municipal Lawyers Association et al. by *Paul D. Clement*, *Zachary D. Tripp*, *John C. Neiman, Jr.*, *Lisa Soronen*, and *Charles W. Thompson, Jr.*; and for the Multistate Tax Commission by *Joe Huddleston*, *Helen Hecht*, and *Sheldon Laskin*.

Briefs of *amici curiae* urging affirmance were filed for American Association of Attorney-Certified Public Accountants, Inc., by *David S. DeJong*, *C. Murray Saylor, Jr.*, *James H. Sutton, Jr.*, and *Sydney S. Traum*; for the American Legislative Exchange Council by *Seth L. Cooper*; for the Chamber of Commerce of the United States of America by *Jeffrey A. Lamken*, *Kathryn Comerford Todd*, and *Warren Postman*; for the Council

JUSTICE ALITO delivered the opinion of the Court.

This case involves the constitutionality of an unusual feature of Maryland's personal income tax scheme. Like many other States, Maryland taxes the income its residents earn both within and outside the State, as well as the income that nonresidents earn from sources within Maryland. But unlike most other States, Maryland does not offer its residents a full credit against the income taxes that they pay to other States. The effect of this scheme is that some of the income earned by Maryland residents outside the State is taxed twice. Maryland's scheme creates an incentive for taxpayers to opt for intrastate rather than interstate economic activity.

We have long held that States cannot subject corporate income to tax schemes similar to Maryland's, and we see no reason why income earned by individuals should be treated less favorably. Maryland admits that its law has the same economic effect as a state tariff, the quintessential evil targeted by the dormant Commerce Clause. We therefore affirm the decision of Maryland's highest court and hold that this feature of the State's tax scheme violates the Federal Constitution.

I

Maryland, like most States, raises revenue in part by levying a personal income tax. The income tax that Maryland

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on State Taxation by *Karl Frieden*, *Frederick Nicely*, and *Douglas Lindholm*; for the Maryland Chamber of Commerce by *Jerome B. Libin*, *Jeffrey A. Friedman*, and *Walter Hellerstein*; for the National Association of Publicly Traded Partnerships by *Timothy P. O'Toole* and *Alan I. Horowitz*; for the National Federation of Independent Business Small Business Legal Center et al. by *Steven G. Bradbury*, *Steven A. Engel*, *Michael J. Rufkahr*, *Karen R. Harned*, *Elizabeth Milito*, and *Devala Janardan*; for Tax Economists by *David W. T. Daniels*; for the Tax Executives Institute, Inc., by *Daniel B. DeJong*, *W. Patrick Evans*, and *Eli J. Dicker*; and for the Tax Foundation by *Joseph D. Henchman*.

A brief of *amici curiae* was filed for Michael S. Knoll et al. by *H. David Rosenbloom*, and *Mr. Knoll* and *Ruth Mason*, both *pro se*.

imposes upon its own residents has two parts: a "state" income tax, which is set at a graduated rate, Md. Tax-Gen. Code Ann. § 10–105(a) (Supp. 2014), and a so-called "county" income tax, which is set at a rate that varies by county but is capped at 3.2%, §§ 10–103, 10–106 (2010). Despite the names that Maryland has assigned to these taxes, both are State taxes, and both are collected by the State's Comptroller of the Treasury. *Frey* v. *Comptroller of Treasury*, 422 Md. 111, 125, 141–142, 29 A. 3d 475, 483, 492 (2011). Of course, some Maryland residents earn income in other States, and some of those States also tax this income. If Maryland residents pay income tax to another jurisdiction for income earned there, Maryland allows them a credit against the "state" tax but not the "county" tax. § 10–703; 431 Md. 147, 156–157, 64 A. 3d 453, 458 (2013) (case below). As a result, part of the income that a Maryland resident earns outside the State may be taxed twice.

Maryland also taxes the income of nonresidents. This tax has two parts. First, nonresidents must pay the "state" income tax on all the income that they earn from sources within Maryland. §§ 10–105(d) (Supp. 2014), 10–210 (2010). Second, nonresidents not subject to the county tax must pay a "special nonresident tax" in lieu of the "county" tax. § 10–106.1; *Frey*, *supra*, at 125–126, 29 A. 3d, at 483. The "special nonresident tax" is levied on income earned from sources within Maryland, and its rate is "equal to the lowest county income tax rate set by any Maryland county." § 10–106.1. Maryland does not tax the income that nonresidents earn from sources outside Maryland. See § 10–210.

Respondents Brian and Karen Wynne are Maryland residents. In 2006, the relevant tax year, Brian Wynne owned stock in Maxim Healthcare Services, Inc., a Subchapter S corporation.[1] That year, Maxim earned income in States

[1] Under federal law, S corporations permit shareholders "to elect a 'pass-through' taxation system under which income is subjected to only one level of taxation. The corporation's profits pass through directly to its

other than Maryland, and it filed state income tax returns in 39 States. The Wynnes earned income passed through to them from Maxim. On their 2006 Maryland tax return, the Wynnes claimed an income tax credit for income taxes paid to other States.

Petitioner, the Maryland State Comptroller of the Treasury, denied this claim and assessed a tax deficiency. In accordance with Maryland law, the Comptroller allowed the Wynnes a credit against their Maryland "state" income tax but not against their "county" income tax. The Hearings and Appeals Section of the Comptroller's Office slightly modified the assessment but otherwise affirmed. The Maryland Tax Court also affirmed, but the Circuit Court for Howard County reversed on the ground that Maryland's tax system violated the Commerce Clause.

The Court of Appeals of Maryland affirmed. 431 Md. 147, 64 A. 3d 453. That court evaluated the tax under the four-part test of *Complete Auto Transit, Inc.* v. *Brady*, 430 U. S. 274 (1977), which asks whether a "tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." *Id.*, at 279. The Court of Appeals held that the tax failed both the fair apportionment and nondiscrimination parts of the *Complete Auto* test. With respect to fair appor-

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shareholders on a pro rata basis and are reported on the shareholders' individual tax returns." *Gitlitz* v. *Commissioner*, 531 U. S. 206, 209 (2001) (citation omitted). Maryland affords similar pass-through treatment to the income of an S corporation. 431 Md. 147, 158, 64 A. 3d 453, 459 (2013). By contrast, C corporations—organized under Subchapter C rather than S of Chapter 1 of the Internal Revenue Code—must pay their own taxes because they are considered to be separate tax entities from their shareholders. 14A W. Fletcher, Cyclopedia of the Law of Corporations §§ 6971, 6973 (rev. ed. 2008 and Cum. Supp. 2014–2015). Because of limitations on the number and type of shareholders they may have, S corporations tend to be smaller, more closely held corporations. *Id.*, §§ 7025.50, 7026.

tionment, the court first held that the tax failed the "internal consistency" test because if every State adopted Maryland's tax scheme, interstate commerce would be taxed at a higher rate than intrastate commerce. It then held that the tax failed the "external consistency" test because it created a risk of multiple taxation. With respect to nondiscrimination, the court held that the tax discriminated against interstate commerce because it denied residents a credit on income taxes paid to other States and so taxed income earned interstate at a rate higher than income earned intrastate. The court thus concluded that Maryland's tax scheme was unconstitutional insofar as it denied the Wynnes a credit against the "county" tax for income taxes they paid to other States. Two judges dissented and argued that the tax did not violate the Commerce Clause. The Court of Appeals later issued a brief clarification that "[a] state may avoid discrimination against interstate commerce by providing a tax credit, or some other method of apportionment, to avoid discriminating against interstate commerce in violation of the dormant Commerce Clause." 431 Md., at 189, 64 A. 3d, at 478.

We granted certiorari. 572 U. S. 1134 (2014).

II

A

The Commerce Clause grants Congress power to "regulate Commerce . . . among the several States." Art. I, § 8, cl. 3. These "few simple words . . . reflected a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation." *Hughes* v. *Oklahoma*, 441 U. S. 322, 325–326 (1979). Although the Clause is framed as a positive grant of power to Congress, "we have consistently

held this language to contain a further, negative command, known as the dormant Commerce Clause, prohibiting certain state taxation even when Congress has failed to legislate on the subject." *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U. S. 175, 179 (1995).

This interpretation of the Commerce Clause has been disputed. See *Camps Newfound/Owatonna, Inc.* v. *Town of Harrison*, 520 U. S. 564, 609–620 (1997) (THOMAS, J., dissenting); *Tyler Pipe Industries, Inc.* v. *Washington State Dept. of Revenue*, 483 U. S. 232, 259–265 (1987) (SCALIA, J., concurring in part and dissenting in part); *License Cases*, 5 How. 504, 578–579 (1847) (Taney, C. J.). But it also has deep roots. See, *e. g., Case of the State Freight Tax*, 15 Wall. 232, 279–280 (1873); *Cooley* v. *Board of Wardens of Port of Philadelphia ex rel. Soc. for Relief of Distressed Pilots*, 12 How. 299, 318–319 (1852); *Gibbons* v. *Ogden*, 9 Wheat. 1, 209 (1824) (Marshall, C. J.). By prohibiting States from discriminating against or imposing excessive burdens on interstate commerce without congressional approval, it strikes at one of the chief evils that led to the adoption of the Constitution, namely, state tariffs and other laws that burdened interstate commerce. *Fulton Corp.* v. *Faulkner*, 516 U. S. 325, 330–331 (1996); *Hughes*, *supra*, at 325; *Welton* v. *Missouri*, 91 U. S. 275, 280 (1876); see also The Federalist Nos. 7, 11 (A. Hamilton), and 42 (J. Madison).

Under our precedents, the dormant Commerce Clause precludes States from "discriminat[ing] between transactions on the basis of some interstate element." *Boston Stock Exchange* v. *State Tax Comm'n*, 429 U. S. 318, 332, n. 12 (1977). This means, among other things, that a State "may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State." *Armco Inc.* v. *Hardesty*, 467 U. S. 638, 642 (1984). "Nor may a State impose a tax which discriminates against interstate commerce either by providing a direct commercial advantage to local business, or by subjecting interstate commerce to the

burden of 'multiple taxation.'" *Northwestern States Portland Cement Co.* v. *Minnesota*, 358 U. S. 450, 458 (1959) (citations omitted).

B

Our existing dormant Commerce Clause cases all but dictate the result reached in this case by Maryland's highest court. Three cases involving the taxation of the income of domestic corporations are particularly instructive.

In *J. D. Adams Mfg. Co.* v. *Storen*, 304 U. S. 307 (1938), Indiana taxed the income of every Indiana resident (including individuals) and the income that every nonresident derived from sources within Indiana. *Id.*, at 308. The State levied the tax on income earned by the plaintiff Indiana corporation on sales made out of the State. *Id.*, at 309. Holding that this scheme violated the dormant Commerce Clause, we explained that the "vice of the statute" was that it taxed, "without apportionment, receipts derived from activities in interstate commerce." *Id.*, at 311. If these receipts were also taxed by the States in which the sales occurred, we warned, interstate commerce would be subjected "to the risk of a double tax burden to which intrastate commerce is not exposed, and which the commerce clause forbids." *Ibid.*

The next year, in *Gwin, White & Prince, Inc.* v. *Henneford*, 305 U. S. 434 (1939), we reached a similar result. In that case, the State of Washington taxed all the income of persons doing business in the State. *Id.*, at 435. Washington levied that tax on income that the plaintiff Washington corporation earned in shipping fruit from Washington to other States and foreign countries. *Id.*, at 436–437. This tax, we wrote, "discriminates against interstate commerce, since it imposes upon it, merely because interstate commerce is being done, the risk of a multiple burden to which local commerce is not exposed." *Id.*, at 439.

In the third of these cases involving the taxation of a domestic corporation, *Central Greyhound Lines, Inc.* v. *Mealey*,

334 U. S. 653 (1948), New York sought to tax the portion of a domiciliary bus company's gross receipts that were derived from services provided in neighboring States. *Id.*, at 660; see also *id.*, at 665 (Murphy, J., dissenting) (stating that the plaintiff was a New York corporation). Noting that these other States might also attempt to tax this portion of the company's gross receipts, the Court held that the New York scheme violated the dormant Commerce Clause because it imposed an "unfair burden" on interstate commerce. *Id.*, at 662 (majority opinion).

In all three of these cases, the Court struck down a state tax scheme that might have resulted in the double taxation of income earned out of the State and that discriminated in favor of intrastate over interstate economic activity. As we will explain, see Part II–F, *infra*, Maryland's tax scheme is unconstitutional for similar reasons.

C

The principal dissent distinguishes these cases on the sole ground that they involved a tax on gross receipts rather than net income. We see no reason why the distinction between gross receipts and net income should matter, particularly in light of the admonition that we must consider "not the formal language of the tax statute but rather its practical effect." *Complete Auto*, 430 U. S., at 279. The principal dissent claims, see *post*, at 592 (opinion of GINSBURG, J.), that "[t]he Court, *historically*, has taken the position that the difference between taxes on net income and taxes on gross receipts from interstate commerce warrants different results," 2 C. Trost & P. Hartman, Federal Limitations on State and Local Taxation 2d § 10:1, p. 251 (2003) (hereinafter Trost) (emphasis added). But this historical point is irrelevant. As the principal dissent seems to acknowledge, our cases rejected this formal distinction some time ago. And the distinction between gross receipts and net income taxes was not the basis for our decisions in *J. D. Adams*, *Gwin*, *White*, and *Central*

Greyhound, which turned instead on the threat of multiple taxation.

The discarded distinction between taxes on gross receipts and net income was based on the notion, endorsed in some early cases, that a tax on gross receipts is an impermissible "direct and immediate burden" on interstate commerce, whereas a tax on net income is merely an "indirect and incidental" burden. *United States Glue Co.* v. *Town of Oak Creek*, 247 U. S. 321, 328–329 (1918); see also *Shaffer* v. *Carter*, 252 U. S. 37, 57 (1920). This arid distinction between direct and indirect burdens allowed "very little coherent, trustworthy guidance as to tax validity." 2 Trost § 9:1, at 212. And so, beginning with Justice Stone's seminal opinion in *Western Live Stock* v. *Bureau of Revenue*, 303 U. S. 250 (1938), and continuing through cases like *J. D. Adams* and *Gwin, White*, the direct-indirect burdens test was replaced with a more practical approach that looked to the economic impact of the tax. These cases worked "a substantial judicial reinterpretation of the power of the States to levy taxes on gross income from interstate commerce." 1 Trost § 2:20, at 175.

After a temporary reversion to our earlier formalism, see *Spector Motor Service, Inc.* v. *O'Connor*, 340 U. S. 602 (1951), "the gross receipts judicial pendulum has swung in a wide arc, recently reaching the place where taxation of gross receipts from interstate commerce is placed on an equal footing with receipts from local business, in *Complete Auto Transit Inc. v. Brady*," 2 Trost § 9:1, at 212. And we have now squarely rejected the argument that the Commerce Clause distinguishes between taxes on net and gross income. See *Jefferson Lines*, 514 U. S., at 190 (explaining that the Court in *Central Greyhound* "understood the gross receipts tax to be simply a variety of tax on income"); *Moorman Mfg. Co.* v. *Bair*, 437 U. S. 267, 280 (1978) (rejecting a suggestion that the Commerce Clause distinguishes between gross receipts

taxes and net income taxes); *id.*, at 281 (Brennan, J., dissenting) ("I agree with the Court that, for purposes of constitutional review, there is no distinction between a corporate income tax and a gross-receipts tax"); *Complete Auto*, *supra*, at 280 (upholding a gross receipts tax and rejecting the notion that the Commerce Clause places "a blanket prohibition against any state taxation imposed directly on an interstate transaction").[2]

For its part, petitioner distinguishes *J. D. Adams*, *Gwin*, *White*, and *Central Greyhound* on the ground that they concerned the taxation of corporations, not individuals. But it is hard to see why the dormant Commerce Clause should treat individuals less favorably than corporations. See *Camps Newfound*, 520 U. S., at 574 ("A tax on real estate, *like any other tax*, may impermissibly burden interstate commerce" (emphasis added)). In addition, the distinction between individuals and corporations cannot stand because the taxes invalidated in *J. D. Adams* and *Gwin*, *White* applied to the income of both individuals and corporations. See Ind. Stat. Ann., ch. 26, § 64–2602 (Burns 1933) (tax in *J. D. Adams*); 1935 Wash. Sess. Laws ch. 180, Tit. II, § 4(e), pp. 710–711 (tax in *Gwin*, *White*).

Attempting to explain why the dormant Commerce Clause should provide less protection for natural persons than for corporations, petitioner and the Solicitor General argue that

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[2] The principal dissent mischaracterizes the import of the Court's statement in *Moorman* that a gross receipts tax is "'more burdensome'" than a net income tax. *Post*, at 593. This was a statement about the relative economic impact of the taxes (a gross receipts tax applies regardless of whether the corporation makes a profit). It was not, as Justice Brennan confirmed in dissent, a suggestion that net income taxes are subject to lesser constitutional scrutiny than gross receipts taxes. Indeed, we noted in *Moorman* that "the actual burden on interstate commerce would have been the same had Iowa imposed a plainly valid gross-receipts tax instead of the challenged [net] income tax." *Moorman Mfg. Co.* v. *Bair*, 437 U. S. 267, 280–281 (1978).

States should have a free hand to tax their residents' out-of-state income because States provide their residents with many services. As the Solicitor General puts it, individuals "reap the benefits of local roads, local police and fire protection, local public schools, [and] local health and welfare benefits." Brief for United States as *Amicus Curiae* 30.

This argument fails because corporations also benefit heavily from state and local services. Trucks hauling a corporation's supplies and goods, and vehicles transporting its employees, use local roads. Corporations call upon local police and fire departments to protect their facilities. Corporations rely on local schools to educate prospective employees, and the availability of good schools and other government services are features that may aid a corporation in attracting and retaining employees. Thus, disparate treatment of corporate and personal income cannot be justified based on the state services enjoyed by these two groups of taxpayers.

The sole remaining attribute that, in the view of petitioner, distinguishes a corporation from an individual for present purposes is the right of the individual to vote. The principal dissent also emphasizes that residents can vote to change Maryland's discriminatory tax law. *Post*, at 583–584. The argument is that this Court need not be concerned about state laws that burden the interstate activities of individuals because those individuals can lobby and vote against legislators who support such measures. But if a State's tax unconstitutionally discriminates against interstate commerce, it is invalid regardless of whether the plaintiff is a resident voter or nonresident of the State. This Court has thus entertained and even sustained dormant Commerce Clause challenges by individual residents of the State that imposed the alleged burden on interstate commerce, *Department of Revenue of Ky.* v. *Davis*, 553 U. S. 328, 336 (2008); *Granholm* v. *Heald*, 544 U. S. 460, 469 (2005), and we have also sustained such a challenge to a tax whose burden was borne by in-

state consumers, *Bacchus Imports, Ltd.* v. *Dias*, 468 U. S. 263, 272 (1984).[3]

The principal dissent and JUSTICE SCALIA respond to these holdings by relying on dictum in *Goldberg* v. *Sweet*, 488 U. S. 252, 266 (1989), that it is not the purpose of the dormant Commerce Clause "'to protect state residents from their own state taxes.'" *Post*, at 584 (GINSBURG, J., dissenting); *post*, at 576 (SCALIA, J., dissenting). But we repudiated that dictum in *West Lynn Creamery, Inc.* v. *Healy*, 512 U. S. 186 (1994), where we stated that "[s]tate taxes are ordinarily paid by in-state businesses and consumers, yet if they discriminate against out-of-state products, they are unconstitutional." *Id.*, at 203. And, of course, the dictum must bow to the holdings of our many cases entertaining Commerce Clause challenges brought by residents. We find the dissents' reliance on *Goldberg*'s dictum particularly inappropriate since they do not find themselves similarly bound by the rule of that case, which applied the internal consistency test to determine whether the tax at issue violated the dormant Commerce Clause. 488 U. S., at 261.

In addition, the notion that the victims of such discrimination have a complete remedy at the polls is fanciful. It is likely that only a distinct minority of a State's residents earns income out of State. Schemes that discriminate against income earned in other States may be attractive to legislators and a majority of their constituents for precisely this reason. It is even more farfetched to suggest that natural persons with out-of-state income are better able to influence state lawmakers than large corporations headquartered

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[3] Similarly, we have sustained dormant Commerce Clause challenges by corporate residents of the State that imposed the burden on interstate commerce. See, *e. g.*, *Camps Newfound/Owatonna, Inc.* v. *Town of Harrison*, 520 U. S. 564, 567 (1997); *Fulton Corp.* v. *Faulkner*, 516 U. S. 325, 328 (1996); *Central Greyhound Lines, Inc.* v. *Mealey*, 334 U. S. 653, 654 (1948); *Gwin, White & Prince, Inc.* v. *Henneford*, 305 U. S. 434, 435 (1939); *J. D. Adams Mfg. Co.* v. *Storen*, 304 U. S. 307, 308 (1938).

in the State. In short, petitioner's argument would leave no security where the majority of voters prefer protectionism at the expense of the few who earn income interstate.

It would be particularly incongruous in the present case to disregard our prior decisions regarding the taxation of corporate income because the income at issue here is a type of corporate income, namely, the income of a Subchapter S corporation. Only small businesses may incorporate under Subchapter S, and thus acceptance of petitioner's submission would provide greater protection for income earned by large Subchapter C corporations than small businesses incorporated under Subchapter S.

D

In attempting to justify Maryland's unusual tax scheme, the principal dissent argues that the Commerce Clause imposes no limit on Maryland's ability to tax the income of its residents, no matter where that income is earned. It argues that Maryland has the sovereign power to tax all of the income of its residents, wherever earned, and it therefore reasons that the dormant Commerce Clause cannot constrain Maryland's ability to expose its residents (and nonresidents) to the threat of double taxation.

This argument confuses what a State may do without violating the Due Process Clause of the Fourteenth Amendment with what it may do without violating the Commerce Clause. The Due Process Clause allows a State to tax "*all* the income of its residents, even income earned outside the taxing jurisdiction." *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U. S. 450, 462–463 (1995). But "while a State may, consistent with the Due Process Clause, have the authority to tax a particular taxpayer, imposition of the tax may nonetheless violate the Commerce Clause." *Quill Corp.* v. *North Dakota*, 504 U. S. 298, 305 (1992) (rejecting a due process challenge to a tax before sustaining a Commerce Clause challenge to that tax).

Our decision in *Camps Newfound* illustrates the point. There, we held that the Commerce Clause prohibited Maine

from granting more favorable tax treatment to charities that operated principally for the benefit of Maine residents. 520 U. S., at 580–583. Because the plaintiff charity in that case was a Maine nonprofit corporation, there is no question that Maine had the raw jurisdictional power to tax the charity. See *Chickasaw Nation*, *supra*, at 462–463. Nonetheless, the tax failed scrutiny under the Commerce Clause. *Camps Newfound*, *supra*, at 580–581. Similarly, Maryland's raw power to tax its residents' out-of-state income does not insulate its tax scheme from scrutiny under the dormant Commerce Clause.

Although the principal dissent claims the mantle of precedent, it is unable to identify a single case that endorses its essential premise, namely, that the Commerce Clause places no constraint on a State's power to tax the income of its residents wherever earned. This is unsurprising. As cases like *Quill Corp.* and *Camps Newfound* recognize, the fact that a State has the jurisdictional power to impose a tax says nothing about whether that tax violates the Commerce Clause. See also, *e. g.*, *Barclays Bank PLC* v. *Franchise Tax Bd. of Cal.*, 512 U. S. 298 (1994) (separately addressing due process and Commerce Clause challenges to a tax); *Moorman*, 437 U. S. 267 (same); *Standard Pressed Steel Co.* v. *Department of Revenue of Wash.*, 419 U. S. 560 (1975) (same); *Lawrence* v. *State Tax Comm'n of Miss.*, 286 U. S. 276 (1932) (separately addressing due process and equal protection challenges to a tax); *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60 (1920) (separately addressing due process and privileges-and-immunities challenges to a tax).

One good reason why we have never accepted the principal dissent's logic is that it would lead to plainly untenable results. Imagine that Maryland taxed the income that its residents earned in other States but exempted income earned out of State from any business that primarily served Maryland residents. Such a tax would violate the dormant Commerce Clause, see *Camps Newfound*, *supra*, and it cannot be saved by the principal dissent's admonition that Maryland

has the power to tax all the income of its residents. There is no principled difference between that hypothetical Commerce Clause challenge and this one.

The principal dissent, if accepted, would work a sea change in our Commerce Clause jurisprudence. Legion are the cases in which we have considered and even upheld dormant Commerce Clause challenges brought by residents to taxes that the State had the jurisdictional power to impose. See, *e. g.*, *Davis*, 553 U. S. 328; *Camps Newfound*, *supra*; *Fulton Corp.*, 516 U. S. 325; *Bacchus Imports*, 468 U. S. 263; *Central Greyhound*, 334 U. S. 653; *Gwin, White*, 305 U. S. 434; *J. D. Adams*, 304 U. S. 307. If the principal dissent were to prevail, all of these cases would be thrown into doubt. After all, in those cases, as here, the State's decision to tax in a way that allegedly discriminates against interstate commerce could be justified by the argument that a State may tax its residents without any Commerce Clause constraints.

E

While the principal dissent claims that we are departing from principles that have been accepted for "a century" and have been "repeatedly acknowledged by this Court," see *post*, at 581, 582, 599, when it comes to providing supporting authority for this assertion, it cites exactly two Commerce Clause decisions that are supposedly inconsistent with our decision today. One is a summary affirmance, *West Publishing Co.* v. *McColgan*, 328 U. S. 823 (1946), and neither actually supports the principal dissent's argument.

In the first of these cases, *Shaffer* v. *Carter*, 252 U. S. 37, a resident of Illinois who earned income from oil in Oklahoma unsuccessfully argued that his Oklahoma income tax assessment violated several provisions of the Federal Constitution. His main argument was based on due process, but he also raised a dormant Commerce Clause challenge. Although the principal dissent relies on *Shaffer* for the proposition that a State may tax the income of its residents wherever

earned, *Shaffer* did not reject the Commerce Clause challenge on that basis.

The dormant Commerce Clause challenge in *Shaffer* was nothing like the Wynnes' challenge here. The taxpayer in *Shaffer* argued that "[i]f the tax is considered an excise tax on business, rather than an income tax proper," it unconstitutionally burdened interstate commerce. Brief for Appellant, O. T. 1919, No. 531, p. 166. The taxpayer did not argue that this burden occurred because he was subject to double taxation; instead, he argued that the tax was an impermissible direct "tax on interstate business." *Ibid.* That argument was based on the notion that States may not impose a tax "directly" on interstate commerce. See *supra*, at 552–553. After assuming that the taxpayer's business was engaged in interstate commerce, we held that "it is sufficient to say that the tax is imposed not upon the gross receipts, . . . but only upon the net proceeds, and is plainly sustainable, even if it includes net gains from interstate commerce. [*United States Glue Co.* v. *Town of Oak Creek*], 247 U. S. 321." *Shaffer*, *supra*, at 57.

Shaffer thus did not adjudicate anything like the double taxation argument that was accepted in later cases and is before us today. And the principal dissent's suggestion that *Shaffer* allows States to levy discriminatory net income taxes is refuted by a case decided that same day. In *Travis*, a Connecticut corporation challenged New York's net income tax, which allowed residents, but not nonresidents, certain tax exemptions. The Court first rejected the taxpayer's due process argument as "settled by our decision in *Shaffer*." 252 U. S., at 75. But that due process inquiry was not the end of the matter: The Court then separately considered—and sustained—the argument that the net income tax's disparate treatment of residents and nonresidents violated the Privileges and Immunities Clause. *Id.*, at 79–80.

The second case on which the principal dissent relies, *West Publishing*, is a summary affirmance and thus has "consider-

ably less precedential value than an opinion on the merits." *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U. S. 173, 180–181 (1979). A summary affirmance "'is not to be read as a renunciation by this Court of doctrines previously announced in our opinions after full argument.'" *Mandel* v. *Bradley*, 432 U. S. 173, 176 (1977) (*per curiam*) (quoting *Fusari* v. *Steinberg*, 419 U. S. 379, 392 (1975) (Burger, C. J., concurring)). The principal dissent's reliance on the state-court decision below in that case is particularly inappropriate because "a summary affirmance is an affirmance of the judgment only," and "the rationale of the affirmance may not be gleaned solely from the opinion below." 432 U. S., at 176.

Moreover, we do not disagree with the result of *West Publishing*. The tax in that case was levied only on "'the net income of every corporation derived *from sources within this State*,'" and thus was an internally consistent and nondiscriminatory tax scheme. See *West Publishing Co.* v. *McColgan*, 27 Cal. 2d 705, 707, n., 166 P. 2d 861, 862, n. (1946) (emphasis added). Moreover, even if we did disagree with the result, the citation in our summary affirmance to *United States Glue Co.* suggests that our decision was based on the since-discarded distinction between net income and gross receipts taxes. *West Publishing* did not—indeed, it could not—repudiate the double taxation cases upon which we rely.

The principal dissent also finds it significant that, when States first enacted modern income taxes in the early 1900's, some States had tax schemes similar to Maryland's. This practice, however, was by no means universal. A great many States—such as Alabama, Colorado, Georgia, Kentucky, and Maryland—had early income tax schemes that allowed their residents a credit against taxes paid to other States. See Ala. Code, Tit. 51, ch. 17, § 390 (1940); Colo. Stat. Ann., ch. 84A, § 38 (Cum. Supp. 1951); Ga. Code Ann. § 92–3111 (1974); Carroll's Ky. Stat. Ann., ch. 108, Art. XX, § 4281b–15 (Baldwin rev. 1936); Md. Ann. Code, Art. 81, ch.

277, § 231 (1939). Other States also adopted internally consistent tax schemes. For example, Massachusetts and Utah taxed only the income of residents, not nonresidents. See Mass. Gen. Laws, ch. 62 (1932); Utah Rev. Stat. § 80–14–1 *et seq.* (1933).

In any event, it is hardly surprising that these early state ventures into the taxation of income included some protectionist regimes that favored the local economy over interstate commerce. What is much more significant is that over the next century, as our Commerce Clause jurisprudence developed, the States have almost entirely abandoned that approach, perhaps in recognition of their doubtful constitutionality. Today, the near-universal state practice is to provide credits against personal income taxes for such taxes paid to other States. See 2 J. Hellerstein & W. Hellerstein, State Taxation ¶20.10, pp. 20–163 to 20–164 (3d ed. 2003).[4]

F

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As previously noted, the tax schemes held to be unconstitutional in *J. D. Adams*, *Gwin*, *White*, and *Central Greyhound* had the potential to result in the discriminatory double taxation of income earned out of State and created a powerful incentive to engage in intrastate rather than interstate economic activity. Although we did not use the term in those cases, we held that those schemes could be cured by taxes that satisfy what we have subsequently labeled the

[4] There is no merit to petitioner's argument that Maryland is free to adopt any tax scheme that is not actually intended to discriminate against interstate commerce. Reply Brief 7. The Commerce Clause regulates effects, not motives, and it does not require courts to inquire into voters' or legislators' reasons for enacting a law that has a discriminatory effect. See, *e. g.*, *Associated Industries of Mo.* v. *Lohman*, 511 U. S. 641, 653 (1994); *Philadelphia* v. *New Jersey*, 437 U. S. 617, 626–627 (1978); *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U. S. 333, 352–353 (1977).

"internal consistency" test. See *Jefferson Lines*, 514 U. S., at 185 (citing *Gwin, White* as a case requiring internal consistency); see also 1 Trost § 2:19, at 122–123, and n. 160 (explaining that the internal consistency test has its origins in *Western Live Stock*, *J. D. Adams*, and *Gwin, White*). This test, which helps courts identify tax schemes that discriminate against interstate commerce, "looks to the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate commerce at a disadvantage as compared with commerce intrastate." 514 U. S., at 185. See also, *e. g.*, *Tyler Pipe*, 483 U. S., at 246–248; *Armco*, 467 U. S., at 644–645; *Container Corp. of America* v. *Franchise Tax Bd.*, 463 U. S. 159, 169 (1983).

By hypothetically assuming that every State has the same tax structure, the internal consistency test allows courts to isolate the effect of a defendant State's tax scheme. This is a virtue of the test because it allows courts to distinguish between (1) tax schemes that inherently discriminate against interstate commerce without regard to the tax policies of other States, and (2) tax schemes that create disparate incentives to engage in interstate commerce (and sometimes result in double taxation) only as a result of the interaction of two different but nondiscriminatory and internally consistent schemes. See *Armco*, *supra*, at 645–646; *Moorman*, 437 U. S., at 277, n. 12; Brief for Tax Economists as *Amici Curiae* 23–24 (hereinafter Brief for Tax Economists); Brief for Michael S. Knoll & Ruth Mason as *Amici Curiae* 18–23 (hereinafter Brief for Knoll & Mason). The first category of taxes is typically unconstitutional; the second is not.[5] See *Armco*, *supra*, at 644–646; *Moorman*, *supra*, at 277, and

[5] Our cases have held that tax schemes may be invalid under the dormant Commerce Clause even absent a showing of actual double taxation. *Mobil Oil Corp.* v. *Commissioner of Taxes of Vt.*, 445 U. S. 425, 444 (1980); *Gwin, White*, 305 U. S., at 439. We note, however, that petitioner does not dispute that respondents have been subject to actual multiple taxation in this case.

n. 12. Tax schemes that fail the internal consistency test will fall into the first category, not the second: "[A]ny cross-border tax disadvantage that remains after application of the [test] cannot be due to tax disparities"[6] but is instead attributable to the taxing State's discriminatory policies alone.

Neither petitioner nor the principal dissent questions the economic bona fides of the internal consistency test. And despite its professed adherence to precedent, the principal dissent ignores the numerous cases in which we have applied the internal consistency test in the past. The internal consistency test was formally introduced more than three decades ago, see *Container Corp.*, *supra*, and it has been invoked in no fewer than seven cases, invalidating the tax in three of those cases. See *American Trucking Assns., Inc.* v. *Michigan Pub. Serv. Comm'n*, 545 U. S. 429 (2005);[7] *Jeffer-*

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[6] Mason, Made in America for European Tax: The Internal Consistency Test, 49 Boston College L. Rev. 1277, 1310 (2008).

[7] The principal dissent and JUSTICE SCALIA inaccurately state that the Court in *American Trucking* "conceded that a trucking tax 'fail[ed] the "internal consistency" test,' but upheld the tax anyway." *Post*, at 575 (SCALIA, J., dissenting); see also *post*, at 594 (GINSBURG, J., dissenting). The Court did not say that the tax in question "failed the 'internal consistency test.'" The Court wrote that this is what *petitioner argued*. See *American Trucking*, 545 U. S., at 437. And the Court did not concede that this was true. The tax in that case was a flat tax on any truck that made point-to-point deliveries in Michigan. The tax therefore fell on all trucks that made solely intrastate deliveries and some that made interstate deliveries, namely, those that also made some intrastate deliveries. What the Court "concede[d]" was that "if all States [adopted a similar tax], an interstate truck would have to pay fees totaling several hundred dollars, or even several thousand dollars, *were it to 'top off' its business by carrying local loads in many (or even all) other States*." *Id.*, at 438 (emphasis added). But that was not the same as a concession that the tax violated the internal consistency test. The internal consistency test asks whether the adoption of a rule by all States "would place interstate commerce at a disadvantage as compared with commerce intrastate." *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U. S. 175, 185 (1995). Whether the Michigan trucking tax had such an effect depended on an empirical showing that petitioners failed to make, namely, that the chal-

son Lines, Inc., *supra*; *Goldberg*, 488 U. S. 252; *American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S. 266 (1987); *Tyler Pipe*, *supra*; *Armco*, *supra*; *Container Corp.*, *supra*.

2

Maryland's income tax scheme fails the internal consistency test.[8] A simple example illustrates the point. Assume that every State imposed the following taxes, which are similar to Maryland's "county" and "special nonresident" taxes: (1) a 1.25% tax on income that residents earn in State, (2) a 1.25% tax on income that residents earn in other jurisdictions, and (3) a 1.25% tax on income that nonresidents

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lenged tax imposed a heavier burden on interstate truckers in general than it did on intrastate truckers. Under the Michigan tax, some interstate truckers, *i. e.*, those who used Michigan roads solely for trips that started and ended outside the State, did not pay this tax even though they benefited from the use of the State's roads; they were thus treated more favorably than truckers who did not leave the State. Other truckers who made interstate trips, *i. e.*, those who made some intrastate trips, were treated less favorably. As the United States explained in its brief, "[n]either record evidence nor abstract logic makes clear whether the overall effect of such a system would be to increase or to reduce existing financial disincentives to interstate travel." Brief for United States in *American Trucking Assns., Inc.* v. *Michigan Pub. Serv. Comm'n*, O. T. 2004, No. 03–1230, p. 26.

[8] In order to apply the internal consistency test in this case, we must evaluate the Maryland income tax scheme as a whole. That scheme taxes three separate categories of income: (1) the "county tax" on income that Maryland residents earn in Maryland; (2) the "county tax" on income that Maryland residents earn in other States; and (3) the "special nonresident tax" on income that nonresidents earn in Maryland. For Commerce Clause purposes, it is immaterial that Maryland assigns different labels (*i. e.*, "county tax" and "special nonresident tax") to these taxes. In applying the dormant Commerce Clause, they must be considered as one. Cf. *Oregon Waste Systems, Inc.* v. *Department of Environmental Quality of Ore.*, 511 U. S. 93, 102–103 (1994) (independent taxes on intrastate and interstate commerce are "compensatory" if they are rough equivalents imposed upon substantially similar events). If state labels controlled, a State would always be free to tax domestic, inbound, and outbound income at discriminatory rates simply by attaching different labels.

earn in State. Assume further that two taxpayers, April and Bob, both live in State A, but that April earns her income in State A whereas Bob earns his income in State B. In this circumstance, Bob will pay more income tax than April solely because he earns income interstate. Specifically, April will have to pay a 1.25% tax only once, to State A. But Bob will have to pay a 1.25% tax twice: once to State A, where he resides, and once to State B, where he earns the income.

Critically—and this dispels a central argument made by petitioner and the principal dissent—the Maryland scheme's discriminatory treatment of interstate commerce is not simply the result of its interaction with the taxing schemes of other States. Instead, the internal consistency test reveals what the undisputed economic analysis shows: Maryland's tax scheme is inherently discriminatory and operates as a tariff. See Brief for Tax Economists 4, 9; Brief for Knoll & Mason 2. This identity between Maryland's tax and a tariff is fatal because tariffs are "[t]he paradigmatic example of a law discriminating against interstate commerce." *West Lynn*, 512 U. S., at 193. Indeed, when asked about the foregoing analysis made by *amici* Tax Economists and Knoll & Mason, counsel for Maryland responded, "I don't dispute the mathematics. They lose me when they switch from tariffs to income taxes." Tr. of Oral Arg. 9. But Maryland has offered no reason why our analysis should change because we deal with an income tax rather than a formal tariff, and we see none. After all, "tariffs against the products of other States are so patently unconstitutional that our cases reveal not a single attempt by any State to enact one. Instead, the cases are filled with state laws that aspire to reap some of the benefits of tariffs by other means." *West Lynn*, *supra*, at 193.

None of our dissenting colleagues dispute this economic analysis. The principal dissent focuses instead on a supposed "oddity" with our analysis: The principal dissent can envision other tax schemes that result in double taxation but

do not violate the internal consistency test. This would happen, the principal dissent points out, if State A taxed only based on residence and State B taxed only based on source. *Post*, at 596–597 (opinion of GINSBURG, J.); see also *post*, at 577 (opinion of SCALIA, J.). Our prior decisions have already considered and rejected this precise argument—and for good reason. For example, in *Armco*, we struck down an internally inconsistent tax that posed a risk of double taxation even though we recognized that there might be other permissible arrangements that would result in double taxation. Such schemes would be constitutional, we explained, because "such a result would not arise from impermissible discrimination against interstate commerce." 467 U. S., at 645. The principal dissent's protest that our distinction is "entirely circular," *post*, at 597, n. 10, misunderstands the critical distinction, recognized in cases like *Armco*, between discriminatory tax schemes and double taxation that results only from the interaction of two different but nondiscriminatory tax schemes. See also *Moorman*, 437 U. S., at 277, n. 12 (distinguishing "the potential consequences of the use of different formulas by the two States," which is not prohibited by the Commerce Clause, from discrimination that "inhere[s] in either State's formula," which is prohibited).

Petitioner and the Solicitor General argue that Maryland's tax is neutral, not discriminatory, because the same tax applies to all three categories of income. Specifically, they point out that the same tax is levied on (1) residents who earn income in State, (2) residents who earn income out of State, and (3) nonresidents who earn income in State. But the fact that the tax might have "'the advantage of appearing nondiscriminatory' does not save it from invalidation." *Tyler Pipe*, 483 U. S., at 248 (quoting *General Motors Corp.* v. *Washington*, 377 U. S. 436, 460 (1964) (Goldberg, J., dissenting)). See also *American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S., at 281 (dormant Commerce Clause applies to state taxes even when they "do not allocate tax

burdens between insiders and outsiders in a manner that is facially discriminatory"); *Maine* v. *Taylor*, 477 U. S. 131, 138 (1986) (a state law may discriminate against interstate commerce "'either on its face or in practical effect'" (quoting *Hughes*, 441 U. S., at 336)). In this case, the internal consistency test and economic analysis—indeed, petitioner's own concession—confirm that the tax scheme operates as a tariff and discriminates against interstate commerce, and so the scheme is invalid.

Petitioner and the principal dissent, *post*, at 586, also note that by offering residents who earn income in interstate commerce a credit against the "state" portion of the income tax, Maryland actually receives less tax revenue from residents who earn income from interstate commerce rather than intrastate commerce. This argument is a red herring. The critical point is that the total tax burden on interstate commerce is higher, not that Maryland may receive more or less tax revenue from a particular taxpayer. See *Armco*, *supra*, at 642–645. Maryland's tax unconstitutionally discriminates against interstate commerce, and it is thus invalid regardless of how much a particular taxpayer must pay to the taxing State.

Once again, a simple hypothetical illustrates the point. Assume that State A imposes a 5% tax on the income that its residents earn in State but a 10% tax on income they earn in other jurisdictions. Assume also that State A happens to grant a credit against income taxes paid to other States. Such a scheme discriminates against interstate commerce because it taxes income earned interstate at a higher rate than income earned intrastate. This is so despite the fact that, in certain circumstances, a resident of State A who earns income interstate may pay less tax to State A than a neighbor who earns income intrastate. For example, if Bob lives in State A but earns his income in State B, which has a 6% income tax rate, Bob would pay a total tax of 10% on his income, though 6% would go to State B and (because of

the credit) only 4% would go to State A. Bob would thus pay less to State A than his neighbor, April, who lives in State A and earns all of her income there, because April would pay a 5% tax to State A. But Bob's tax burden to State A is irrelevant; his total tax burden is what matters.

The principal dissent is left with two arguments against the internal consistency test. These arguments are inconsistent with each other and with our precedents.

First, the principal dissent claims that the analysis outlined above requires a State taxing based on residence to "recede" to a State taxing based on source. *Post*, at 582. We establish no such rule of priority. To be sure, Maryland could remedy the infirmity in its tax scheme by offering, as most States do, a credit against income taxes paid to other States. See *Tyler Pipe*, *supra*, at 245–246, and n. 13. If it did, Maryland's tax scheme would survive the internal consistency test and would not be inherently discriminatory. Tweak our first hypothetical, *supra*, at 564–565, and assume that all States impose a 1.25% tax on all three categories of income but also allow a credit against income taxes that residents pay to other jurisdictions. In that circumstance, April (who lives and works in State A) and Bob (who lives in State A but works in State B) would pay the same tax. Specifically, April would pay a 1.25% tax only once (to State A), and Bob would pay a 1.25% tax only once (to State B, because State A would give him a credit against the tax he paid to State B).

But while Maryland could cure the problem with its current system by granting a credit for taxes paid to other States, we do not foreclose the possibility that it could comply with the Commerce Clause in some other way. See Brief for Tax Economists 32; Brief for Knoll & Mason 28–30. Of course, we do not decide the constitutionality of a hypothetical tax scheme that Maryland might adopt because such a scheme is not before us. That Maryland's existing tax unconstitutionally discriminates against interstate commerce is enough to decide this case.

Second, the principal dissent finds a "deep flaw" with the possibility that "Maryland could eliminate the inconsistency [with its tax scheme] by terminating the special nonresident tax—a measure that would not help the Wynnes at all." *Post*, at 596. This second objection refutes the first. By positing that Maryland could remedy the unconstitutionality of its tax scheme by eliminating the special nonresident tax, the principal dissent accepts that Maryland's desire to tax based on residence need not "recede" to another State's desire to tax based on source.

Moreover, the principal dissent's supposed flaw is simply a truism about every case under the dormant Commerce Clause (not to mention the Equal Protection Clause): Whenever government impermissibly treats like cases differently, it can cure the violation by either "leveling up" or "leveling down." Whenever a State impermissibly taxes interstate commerce at a higher rate than intrastate commerce, that infirmity could be cured by lowering the higher rate, raising the lower rate, or a combination of the two. For this reason, we have concluded that "a State found to have imposed an impermissibly discriminatory tax retains flexibility in responding to this determination." *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18, 39–40 (1990). See also *Associated Industries of Mo.* v. *Lohman*, 511 U. S. 641, 656 (1994); *Fulton Corp.*, 516 U. S., at 346–347. If every claim that suffers from this "flaw" cannot succeed, no dormant Commerce Clause or equal protection claim could ever succeed.

G

Justice Scalia would uphold the constitutionality of the Maryland tax scheme because the dormant Commerce Clause, in his words, is "a judicial fraud." *Post*, at 572. That was not the view of the Court in *Gibbons* v. *Ogden*, 9 Wheat., at 209, where Chief Justice Marshall wrote that there was "great force" in the argument that the Commerce Clause by itself limits the power of the States to enact laws regulating

interstate commerce. Since that time, this supposedly fraudulent doctrine has been applied in dozens of our opinions, joined by dozens of Justices. Perhaps for this reason, petitioner in this case, while challenging the interpretation and application of that doctrine by the court below, did not ask us to reconsider the doctrine's validity.

JUSTICE SCALIA does not dispute the fact that state tariffs were among the principal problems that led to the adoption of the Constitution. See *post*, at 573. Nor does he dispute the fact that the Maryland tax scheme is tantamount to a tariff on work done out of State. He argues, however, that the Constitution addresses the problem of state tariffs by prohibiting States from imposing " 'Imposts or Duties on Imports or Exports.' " *Ibid.* (quoting Art. I, § 10, cl. 2). But he does not explain why, under his interpretation of the Constitution, the Import-Export Clause would not lead to the same result that we reach under the dormant Commerce Clause. Our cases have noted the close relationship between the two provisions. See, *e. g.*, *State Tonnage Tax Cases*, 12 Wall. 204, 214 (1871).

JUSTICE THOMAS also refuses to accept the dormant Commerce Clause doctrine, and he suggests that the Constitution was ratified on the understanding that it would not prevent a State from doing what Maryland has done here. He notes that some States imposed income taxes at the time of the adoption of the Constitution, and he observes that "[t]here is no indication that those early state income tax schemes provided credits for income taxes paid elsewhere." *Post*, at 579 (dissenting opinion). "It seems highly implausible," he writes, "that those who ratified the Commerce Clause understood it to conflict with the income tax laws of their States and nonetheless adopted it without a word of concern." *Post*, at 579–580. This argument is plainly unsound.

First, because of the difficulty of interstate travel, the number of individuals who earned income out of State in 1787 was surely very small. (We are unaware of records

showing, for example, that it was common in 1787 for workers to commute to Manhattan from New Jersey by rowboat or from Connecticut by stagecoach.)

Second, JUSTICE THOMAS has not shown that the small number of individuals who earned income out of State were taxed twice on that income. A number of founding-era income tax schemes appear to have taxed only the income of residents, not nonresidents. For example, in his report to Congress on direct taxes, Oliver Wolcott, Jr., Secretary of Treasury, describes Delaware's income tax as being imposed only on "the inhabitants of this State," and he makes no mention of the taxation of nonresidents' income. Report to 4th Cong., 2d Sess. (1796), concerning Direct Taxes, in 1 American State Papers, Finance 429 (1832). JUSTICE THOMAS likewise understands that the Massachusetts and Delaware income taxes were imposed only on residents. *Post*, at 579, n. These tax schemes, of course, pass the internal consistency test. Moreover, the difficulty of administering an income tax on nonresidents would have diminished the likelihood of double taxation. See R. Blakey, State Income Taxation 1 (1930).

Third, even if some persons were taxed twice, it is unlikely that this was a matter of such common knowledge that it must have been known by the delegates to the state ratifying conventions who voted to adopt the Constitution.

* * *

For these reasons, the judgment of the Court of Appeals of Maryland is affirmed.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins as to Parts I and II, dissenting.

The Court holds unconstitutional Maryland's refusal to give its residents full credits against income taxes paid to other States. It does this by invoking the negative Com-

merce Clause, a judge-invented rule under which judges may set aside state laws that they think impose too much of a burden upon interstate commerce. I join the principal dissent, which demonstrates the incompatibility of this decision with our prior negative Commerce Clause cases. *Post*, at 582–593 (opinion of GINSBURG, J.). Incompatibility, however, is not the test for me—though what is incompatible with our cases *a fortiori* fails my test as well, as discussed briefly in Part III below. The principal purpose of my writing separately is to point out how wrong our negative Commerce Clause jurisprudence is in the first place, and how well today's decision illustrates its error.

I

The fundamental problem with our negative Commerce Clause cases is that the Constitution does not contain a negative Commerce Clause. It contains only a Commerce Clause. Unlike the negative Commerce Clause adopted by the judges, the real Commerce Clause adopted by the People merely empowers Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, § 8, cl. 3. The Clause says nothing about prohibiting state laws that burden commerce. Much less does it say anything about authorizing judges to set aside state laws *they believe* burden commerce. The clearest sign that the negative Commerce Clause is a judicial fraud is the utterly illogical holding that congressional consent enables States to enact laws that would otherwise constitute impermissible burdens upon interstate commerce. See *Prudential Ins. Co.* v. *Benjamin*, 328 U. S. 408, 421–427 (1946). How could congressional consent lift a constitutional prohibition? See *License Cases*, 5 How. 504, 580 (1847) (opinion of Taney, C. J.).

The Court's efforts to justify this judicial economic veto come to naught. The Court claims that the doctrine "has deep roots." *Ante*, at 549. So it does, like many weeds.

But age alone does not make up for brazen invention. And the doctrine in any event is not quite as old as the Court makes it seem. The idea that the Commerce Clause of its own force limits state power "finds no expression" in discussions surrounding the Constitution's ratification. F. Frankfurter, The Commerce Clause Under Marshall, Taney and Waite 13 (1937). For years after the adoption of the Constitution, States continually made regulations that burdened interstate commerce (like pilotage laws and quarantine laws) without provoking any doubts about their constitutionality. *License Cases*, *supra*, at 580–581. This Court's earliest allusions to a negative Commerce Clause came only in dicta—ambiguous dicta, at that—and were vigorously contested at the time. See, *e. g.*, *id.*, at 581–582. Our first clear *holding* setting aside a state law under the negative Commerce Clause came after the Civil War, more than 80 years after the Constitution's adoption. *Case of the State Freight Tax*, 15 Wall. 232 (1873). Since then, we have tended to revamp the doctrine every couple of decades upon finding existing decisions unworkable or unsatisfactory. See *Quill Corp.* v. *North Dakota*, 504 U. S. 298, 309 (1992). The negative Commerce Clause applied today has little in common with the negative Commerce Clause of the 19th century, except perhaps for incoherence.

The Court adds that "tariffs and other laws that burdened interstate commerce" were among "the chief evils that led to the adoption of the Constitution." *Ante*, at 549. This line of reasoning forgets that interpretation requires heeding more than the Constitution's purposes; it requires heeding the means the Constitution uses to achieve those purposes. The Constitution addresses the evils of local impediments to commerce by prohibiting States from imposing certain especially burdensome taxes—"Imposts or Duties on Imports or Exports" and "Dut[ies] of Tonnage"—without congressional consent. Art. I, § 10, cls. 2–3. It also addresses these evils by giving Congress a commerce power under which *it* may

prohibit other burdensome taxes and laws. As the Constitution's text shows, however, it does not address these evils by empowering the *judiciary* to set aside state taxes and laws that *it* deems too burdensome. By arrogating this power anyway, our negative Commerce Clause cases have disrupted the balance the Constitution strikes between the goal of protecting commerce and competing goals like preserving local autonomy and promoting democratic responsibility.

II

The failings of negative Commerce Clause doctrine go beyond its lack of a constitutional foundation, as today's decision well illustrates.

1. One glaring defect of the negative Commerce Clause is its lack of governing principle. Neither the Constitution nor our legal traditions offer guidance about how to separate improper state interference with commerce from permissible state taxation or regulation of commerce. So we must make the rules up as we go along. That is how we ended up with the bestiary of ad hoc tests and ad hoc exceptions that we apply nowadays, including the substantial nexus test, the fair apportionment test, and the fair relation test, *Complete Auto Transit, Inc.* v. *Brady*, 430 U. S. 274, 279 (1977), the interest-on-state-bonds exception, *Department of Revenue of Ky.* v. *Davis*, 553 U. S. 328, 353–356 (2008), and the sales-taxes-on-mail-orders exception, *Quill Corp.*, *supra*, at 314–319.

The internal consistency rule invoked by the Court nicely showcases our ad hocery. Under this rule, a tax violates the Constitution if its hypothetical adoption by all States would interfere with interstate commerce. *Ante*, at 562–563. How did this exercise in counterfactuals find its way into our basic charter? The test, it is true, bears some resemblance to Kant's first formulation of the categorical imperative: "Act only according to that maxim whereby you can at the same time will that it should become a universal law" without contradiction. Grounding for the Metaphysics of Morals 30 (J.

Ellington transl. 3d ed. 1993). It bears no resemblance, however, to anything in the text or structure of the Constitution. Nor can one discern an obligation of internal consistency from our legal traditions, which show that States have been imposing internally inconsistent taxes for quite a while—until recently with our approval. See, *e. g.*, *General Motors Corp.* v. *Washington*, 377 U. S. 436 (1964) (upholding internally inconsistent business activities tax); *Hinson* v. *Lott*, 8 Wall. 148 (1869) (upholding internally inconsistent liquor tax). No, the only justification for the test seems to be that this Court disapproves of "'cross-border tax disadvantage[s]'" when created by internally inconsistent taxes, but is willing to tolerate them when created by "the interaction of . . . internally consistent schemes." *Ante*, at 562, 563. "Whatever it is we are expounding in this area, it is not a Constitution." *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167, 203 (1990) (SCALIA, J., concurring in judgment).

2. Another conspicuous feature of the negative Commerce Clause is its instability. Because no principle anchors our development of this doctrine—and because the line between wise regulation and burdensome interference changes from age to economic age—one can never tell when the Court will make up a new rule or throw away an old one. "Change is almost [the doctrine's] natural state, as it is the natural state of legislation in a constantly changing national economy." *Ibid.*

Today's decision continues in this proud tradition. Consider a few ways in which it contradicts earlier decisions:

- In an earlier case, the Court conceded that a trucking tax "fail[ed] the 'internal consistency' test," but upheld the tax anyway. *American Trucking Assns., Inc.* v. *Michigan Pub. Serv. Comm'n*, 545 U. S. 429, 437 (2005). Now, the Court proclaims that an income tax "fails the internal consistency test," and for that reason strikes it down. *Ante*, at 564.

- In an earlier case, the Court concluded that "[i]t is not a purpose of the Commerce Clause to protect state residents from their own state taxes" and that residents could "complain about and change the tax through the [State's] political process." *Goldberg* v. *Sweet*, 488 U. S. 252, 266 (1989). Now, the Court concludes that the negative Commerce Clause operates "regardless of whether the plaintiff is a resident . . . or nonresident" and that "the notion that [residents] have a complete remedy at the polls is fanciful." *Ante*, at 554, 555.
- In an earlier case, the Court said that "[t]he difference in effect between a tax measured by gross receipts and one measured by net income . . . is manifest and substantial." *United States Glue Co.* v. *Town of Oak Creek*, 247 U. S. 321, 328 (1918). Now, the Court says that the "formal distinction" between taxes on net and gross income "should [not] matter." *Ante*, at 551.
- In an earlier case, the Court upheld a tax despite its economic similarity to the gross-receipts tax struck down in *Central Greyhound Lines, Inc.* v. *Mealey*, 334 U. S. 653 (1948). *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U. S. 175, 190–191 (1995). The Court explained that "economic equivalence alone has . . . not been (and should not be) the touchstone of Commerce Clause jurisprudence." *Id.*, at 196–197, n. 7. Now, the Court strikes down a tax in part because of its economic similarity to the gross-receipts tax struck down in *Central Greyhound*. *Ante*, at 550–551. The Court explains that "we must consider 'not the formal language of the tax statute but rather its practical effect.'" *Ante*, at 551.

So much for internal consistency.

3. A final defect of our Synthetic Commerce Clause cases is their incompatibility with the judicial role. The doctrine

does not call upon us to perform a conventional judicial function, like interpreting a legal text, discerning a legal tradition, or even applying a stable body of precedents. It instead requires us to balance the needs of commerce against the needs of state governments. That is a task for legislators, not judges.

Today's enterprise of eliminating double taxation puts this problem prominently on display. The one sure way to eliminate all double taxation is to prescribe uniform national tax rules—for example, to allow taxation of income only where earned. But a program of prescribing a national tax code plainly exceeds the judicial competence. (It may even exceed the legislative competence to come up with a uniform code that accounts for the many political and economic differences among the States.) As an alternative, we could consider whether a State's taxes in practice overlap too much with the taxes of other States. But any such approach would drive us "to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to an abuse of power." *McCulloch* v. *Maryland*, 4 Wheat. 316, 430 (1819). The Court today chooses a third approach, prohibiting States from imposing internally inconsistent taxes. *Ante*, at 562–563. But that rule avoids double taxation only in the hypothetical world where all States adopt the same internally consistent tax, not in the real world where different States might adopt different internally consistent taxes. For example, if Maryland imposes its income tax on people who live in Maryland regardless of where they work (one internally consistent scheme), while Virginia imposes its income tax on people who work in Virginia regardless of where they live (another internally consistent scheme), Marylanders who work in Virginia *still* face double taxation. *Post*, at 596–597. Then again, it is only fitting that the Imaginary Commerce Clause would lead to imaginary benefits.

III

For reasons of *stare decisis*, I will vote to set aside a tax under the negative Commerce Clause if (but only if) it discriminates on its face against interstate commerce or cannot be distinguished from a tax this Court has already held unconstitutional. *American Trucking Assns.*, 545 U. S., at 439 (SCALIA, J., concurring in judgment). The income tax before us does not discriminate on its face against interstate commerce; a resident pays no less to Maryland when he works in Maryland than when he works elsewhere. Neither is the tax before us indistinguishable from one that we have previously held unconstitutional. To the contrary, as the principal dissent establishes, our prior cases validate this tax.

* * *

Maryland's refusal to give residents full tax credits against income taxes paid to other States has its disadvantages. It threatens double taxation and encourages residents to work in Maryland. But Maryland's law also has its advantages. It allows the State to collect equal revenue from taxpayers with equal incomes, avoids the administrative burdens of verifying tax payments to other States, and ensures that every resident pays the State at least some income tax. Nothing in the Constitution precludes Maryland from deciding that the benefits of its tax scheme are worth the costs.

I respectfully dissent.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins except as to the first paragraph, dissenting.

"I continue to adhere to my view that the negative Commerce Clause has no basis in the text of the Constitution, makes little sense, and has proved virtually unworkable in application, and, consequently, cannot serve as a basis for striking down a state statute." *McBurney* v. *Young*, 569 U. S. 221, 237 (2013) (THOMAS, J., concurring) (internal quotation marks and alteration omitted); accord, *e. g.*, *Camps*

Newfound/Owatonna, Inc. v. *Town of Harrison*, 520 U. S. 564, 610–612 (1997) (THOMAS, J., dissenting). For that reason, I would uphold Maryland's tax scheme.

In reaching the contrary conclusion, the Court proves just how far our negative Commerce Clause jurisprudence has departed from the actual Commerce Clause. According to the majority, a state income tax that fails to provide residents with "a full credit against the income taxes that they pay to other States" violates the Commerce Clause. *Ante*, at 545. That news would have come as a surprise to those who penned and ratified the Constitution. As this Court observed some time ago, "Income taxes . . . were imposed by several of the States at or shortly after the adoption of the Federal Constitution." *Shaffer* v. *Carter*, 252 U. S. 37, 51 (1920).* There is no indication that those early state income tax schemes provided credits for income taxes paid elsewhere. Thus, under the majority's reasoning, all of those state laws would have contravened the newly ratified Commerce Clause.

It seems highly implausible that those who ratified the Commerce Clause understood it to conflict with the income tax laws of their States and nonetheless adopted it without

*See, *e. g.*, 1777–1778 Mass. Acts ch. 13, § 2, p. 756 (taxing "the amount of [inhabitants'] income from any profession, faculty, handicraft, trade or employment; and also on the amount of all incomes and profits gained by trading by sea and on shore"); 1781 Pa. Laws ch. 961, § 12, p. 390 (providing that "[a]ll offices and posts of profit, trades, occupations and professions (that of ministers of the gospel of all denominations and schoolmasters only excepted), shall be rated at the discretion of the township, ward or district assessors . . . having due regard of the profits arising from them"); see also Report of Oliver Wolcott, Jr., Secretary of the Treasury, to 4th Cong., 2d Sess., concerning Direct Taxes (1796), in 1 American State Papers, Finance 414, 423 (1832) (describing Connecticut's income tax as assessing, as relevant, "the estimated gains or profits arising from any, and all, lucrative professions, trades, and occupations"); *id.*, at 429 (noting that, in Delaware, "[t]axes have been hitherto collected on the estimated annual income of the inhabitants of this State, without reference to specific objects").

a word of concern. That silence is particularly deafening given the importance of such taxes for raising revenues at the time. See Kinsman, The Income Tax in the Commonwealths of the United States 7, in 4 Publications of the American Economic Assn. (1903) (noting, for example, that "Connecticut from her earliest history had followed the plan of taxing incomes rather than property" and that "[t]he total assessed value of [taxable] incomes in Connecticut in the year 1795 was a little over $300,000" (internal quotation marks omitted)).

In other areas of constitutional analysis, we would have considered these laws to be powerful evidence of the original understanding of the Constitution. We have, for example, relied on the practices of the First Congress to guide our interpretation of provisions defining congressional power. See, *e. g.*, *Golan* v. *Holder*, 565 U. S. 302, 320–321 (2012) (Copyright Clause); *McCulloch* v. *Maryland*, 4 Wheat. 316, 401–402 (1819) (Necessary and Proper Clause). We have likewise treated "actions taken by the First Congress a[s] presumptively consistent with the Bill of Rights," *Town of Greece* v. *Galloway*, 572 U. S. 565, 602 (2014) (ALITO, J., concurring). See, *e. g.*, *id.*, at 575–577 (majority opinion); *Carroll* v. *United States*, 267 U. S. 132, 150–152 (1925). And we have looked to founding-era state laws to guide our understanding of the Constitution's meaning. See, *e. g.*, *District of Columbia* v. *Heller*, 554 U. S. 570, 600–602 (2008) (Second Amendment); *Atwater* v. *Lago Vista*, 532 U. S. 318, 337–340 (2001) (Fourth Amendment); *Roth* v. *United States*, 354 U. S. 476, 482–483 (1957) (First Amendment); *Kilbourn* v. *Thompson*, 103 U. S. 168, 202–203 (1881) (Speech and Debate Clause); see also *Calder* v. *Bull*, 3 Dall. 386, 396–397 (1798) (opinion of Paterson, J.) (*Ex Post Facto* Clause).

Even if one assumed that the negative Commerce Clause existed, I see no reason why it would be subject to a different mode of constitutional interpretation. The majority quibbles that I fail to "sho[w] that the small number of individuals

who earned income out of State were taxed twice on that income," *ante*, at 571, but given the deference we owe to the duly enacted laws of a State—particularly those concerning the paradigmatically sovereign activity of taxation—the burden of proof falls on those who would wield the Federal Constitution to foreclose that exercise of sovereign power.

I am doubtful that the majority's application of one of our many negative Commerce Clause tests is correct under our precedents, see *ante*, at 575–576 (SCALIA, J., dissenting); *post*, at 590–593 (GINSBURG, J., dissenting), but I am certain that the majority's result is incorrect under our Constitution. As was well said in another area of constitutional law: "[I]f there is any inconsistency between [our] tests and the historic practice . . . , the inconsistency calls into question the validity of the test, not the historic practice." *Town of Greece, supra*, at 603 (ALITO, J., concurring).

I respectfully dissent.

JUSTICE GINSBURG, with whom JUSTICE SCALIA and JUSTICE KAGAN join, dissenting.

Today's decision veers from a principle of interstate and international taxation repeatedly acknowledged by this Court: A nation or State "may tax *all* the income of its residents, even income earned outside the taxing jurisdiction." *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U. S. 450, 462–463 (1995). In accord with this principle, the Court has regularly rejected claims that taxes on a resident's out-of-state income violate the Due Process Clause for lack of a sufficient "connection" to the taxing State. *Quill Corp.* v. *North Dakota*, 504 U. S. 298, 306 (1992) (internal quotation marks omitted); see, *e. g.*, *Lawrence* v. *State Tax Comm'n of Miss.*, 286 U. S. 276, 281 (1932). But under dormant Commerce Clause jurisprudence, the Court decides, a State is not really empowered to tax a resident's income from whatever source derived. In taxing personal income, the Court holds, source-based authority, *i. e.*, authority to tax commerce con-

ducted within a State's territory, boxes in the taxing authority of a taxpayer's domicile.

As I see it, nothing in the Constitution or in prior decisions of this Court dictates that one of two States, the domiciliary State or the source State, must recede simply because both have lawful tax regimes reaching the same income. See *Moorman Mfg. Co.* v. *Bair*, 437 U. S. 267, 277, n. 12 (1978) (finding no "discriminat[ion] against interstate commerce" where alleged taxation disparities were "the consequence of the combined effect" of two otherwise lawful income tax schemes). True, Maryland elected to deny a credit for income taxes paid to other States in computing a resident's county tax liability. It is equally true, however, that the other States that taxed the Wynnes' income elected not to offer them a credit for their Maryland county income taxes. In this situation, the Constitution does not prefer one lawful basis for state taxation of a person's income over the other. Nor does it require one State, in this case Maryland, to limit its residence-based taxation, should the State also choose to exercise, to the full extent, its source-based authority. States often offer their residents credits for income taxes paid to other States, as Maryland does for state income tax purposes. States do so, however, as a matter of tax "policy," *Chickasaw Nation*, 515 U. S., at 463, n. 12 (internal quotation marks omitted), not because the Constitution compels that course.

I

For at least a century, "domicile" has been recognized as a secure ground for taxation of residents' worldwide income. *Lawrence*, 286 U. S., at 279. "Enjoyment of the privileges of residence within [a] state, and the attendant right to invoke the protection of its laws," this Court has explained, "are inseparable from the responsibility for sharing the costs of government." *Ibid.* "A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy

its benefits." *New York ex rel. Cohn* v. *Graves*, 300 U. S. 308, 313 (1937).

More is given to the residents of a State than to those who reside elsewhere, therefore more may be demanded of them. With this Court's approbation, States have long favored their residents over nonresidents in the provision of local services. See *Reeves, Inc.* v. *Stake*, 447 U. S. 429, 442 (1980) (such favoritism does not violate the Commerce Clause). See also *Martinez* v. *Bynum*, 461 U. S. 321 (1983) (upholding residency requirements for free primary and secondary schooling). The cost of services residents enjoy is substantial. According to the State's Comptroller, for example, in 2012 Maryland and its local governments spent over $11 billion to fund public schools, $4 billion for state health programs, and $1.1 billion for the State's food supplemental program—all programs available to residents only. Brief for Petitioner 20–23. See also Brief for United States as *Amicus Curiae* 18 (Howard County—where the Wynnes lived in 2006—budgeted more than $903 million for education in fiscal year 2014). Excluding nonresidents from these services, this Court has observed, is rational for it is residents "who fund the state treasury and whom the State was created to serve." *Reeves*, 447 U. S., at 442. A taxpayer's home State, then, can hardly be faulted for making support of local government activities an obligation of every resident, regardless of any obligations residents may have to *other* States.[1]

Residents, moreover, possess political means, not shared by outsiders, to ensure that the power to tax their income is

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[1] The Court offers no response to this reason for permitting a State to tax its residents' worldwide income, other than to urge that Commerce Clause doctrine ought not favor corporations over individuals. See *ante*, at 553–554. I scarcely disagree with that proposition (nor does this opinion suggest otherwise). But I fail to see how it answers, or is even relevant to, my observation that affording residents greater benefits entitles a State to require that they bear a greater tax burden.

not abused. "It is not," this Court has observed, "a purpose of the Commerce Clause to protect state residents from their own state taxes." *Goldberg* v. *Sweet*, 488 U. S. 252, 266 (1989). The reason is evident. Residents are "insider[s] who presumably [are] able to complain about and change the tax through the [State's] political process." *Ibid.* Nonresidents, by contrast, are not similarly positioned to "effec[t] legislative change." *Ibid.* As Chief Justice Marshall, developer of the Court's Commerce Clause jurisprudence, reasoned: "In imposing a tax the legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation." *McCulloch* v. *Maryland*, 4 Wheat. 316, 428 (1819). The "people of a State" can thus "res[t] confidently on the interest of the legislator, and on the influence of the constituents over their representative, to guard them against . . . abuse" of the "right of taxing themselves and their property." *Ibid.*[2]

I hardly maintain, as the majority insistently asserts I do, that "the Commerce Clause places no constraint on a State's power to tax" its residents. *Ante*, at 557. See also *ante*, at 555–558. This Court has not shied away from striking down or closely scrutinizing state efforts to tax residents at a higher rate for out-of-state activities than for in-state activities (or to exempt from taxation only in-state activities). See, *e. g.*, *Department of Revenue of Ky.* v. *Davis*, 553 U. S.

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[2] The majority dismisses what we said in *Goldberg* v. *Sweet*, 488 U. S. 252 (1989), as "dictum" allegedly "repudiated" by the Court in *West Lynn Creamery, Inc.* v. *Healy*, 512 U. S. 186, 203 (1994). *Ante*, at 555. That is doubly wrong. In *Goldberg*, we distinguished the tax struck down in *American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S. 266 (1987) (*ATA I*), noting, in particular, that the tax in *ATA I* fell on "out-of-state[rs]" whereas the tax in *Goldberg* fell on "the insider who presumably is able to complain about and change the tax through the Illinois political process." 488 U. S., at 266. Essential to our holding, this rationale cannot be written off as "dictum." As for *West Lynn Creamery*, far from "repudiat-[ing]" *Goldberg*, the Court *cited Goldberg* and *reaffirmed* its political safeguards rationale, as explained below. See *infra*, at 585.

328, 336 (2008); *Camps Newfound/Owatonna, Inc.* v. *Town of Harrison*, 520 U. S. 564 (1997); *Fulton Corp.* v. *Faulkner*, 516 U. S. 325 (1996); *Bacchus Imports, Ltd.* v. *Dias*, 468 U. S. 263, 272 (1984). See also *ante*, at 554–555, and n. 3, 558 (mistakenly charging that under my analysis "all of these cases would be thrown into doubt"). "[P]olitical processes" are ill equipped to guard against such facially discriminatory taxes because the effect of a tax of this sort is to "mollif[y]" some of the "in-state interests [that] would otherwise lobby against" it. *West Lynn Creamery, Inc.* v. *Healy*, 512 U. S. 186, 200 (1994). By contrast, the Court has generally upheld "evenhanded tax[es] . . . in spite of any adverse effects on interstate commerce, in part because '[t]he existence of major in-state interests adversely affected . . . is a powerful safeguard against legislative abuse.'" *Ibid.* (citing, *inter alia*, *Goldberg*, 488 U. S., at 266). That justification applies with full force to the "evenhanded tax" challenged here, which taxes residents' income at the same rate whether earned in State or out of State.[3]

These rationales for a State taxing its residents' worldwide income are not diminished by another State's independent interest in "requiring contributions from [nonresidents] who realize current pecuniary benefits under the protection of the [State's] government." *Shaffer* v. *Carter*, 252 U. S. 37, 51 (1920). A taxpayer living in one State and working in another gains protection and benefits from both—and so

[3] Given the pedigree of this rationale, applying it here would hardly "work a sea change in our Commerce Clause jurisprudence." *Ante*, at 558. See *United Haulers Assn., Inc.* v. *Oneida-Herkimer Solid Waste Management Authority*, 550 U. S. 330, 345, n. 7 (2007); *Goldberg*, 488 U. S., at 266; *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U. S. 456, 473, n. 17 (1981); *Raymond Motor Transp., Inc.* v. *Rice*, 434 U. S. 429, 444, n. 18 (1978); *South Carolina Highway Dept.* v. *Barnwell Brothers, Inc.*, 303 U. S. 177, 187 (1938). Nor would applying the rationale to a net income tax cast "doubt" on the Court's gross receipts precedents, *ante*, at 558, given the Court's longstanding practice of evaluating income and gross receipt taxes differently, see *infra*, at 592–593.

can be called upon to share in the costs of both States' governments.

States deciding whether to tax residents' entire worldwide income must choose between legitimate but competing tax policy objectives. A State might prioritize obtaining equal contributions from those who benefit from the State's protection in roughly similar ways. Or a State might prioritize ensuring that its taxpayers are not subject to double taxation. A State cannot, however, accomplish both objectives at once.

To illustrate, consider the Wynnes. Under the tax scheme in place in 2006, other Howard County residents who earned their income in State but who otherwise had the same tax profile as the Wynnes (*e. g.*, $2.67 million in taxable net income) owed the same amount of taxes *to Maryland* as the Wynnes. See App. to Pet. for Cert. A–56. The scheme thus ensured that all residents with similar access to the State's protection and benefits and similar ability to pay made equal contributions to the State to defray the costs of those benefits. Maryland could not achieve that objective, however, without exposing the Wynnes to a risk of double taxation. Conversely, the Court prioritizes reducing the risk that the Wynnes' income will be taxed twice by two different States. But that choice comes at a cost: The Wynnes enjoyed equal access to the State's services but will have paid $25,000 less to cover the costs of those services than similarly situated neighbors who earned their income entirely within the State. See Pet. for Cert. 15.

States confront the same tradeoff when deciding whether to tax nonresidents' entire in-state income. A State can require all residents and nonresidents who work within the State under its protection to contribute equally to the cost of that protection. Or the State can seek to avoid exposing its workers to any risk of double taxation. But it cannot achieve both objectives.

For at least a century, responsibility for striking the right balance between these two policy objectives has belonged to the States (and Congress), not this Court. Some States have chosen the same balance the Court embraces today. See *ante,* at 560–561. But since almost the dawn of the modern era of state income taxation, other States have taken the same approach as Maryland does now, taxing residents' entire income, wherever earned, while at the same time taxing nonresidents' entire in-state income. And recognizing that "[p]rotection, benefit, and power over [a taxpayer's income] are not confined to either" the State of residence or the State in which income is earned, this Court has long afforded States that flexibility. *Curry* v. *McCanless*, 307 U. S. 357, 368 (1939). This history of States imposing and this Court upholding income tax schemes materially identical to the one the Court confronts here should be the beginning and end of this case.

The modern era of state income taxation dates from a Wisconsin tax enacted in 1911. See 1911 Wis. Laws ch. 658; R. Blakey, State Income Taxation 1 (1930). From close to the start of this modern era, States have taxed residents and nonresidents in ways materially indistinguishable from the way Maryland does now. In 1915, for example, Oklahoma began taxing residents' "entire net income . . . arising or accruing from *all* sources," while at the same time taxing nonresidents' "entire net income from [sources] in th[e] State." 1915 Okla. Sess. Laws ch. 164, § 1, pp. 232–233 (emphasis added). Like Maryland today, Oklahoma provided no credit to either residents or nonresidents for taxes paid elsewhere. See *id.*, ch. 164, § 1 *et seq.*, at 232–237. In 1917, neighboring Missouri adopted a similar scheme: Residents owed taxes on their "entire net income . . . from *all* sources" and nonresidents owed taxes on their "entire net income . . . from all sources within th[e] state." 1917 Mo. Laws § 1(a), pp. 524–525 (emphasis added). Missouri too provided nei-

ther residents nor nonresidents a credit for taxes paid to other jurisdictions. See *id.*, § 1 *et seq.*, at 524–538. Thus, much like Maryland today, these early income tax adopters simultaneously taxed residents on *all* income, wherever earned, and nonresidents on *all* income earned within the State.[4]

Almost immediately, this Court began issuing what became a long series of decisions, repeatedly upholding States' authority to tax both residents' worldwide income and nonresidents' in-state income. *E. g.*, *Maguire* v. *Trefry*, 253 U. S. 12, 17 (1920) (resident income tax); *Shaffer*, 252 U. S., at 52–53, 57 (nonresident income tax). See also *State Tax Comm'n of Utah* v. *Aldrich*, 316 U. S. 174, 178 (1942); *Curry*, 307 U. S., at 368; *Guaranty Trust Co.* v. *Virginia*, 305 U. S. 19, 23 (1938); *Graves*, 300 U. S., at 313; *Lawrence*, 286 U. S., at 281. By the end of the 20th century, it was "a well-established principle of interstate and international taxation" that "sovereigns have authority to tax all income of their residents, including income earned outside their borders," *Chickasaw Nation*, 515 U. S., at 462, 463, n. 12, and that sovereigns generally may also tax nonresidents on "income earned within the [sovereign's] jurisdiction," *id.*, at 463, n. 11.

Far from suggesting that States must choose between taxing residents or nonresidents, this Court specifically affirmed that the exact same "income may be taxed [simultaneously]

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[4] Unlike Maryland's county income tax, these early 20th-century income taxes allowed a deduction for taxes paid to other jurisdictions. Compare App. 18 with 1917 Mo. Laws § 5, pp. 526–527, and 1915 Okla. Sess. Laws § 6, p. 234. The Wynnes have not argued and the majority does not suggest, however, that Maryland could fully cure the asserted defects in its tax "scheme" simply by providing a deduction, in lieu of a tax credit. And I doubt that such a deduction would give the Wynnes much satisfaction: Deducting taxes paid to other States from the Wynnes' $2.67 million taxable net income would reduce their Maryland tax burden by a small fraction of the $25,000 tax credit the majority awards them. See Pet. for Cert. 15; App. to Pet. for Cert. A–56.

both by the state where it is earned *and* by the state of the recipient's domicile." *Curry*, 307 U. S., at 368 (emphasis added). See also *Aldrich*, 316 U. S., at 176–178, 181 (rejecting "a rule of immunity from taxation by more than one state," including with respect to income taxation (internal quotation marks omitted)). In *Lawrence*, for example, this Court dealt with a Mississippi tax "scheme" with the same structure Maryland has today: Mississippi taxed residents on all income, wherever earned, and nonresidents on income earned within the State, without providing either set of taxpayers a credit for taxes paid elsewhere. See 286 U. S., at 278–279; Miss. Code Ann. § 5033(a), (b)(9) (1930). *Lawrence* upheld a Mississippi tax on net income earned by one of its residents on the construction of public highways in Tennessee. See 286 U. S., at 279–281. The Court did so fully aware that both Mississippi and Tennessee were effectively imposing "an income tax upon the same occupation." Reply Brief in *Lawrence* v. *State Tax Comm'n of Miss.*, O. T. 1931, No. 580, p. 32. See also *Curry*, 307 U. S., at 363, n. 1, 368 (discussing *Lawrence*).

Likewise, in *Guaranty Trust*, both New York and Virginia had taxed income of a New York trust that had been distributed to a Virginia resident. 305 U. S., at 21–22. The resident sought to block Virginia's tax in order to avoid "double taxation" of the "identical income." *Id.*, at 22. Rejecting that challenge, the Court once again reiterated that "two States" may simultaneously tax the "same income." *Ibid.*

The majority deems these cases irrelevant because they involved challenges brought under the Due Process Clause, not the Commerce Clause. See *ante*, at 556–558. These cases are significant, however, not because the constraints imposed by the two Clauses are identical. Obviously, they are not. See *Quill Corp.*, 504 U. S., at 305. What the sheer volume and consistency of this precedent confirms, rather, is the degree to which this Court has—until now—endorsed the "well-established principle of interstate and international

taxation" that a State may tax its residents' worldwide income, without restriction arising from the source-based taxes imposed by other States and regardless of whether the State also chooses to impose source-based taxes of its own. *Chickasaw Nation*, 515 U. S., at 462.[5]

In any event, it is incorrect that support for this principle is limited to the Court's Due Process Clause cases. In *Shaffer*, for example, this Court rejected *both* a Due Process Clause challenge *and* a dormant Commerce Clause challenge to an income tax "scheme" (the Oklahoma statute described above) with the very features the majority latches onto today: Oklahoma taxed residents on all worldwide income and nonresidents on all in-state income, without providing a credit for taxes paid elsewhere to either residents or nonresidents. 252 U. S., at 52–53 (Due Process Clause challenge); *id.*, at 57 (dormant Commerce Clause challenge). See also *supra*, at 587. The specific tax challenged in *Shaffer*—a tax on a nonresident's in-state income—exposed taxpayers to the same risk of double taxation as the Maryland tax challenged in this case. The majority labors mightily to distinguish *Shaffer*, but it does not dispute the one thing that ought to give it pause: Today's decision overrules *Shaffer*'s dormant Commerce Clause holding. See *ante*, at 558–559. I would not discard our precedents so lightly. Just as the tax in *Shaffer* encountered no constitutional shoals, so Maryland's scheme should survive the Court's inspection.

This Court's decision in *West Publishing Co.* v. *McColgan*, 328 U. S. 823 (1946), reinforces that conclusion. In *West Publishing*, the Court summarily affirmed a decision of the

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[5] Upholding Maryland's facially neutral tax hardly means, as the majority contends, *ante*, at 556, that the dormant Commerce Clause places no limits on States' authority to tax residents' worldwide income. There are, for example, no well-established principles of interstate and international taxation permitting the kind of facially discriminatory tax the majority "[i]magine[s]" a State enacting. *Ante*, at 557. Nor are the political processes noted above an adequate safeguard against such a tax. See *supra*, at 583–585.

California Supreme Court that denied a dormant Commerce Clause challenge based on the principles today's majority disrespects:

> "[T]here [is no] merit to the contention that [California's tax] discriminates against interstate commerce on the ground that it subjects part of plaintiff's income to double taxation, given the taxability of plaintiff's entire net income in the state of its domicile. Taxation in one state is not an immunization against taxation in other states. Taxation by states in which a corporation carries on business activities is justified by the advantages that attend the pursuit of such activities. Income may be taxed both by the state where it is earned and by the state of the recipient's domicile. Protection, benefit and power over the subject matter are not confined to either state." 27 Cal. 2d 705, 710–711, 166 P. 2d 861, 864 (1946) (citations and internal quotation marks omitted).

In treating the matter summarily, the Court rejected an argument strikingly similar to the one the majority now embraces: that California's tax violated the dormant Commerce Clause because it subjected "interstate commerce . . . to the risk of a double tax burden." Brief for Appellant Opposing Motion to Dismiss or Affirm in *West Publishing Co.* v. *McColgan*, O. T. 1945, No. 1255, pp. 20–21 (quoting *J. D. Adams Mfg. Co.* v. *Storen*, 304 U. S. 307, 311 (1938)).

The long history just recounted counsels in favor of respecting States' authority to tax without discount its residents' worldwide income. As Justice Holmes stated over a century ago, in regard to a "mode of taxation . . . of long standing, . . . the fact that the system has been in force for a very long time is of itself a strong reason . . . for leaving any improvement that may be desired to the legislature." *Paddell* v. *City of New York*, 211 U. S. 446, 448 (1908). Only recently, this Court followed that sound advice in resisting a dormant Commerce Clause challenge to a taxing practice

with a pedigree as enduring as the practice in this case. See *Department of Revenue of Ky.* v. *Davis*, 553 U. S. 328, 356–357 (2008) (quoting *Paddell*, 211 U. S., at 448). Surely that advice merits application here, where the challenged tax draws support from both historical practice and numerous decisions of this Court.

The majority rejects Justice Holmes' counsel, observing that most States, over time, have chosen not to exercise plenary authority to tax residents' worldwide income. See *ante*, at 560–561. The Court, however, learns the wrong lesson from the "independent *policy* decision[s]" States have made. *Chickasaw*, 515 U. S., at 463, n. 12 (emphasis added; internal quotation marks omitted). This history demonstrates not that States "doub[t]" their "constitutiona[l]" authority to tax residents' income, wherever earned, as the majority speculates, *ante*, at 561, but that the very political processes the Court disregards as "fanciful," *ante*, at 555, have in fact worked to produce policies the Court ranks as responsible—all the more reason to resist this Court's heavy-handed supervision.

The Court also attempts to deflect the force of this history and precedent by relying on a "trilogy" of decisions it finds "particularly instructive." *Ante*, at 550 (citing *Central Greyhound Lines, Inc.* v. *Mealey*, 334 U. S. 653 (1948); *Gwin, White & Prince, Inc.* v. *Henneford*, 305 U. S. 434 (1939); *J. D. Adams Mfg.*, 304 U. S. 307). As the majority acknowledges, however, those three decisions involved gross receipts taxes, not income taxes. *Ante*, at 551–553. True, this Court has recently pointed to similarities between these two forms of taxation. See *ante*, at 552–553. But it is an indulgence in wishful thinking to say that this Court has previously "rejected the argument that the Commerce Clause distinguishes between" these taxes. *Ante*, at 552. For decades—including the years when the majority's "trilogy" was decided—the Court has routinely maintained that "the difference between taxes on net income and taxes on gross receipts from interstate commerce warrants different results" under the Com-

merce Clause. 2 C. Trost & P. Hartman, Federal Limitations on State and Local Taxation 2d § 10:1, p. 251 (2003).

In *Shaffer*, for example, the Court rejected the taxpayer's dormant Commerce Clause challenge *because* "the tax [was] imposed not upon gross receipts . . . but only upon the net proceeds." 252 U. S., at 57. Just three years before deciding *J. D. Adams*, the Court emphasized "manifest and substantial" differences between the two types of taxes, calling the burden imposed by a gross receipts tax "direct and immediate," in contrast to the "indirect and incidental" burden imposed by an income tax. *Stewart Dry Goods Co.* v. *Lewis*, 294 U. S. 550, 558 (1935) (quoting *United States Glue Co.* v. *Town of Oak Creek*, 247 U. S. 321, 328 (1918)). And the *Gwin, White* opinion observed that invalidating the gross receipts tax at issue "left to the states wide scope for taxation of those engaged in interstate commerce, extending to . . . *net income derived from it.*" 305 U. S., at 441 (emphasis added).

The majority asserts that this Court "rejected" this distinction in *Moorman Mfg.* See *ante*, at 552. That decision in fact described gross receipts taxes as "more burdensome" than income taxes—twice. 437 U. S., at 280, 281. In particular, *Moorman* upheld a state income tax because an earlier decision had upheld a similar but "inherently more burdensome" gross receipts tax. *Id.*, at 281. To say that the constitutionality of an income tax follows *a fortiori* from the constitutionality of a similar but "more burdensome" gross receipts tax is to *affirm*, not reject, a distinction between the two.

The Justices participating in the Court's "trilogy," in short, would scarcely expect to see the three decisions invoked to invalidate a tax on net income.

II

Abandoning principles and precedent sustaining simultaneous residence- and source-based income taxation, the Court offers two reasons for striking down Maryland's

county income tax: (1) The tax creates a risk of double taxation, *ante*, at 551, 561; and (2) the Court deems Maryland's income tax "scheme" "inherently discriminatory"—by which the Court means, the scheme fails the so-called "internal consistency" test, *ante*, at 564. The first objection is overwhelmed by the history, recounted above, of States imposing and this Court upholding income taxes that carried a similar risk of double taxation. See *supra*, at 586–592. The Court's reliance on the internal consistency test is no more compelling.

This Court has not rigidly required States to maintain internally consistent tax regimes. Before today, for two decades, the Court has not insisted that a tax under review pass the internal consistency test, see *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U. S. 175, 185 (1995), and has not struck down a state tax for failing the test in nearly 30 years, see *American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S. 266, 284–287 (1987) (*ATA I*); *Tyler Pipe Industries, Inc.* v. *Washington State Dept. of Revenue*, 483 U. S. 232, 247–248 (1987). Moreover, the Court has rejected challenges to taxes that flunk the test. The Oklahoma tax "scheme" upheld under the dormant Commerce Clause in *Shaffer*, for example, is materially indistinguishable from—therefore as internally inconsistent as—Maryland's scheme. 252 U. S., at 57. And more recently, in *American Trucking Assns., Inc.* v. *Michigan Pub. Serv. Comm'n*, the Court upheld a "conced-e[dly]" internally inconsistent state tax. 545 U. S. 429, 438 (2005) (*ATA II*). The Court did so, satisfied that there was a sufficiently close connection between the tax at issue and the local conduct that triggered the tax. See *ibid.*[6]

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[6] The majority reads *American Trucking Assns., Inc.* v. *Michigan Pub. Serv. Comm'n*, 545 U. S. 429 (2005) (*ATA II*), in a way so implausible, it must resort to quoting from an *amicus* brief, rather than from the Court's opinion. According to the majority, this Court did *not* think the challenged tax failed the internal consistency test in *ATA II*, it held only that the challengers had failed to make the necessary "empirical show-

The logic of *ATA II*, counsel for the Wynnes appeared to recognize, see Tr. of Oral Arg. 46–47, would permit a State to impose a head tax—*i. e.*, a flat charge imposed on every resident in the State—even if that tax were part of an internally inconsistent tax scheme. Such a tax would rest on purely local conduct: the taxpayer's residence in the taxing State. And the taxes paid would defray costs closely connected to that local conduct—the services used by the taxpayer while living in the State.

I see no reason why the Constitution requires us to disarm States from using a progressive tax, rather than a flat toll, to cover the costs of local services all residents enjoy. A head tax and a residence-based income tax differ, do they not, only in that the latter is measured by each taxpayer's ability to pay. Like the head tax, however, a residence-based income tax is triggered by the purely local conduct of residing in the State. And also like the head tax, a residence-based income tax covers costs closely connected to that residence: It finances services used by those living in the State. If a head tax qualifies for *ATA II*'s reprieve from internal consistency, then so too must a residence-based income tax.

The majority asserts that because Maryland's tax scheme is internally inconsistent, it "operates as a tariff," making it "'patently unconstitutional.'" *Ante*, at 565. This is a curious claim. The defining characteristic of a tariff is that it

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ing." See *ante*, at 563, n. 7. It is true that the United States made that argument. See Brief for United States as *Amicus Curiae* in *ATA II*, O. T. 2004, No. 03–1230, p. 26. But one searches the U. S. Reports in vain for any indication that the Court adopted it. Which is hardly surprising, for one would scarcely think that a test turning on "*hypothetically*" assessing a tax's "structure," *ante*, at 562 (emphasis added), would require empirical data. What the Court in fact said in *ATA II*, is that the tax's internal inconsistency would be *excused* because any multiple taxation resulting from every State adopting the challenged tax would be caused by interstate firms' choosing to "engag[e] in *local* business in all those States." 545 U. S., at 438.

taxes interstate activity at a higher rate than it taxes the same activity conducted within the State. See *West Lynn Creamery*, 512 U. S., at 193. Maryland's resident income tax does the exact opposite: It taxes the income of its residents at precisely the same rate, whether the income is earned in State or out of State.[7]

There is, moreover, a deep flaw in the Court's chosen test. The Court characterizes internal consistency as a "cure," *ante*, at 561–562, 568–569, but the test is scarcely that, at least for the double taxation the Court believes to justify its intervention. According to the Court, Maryland's tax "scheme" is internally inconsistent because Maryland simultaneously imposes two taxes: the county income tax and the special nonresident tax. See *ante*, at 551, 564–565, and n. 8. But only one of these taxes—the county income tax—actually falls on the Wynnes. Because it is the interaction between these two taxes that renders Maryland's tax scheme internally inconsistent, Maryland could eliminate the inconsistency by terminating the special nonresident tax—a measure that would not help the Wynnes at all.[8] Maryland could, in other words, bring itself into compliance with the test at the heart of the Court's analysis without removing the double tax burden the test is purportedly designed to "cure."

To illustrate this oddity, consider the Court's "simple example" of April (who lives and works in State A) and Bob (who lives in State A, but works in State B). *Ante*, at 564, 568. Both States fail the internal consistency test because they impose (1) a 1.25% tax on income that residents earn in State, (2) a 1.25% tax on income that residents earn in other jurisdictions, and (3) a 1.25% tax on income that nonresidents earn in State. According to the Court, these

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[7] The majority faults the dissents for not "disput[ing]" its "economic analysis," but beyond citation to a pair of *amicus* briefs, its opinion offers no analysis to dispute. *Ante*, at 565.

[8] Or Maryland could provide nonresidents a credit for taxes paid to other jurisdictions on Maryland source income. Cf. *ante*, at 568–569.

tax schemes are troubling because "Bob will pay more income tax than April solely because he earns income interstate." *Ante*, at 565.

Each State, however, need not pursue the same approach to make their tax schemes internally consistent.[9] See *ante*, at 568. State A might choose to tax residents' worldwide income only, which it could do by eliminating the third tax (on nonresidents' in-state income). State B might instead choose exclusively to tax income earned within the State by deleting the second tax (on residents' out-of-state income). Each State's tax scheme would then be internally consistent. But the tax burden on April and Bob would remain unchanged: Just as under the original schemes, April would have to pay a 1.25% tax only once, to State A, and Bob would have to pay a 1.25% tax twice: once to State A, where he resides, and once to State B, where he earns the income. The Court's "cure," in other words, is no match for the perceived disease.[10]

The Court asserts that this flaw is just a "truism" of every discrimination case, whether brought under the dormant

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[9] I do not "clai[m]" as the Court groundlessly suggests, that the Court's analysis "establish[es] . . . [a] rule of priority" between residence- and source-based taxation. *Ante*, at 568. My objection, rather, is that the Court treats source-based authority as "box[ing] in" a State's discrete authority to tax on the basis of residence. *Supra*, at 582. There is no "inconsisten[cy]" in my analysis, and the majority plainly errs in insisting that there is. *Ante*, at 568.

[10] Attempting to preserve the test's qualification as a "cure," the Court redefines the illness as not just double taxation but double taxation caused by an "inherently discriminat[ory]" tax "scheme." *Ante*, at 562. Relying on such a distinction to justify the test is entirely circular, however, as the Court defines "inherent discrimination" in this case as internal inconsistency. In any event, given the concern that purportedly drives the Court's analysis, it is mystifying why the Court sees "virtue" in striking down only one of the two schemes under which Bob is taxed twice. *Ibid.* Whatever disincentive the original scheme creates for Bob (or the Wynnes) to work in interstate commerce is created just as much by the revised scheme that the Court finds satisfactory.

Commerce Clause or the Equal Protection Clause. *Ante,* at 569. That is simply incorrect. As the Court acknowledges, a government that impermissibly "treats like cases differently" (*i. e.*, discriminates) can ordinarily cure the violation either by "leveling up" or "leveling down." *Ibid.* (internal quotation marks omitted). Consider another April and Bob example. If Bob must pay a 10% tax and April must pay a 5% tax, that discrimination can be eliminated either by requiring both to pay the 10% tax ("leveling up") *or* by requiring both to pay the 5% tax ("leveling down"). True, "leveling up" leaves Bob's tax bill unchanged. "Leveling up" nonetheless benefits Bob because it eliminates the unfairness of being treated differently. And if, as is often true in dormant Commerce Clause cases, April and Bob compete in the same market, then "leveling up" provides the concrete benefit of placing a new burden on Bob's competitors.

The majority's rule does not work this way. As just explained, Maryland can "cure" what the majority deems discrimination without lowering the Wynnes' taxes *or* increasing the tax burden on any of the Wynnes' neighbors—by terminating the special nonresident tax. See *supra,* at 596–597. The State can, in other words, satisfy the majority not by lowering Bob's taxes or by raising April's taxes, but by eliminating the taxes imposed on yet a third taxpayer (say, Cathy). The Court's internal consistency test thus scarcely resembles "ordinary" antidiscrimination law. Whatever virtue the internal consistency test has in other contexts, this shortcoming makes it a poor excuse for jettisoning taxation principles as entrenched as those here.

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This case is, at bottom, about policy choices: Should States prioritize ensuring that all who live or work within the State shoulder their fair share of the costs of government? Or must States prioritize avoidance of double taxation? As I have demonstrated, *supra,* at 596–597 and this page, achiev-

ing even the latter goal is beyond this Court's competence. Resolving the competing tax policy considerations this case implicates is something the Court is even less well equipped to do. For a century, we have recognized that state legislatures and the Congress are constitutionally assigned and institutionally better equipped to balance such issues. I would reverse, so that we may leave that task where it belongs.

Syllabus

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, ET AL. *v.* SHEEHAN

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

No. 13–1412. Argued March 23, 2015—Decided May 18, 2015

Respondent Sheehan lived in a group home for individuals with mental illness. After Sheehan began acting erratically and threatened to kill her social worker, the City and County of San Francisco (San Francisco) dispatched police officers Reynolds and Holder to help escort Sheehan to a facility for temporary evaluation and treatment. When the officers first entered Sheehan's room, she grabbed a knife and threatened to kill them. They retreated and closed the door. Concerned about what Sheehan might do behind the closed door, and without considering if they could accommodate her disability, the officers reentered her room. Sheehan, knife in hand, again confronted them. After pepper spray proved ineffective, the officers shot Sheehan multiple times. Sheehan later sued petitioner San Francisco for, among other things, violating Title II of the Americans with Disabilities Act of 1990 (ADA) by arresting her without accommodating her disability. See 42 U. S. C. § 12132. She also sued petitioners Reynolds and Holder in their personal capacities under 42 U. S. C. § 1983, claiming that they violated her Fourth Amendment rights. The District Court granted summary judgment because it concluded that officers making an arrest are not required to determine whether their actions would comply with the ADA before protecting themselves and others, and also that Reynolds and Holder did not violate the Constitution. Vacating in part, the Ninth Circuit held that the ADA applied and that a jury must decide whether San Francisco should have accommodated Sheehan. The court also held that Reynolds and Holder are not entitled to qualified immunity because it is clearly established that, absent an objective need for immediate entry, officers cannot forcibly enter the home of an armed, mentally ill person who has been acting irrationally and has threatened anyone who enters.

Held:

1. The question whether § 12132 "requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody," Pet. for Cert. i, is dismissed as improvidently granted. Certiorari was granted on the understanding that San Francisco would argue that Title II of the ADA

does not apply when an officer faces an armed and dangerous individual. Instead, San Francisco merely argues that Sheehan was not "qualified" for an accommodation, § 12132, because she "pose[d] a direct threat to the health or safety of others," which threat could not "be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services," 28 CFR §§ 35.139(a), 35.104. This argument was not passed on by the court below. The decision to dismiss this question as improvidently granted, moreover, is reinforced by the parties' failure to address the related question whether a public entity can be vicariously liable for damages under Title II for an arrest made by its police officers. Pp. 608–610.

2. Reynolds and Holder are entitled to qualified immunity from liability for the injuries suffered by Sheehan. Public officials are immune from suit under 42 U. S. C. § 1983 unless they have "violated a statutory or constitutional right that was '" 'clearly established'" ' at the time of the challenged conduct," *Plumhoff* v. *Rickard*, 572 U. S. 765, 778, an exacting standard that "gives government officials breathing room to make reasonable but mistaken judgments," *Ashcroft* v. *al-Kidd*, 563 U. S. 731, 743. The officers did not violate the Fourth Amendment when they opened Sheehan's door the first time, and there is no doubt that they could have opened her door the second time without violating her rights had Sheehan not been disabled. Their use of force was also reasonable. The only question therefore is whether they violated the Fourth Amendment when they decided to reopen Sheehan's door rather than attempt to accommodate her disability. Because any such Fourth Amendment right, even assuming it exists, was not clearly established, Reynolds and Holder are entitled to qualified immunity. Likewise, an alleged failure on the part of the officers to follow their training does not itself negate qualified immunity where it would otherwise be warranted. Pp. 610–617.

Certiorari dismissed in part; 743 F. 3d 1211, reversed in part and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, and SOTOMAYOR, JJ., joined. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which KAGAN, J., joined, *post*, p. 618. BREYER, J., took no part in the consideration or decision of the case.

Christine Van Aken argued the cause for petitioners. With her on the briefs were *Dennis J. Herrera* and *Peter J. Keith*.

Deputy Solicitor General Gershengorn argued the cause for the United States as *amicus curiae* urging vacatur in part and reversal in part. With him on the brief were *Solicitor General Verrilli*, *Acting Assistant Attorneys General Branda* and *Gupta*, *Elizabeth B. Prelogar*, *Barbara L. Herwig*, *Sharon M. McGowan*, *Dana Kaersvang*, and *Holly A. Thomas*.

Leonard J. Feldman argued the cause for respondent. With him on the brief were *Ben Nisenbaum*, *Jill D. Bowman*, and *Hunter O. Ferguson*.*

JUSTICE ALITO delivered the opinion of the Court.

We granted certiorari to consider two questions relating to the manner in which San Francisco police officers arrested a woman who was suffering from a mental illness and had become violent. After reviewing the parties' submissions, we dismiss the first question as improvidently granted. We decide the second question and hold that the officers are entitled to qualified immunity because they did not violate any clearly established Fourth Amendment rights.

I

Petitioners are the City and County of San Francisco, California (San Francisco), and two police officers, Sergeant Kimberly Reynolds and Officer Kathrine Holder. Respond-

*Briefs of *amici curiae* urging reversal were filed for the International Municipal Lawyers Association et al. by *Sarah M. Shalf* and *Charles W. Thompson, Jr.*; and for the National League of Cities et al. by *Danny Chou*, *Greta S. Hansen*, *Melissa* R. *Kiniyalocts*, and *Daniel G. Lloyd*.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Claudia Center*, *Matthew Coles*, *Steven R. Shapiro*, and *Alan L. Schlosser*; for the American Psychiatric Association et al. by *Aaron M. Panner*, *David W. Ogden*, *Daniel S. Volchok*, and *Ira A. Burnim*; for the National Police Accountability Project by *Julia Sherwin* and *Michael J. Haddad*; for the Policy Council on Law Enforcement and the Mentally Ill by *William Harry Ehlies II* and *Anita S. Earls*; and for Eugene De Boise, Sr., by *John Burton* and *W. Bevis Schock*.

ent is Teresa Sheehan, a woman who suffers from a schizoaffective disorder. Because this case arises in a summary judgment posture, we view the facts in the light most favorable to Sheehan, the nonmoving party. See, *e. g.*, *Plumhoff* v. *Rickard*, 572 U. S. 765, 768–769 (2014).

In August 2008, Sheehan lived in a group home for people dealing with mental illness. Although she shared common areas of the building with others, she had a private room. On August 7, Heath Hodge, a social worker who supervised the counseling staff in the building, attempted to visit Sheehan to conduct a welfare check. Hodge was concerned because Sheehan had stopped taking her medication, no longer spoke with her psychiatrist, and reportedly was no longer changing her clothes or eating. See 743 F. 3d 1211, 1218 (CA9 2014); App. 23–24.

Hodge knocked on Sheehan's door but received no answer. He then used a key to enter her room and found Sheehan on her bed. Initially, she would not respond to questions. But she then sprang up, reportedly yelling, "Get out of here! You don't have a warrant! I have a knife, and I'll kill you if I have to." Hodge left without seeing whether she actually had a knife, and Sheehan slammed the door shut behind him. See 743 F. 3d, at 1218.

Sheehan, Hodge realized, required "some sort of intervention," App. 96, but he also knew that he would need help. Hodge took steps to clear the building of other people and completed an application to have Sheehan detained for temporary evaluation and treatment. See Cal. Welf. & Inst. Code Ann. § 5150 (West 2015 Cum. Supp.) (authorizing temporary detention of someone who "as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled"). On that application, Hodge checked off boxes indicating that Sheehan was a "threat to others" and "gravely disabled," but he did not mark that she was a danger to herself. 743 F. 3d, at 1218. He telephoned the police and asked for help to take Sheehan to a secure facility.

Officer Holder responded to police dispatch and headed toward the group home. When she arrived, Holder reviewed the temporary-detention application and spoke with Hodge. Holder then sought assistance from Sergeant Reynolds, a more experienced officer. After Reynolds arrived and was brought up to speed, Hodge spoke with a nurse at the psychiatric emergency services unit at San Francisco General Hospital who said that the hospital would be able to admit Sheehan.

Accompanied by Hodge, the officers went to Sheehan's room, knocked on her door, announced who they were, and told Sheehan that "we want to help you." App. 36. When Sheehan did not answer, the officers used Hodge's key to enter the room. Sheehan reacted violently. She grabbed a kitchen knife with an approximately 5-inch blade and began approaching the officers, yelling something along the lines of "I am going to kill you. I don't need help. Get out." *Ibid.* See also *id.*, at 284 ("[Q.] Did you tell them I'll kill you if you don't get out of here? A. Yes"). The officers—who did not have their weapons drawn—"retreated and Sheehan closed the door, leaving Sheehan in her room and the officers and Hodge in the hallway." 743 F. 3d, at 1219. The officers called for backup and sent Hodge downstairs to let in reinforcements when they arrived.

The officers were concerned that the door to Sheehan's room was closed. They worried that Sheehan, out of their sight, might gather more weapons—Reynolds had already observed other knives in her room, see App. 228—or even try to flee through the back window, *id.*, at 227. Because Sheehan's room was on the second floor, she likely would have needed a ladder to escape. Fire escapes, however, are common in San Francisco, and the officers did not know whether Sheehan's room had such an escape. (Neither officer asked Hodge about a fire escape, but if they had, it seems he "probably" would have said there was one, *id.*, at 117). With the door closed, all that Reynolds and Holder knew for

sure was that Sheehan was unstable, she had just threatened to kill three people, and she had a weapon.[1]

Reynolds and Holder had to make a decision. They could wait for backup—indeed, they already heard sirens. Or they could quickly reenter the room and try to subdue Sheehan before more time elapsed. Because Reynolds believed that the situation "required [their] immediate attention," *id.*, at 235, the officers chose reentry. In making that decision, they did not pause to consider whether Sheehan's disability should be accommodated. See 743 F. 3d, at 1219. The officers obviously knew that Sheehan was unwell, but in Reynolds' words, that was "a secondary issue" given that they were "faced with a violent woman who had already threatened to kill her social worker" and "two uniformed police officers." App. 235.

The officers ultimately decided that Holder—the larger officer—should push the door open while Reynolds used pepper spray on Sheehan. With pistols drawn, the officers moved in. When Sheehan, knife in hand, saw them, she again yelled for them to leave. She may also have again said that she was going to kill them. Sheehan is "not sure" if she threatened death a second time, *id.*, at 284, but "concedes that it was her intent to resist arrest and to use the knife," 743 F. 3d, at 1220. In any event, Reynolds began pepper-spraying Sheehan in the face, but Sheehan would not

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[1] The officers also may have feared that another person was with Sheehan. Reynolds testified that the officers had not been "able to do a complete assessment of the entire room." App. 38. Sheehan, by contrast, testified during a deposition that the officers "could see . . . that no one else was in the room." *Id.*, at 279. Before the Ninth Circuit, Sheehan conceded that some of her deposition testimony "smacks of irrationality that begs the question whether any of it is credible." Brief for Appellant in No. 11–16401 (CA9), p. 41; see also Reply Brief in No. 11–16401, p. 17 (explaining that "the inherent inconsistencies in her testimony cast suspicion over all of it"). We need not decide whether there is a genuine dispute of fact here because the officers' other, independent concerns make this point immaterial.

drop the knife. When Sheehan was only a few feet away, Holder shot her twice, but she did not collapse. Reynolds then fired multiple shots.[2] After Sheehan finally fell, a third officer (who had just arrived) kicked the knife out of her hand. Sheehan survived.

Some time later, San Francisco prosecuted Sheehan for assault with a deadly weapon, assault on a peace officer with a deadly weapon, and making criminal threats. The jury acquitted Sheehan of making threats but was unable to reach a verdict on the assault counts, and prosecutors decided not to retry her.

Sheehan then brought suit, alleging, among other things, that San Francisco violated the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 327, 42 U. S. C. § 12101 *et seq.*, by subduing her in a manner that did not reasonably accommodate her disability. She also sued Reynolds and Holder in their personal capacities under Rev. Stat. § 1979, 42 U. S. C. § 1983, for violating her Fourth Amendment rights. In support of her claims, she offered testimony from a former deputy police chief, Lou Reiter, who contended that Reynolds and Holder fell short of their training by not using practices designed to minimize the risk of violence when dealing with the mentally ill.

The District Court granted summary judgment for petitioners. Relying on *Hainze* v. *Richards*, 207 F. 3d 795 (CA5 2000), the court held that officers making an arrest are not required "to first determine whether their actions would comply with the ADA before protecting themselves and others." App. to Pet. for Cert. 80. The court also held that the officers did not violate the Fourth Amendment. The court wrote that the officers "had no way of knowing whether [Sheehan] might escape through a back window or fire escape, whether she might hurt herself, or whether there

[2] There is a dispute regarding whether Sheehan was on the ground for the last shot. This dispute is not material: "Even if Sheehan was on the ground, she was certainly not subdued." 743 F. 3d 1211, 1230 (CA9 2014).

was anyone else in her room whom she might hurt." *Id.*, at 71. In addition, the court observed that Holder did not begin shooting until it was necessary for her to do so in order "to protect herself" and that "Reynolds used deadly force only after she found that pepper spray was not enough force to contain the situation." *Id.*, at 75, 76–77.

On appeal, the Ninth Circuit vacated in part. Relevant here, the panel held that because the ADA covers public "services, programs, or activities," § 12132, the ADA's accommodation requirement should be read "to encompass 'anything a public entity does,'" 743 F. 3d, at 1232. The Ninth Circuit agreed "that exigent circumstances inform the reasonableness analysis under the ADA," *ibid.*, but concluded that it was for a jury to decide whether San Francisco should have accommodated Sheehan by, for instance, "respect[ing] her comfort zone, engag[ing] in non-threatening communications and us[ing] the passage of time to defuse the situation rather than precipitating a deadly confrontation," *id.*, at 1233.

As to Reynolds and Holder, the panel held that their initial entry into Sheehan's room was lawful and that, after the officers opened the door for the second time, they reasonably used their firearms when the pepper spray failed to stop Sheehan's advance. Nonetheless, the panel also held that a jury could find that the officers "provoked" Sheehan by needlessly forcing that second confrontation. *Id.*, at 1216, 1229. The panel further found that it was clearly established that an officer cannot "forcibly enter the home of an armed, mentally ill subject who had been acting irrationally and had threatened anyone who entered when there was no objective need for immediate entry." *Id.*, at 1229. Dissenting in part, Judge Graber would have held that the officers were entitled to qualified immunity.

San Francisco and the officers petitioned for a writ of certiorari and asked us to review two questions. We granted the petition. 574 U. S. 1021 (2014).

II

Title II of the ADA commands that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U. S. C. § 12132. The first question on which we granted review asks whether this provision "requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody." Pet. for Cert. i. When we granted review, we understood this question to embody what appears to be the thrust of the argument that San Francisco made in the Ninth Circuit, namely that "'Title II *does not apply* to an officer's on-the-street responses to reported disturbances or other similar incidents, whether or not those calls involve subjects with mental disabilities, prior to the officer's securing the scene and ensuring that there is no threat to human life.'" Brief for Appellees in No. 11–16401 (CA9), p. 36 (quoting *Hainze*, *supra*, at 801; emphasis added); see also Brief for Appellees in No. 11–16401, at 37 (similar).

As San Francisco explained in its reply brief at the certiorari stage, resolving its "question presented" "does not require a fact-intensive 'reasonable accommodation' inquiry," since "the only question for this Court to resolve is whether any accommodation of an armed and violent individual is reasonable or required under Title II of the ADA." Reply to Brief in Opposition 3.

Having persuaded us to grant certiorari, San Francisco chose to rely on a different argument than what it pressed below. In its brief in this Court, San Francisco focuses on the statutory phrase "qualified individual," § 12132, and a regulation declaring that Title II "does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health

or safety of others," 28 CFR § 35.139(a) (2014). Another regulation defines a "direct threat" as "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services." § 35.104. Putting these authorities together, San Francisco argues that "a person who poses a direct threat or significant risk to the safety of others is not qualified for accommodations under the ADA," Brief for Petitioners 17. Contending that Sheehan clearly posed a "direct threat," San Francisco concludes that she was therefore not "qualified" for an accommodation.

Though, to be sure, this "qualified" argument does appear in San Francisco's certiorari petition, San Francisco never hinted at it in the Ninth Circuit. The Court does not ordinarily decide questions that were not passed on below. More than that, San Francisco's new argument effectively concedes that the relevant provision of the ADA, 42 U. S. C. § 12132, *may* "requir[e] law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody." Pet. for Cert. i. This is so because there may be circumstances in which any "significant risk" presented by "an armed, violent, and mentally ill suspect" can be "eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services."

The argument that San Francisco now advances is predicated on the proposition that the ADA governs the manner in which a qualified individual with a disability is arrested. The relevant provision provides that a public entity may not "exclud[e]" a qualified individual with a disability from "participat[ing] in," and may not "den[y]" that individual the "benefits of[,] the services, programs, or activities of a public entity." § 12132. This language would apply to an arrest if an arrest is an "activity" in which the arrestee "participat[es]" or from which the arrestee may "benefi[t]."

This same provision also commands that "no qualified individual with a disability shall be . . . subjected to discrimination by any [public] entity." *Ibid.* This part of the statute would apply to an arrest if the failure to arrest an individual with a mental disability in a manner that reasonably accommodates that disability constitutes "discrimination." *Ibid.*

Whether the statutory language quoted above applies to arrests is an important question that would benefit from briefing and an adversary presentation. But San Francisco, the United States as *amicus curiae*, and Sheehan all argue (or at least accept) that § 12132 applies to arrests. No one argues the contrary view. As a result, we do not think that it would be prudent to decide the question in this case.

Our decision not to decide whether the ADA applies to arrests is reinforced by the parties' failure to address a related question: whether a public entity can be liable for damages under Title II for an arrest made by its police officers. Only public entities are subject to Title II, see, *e. g.*, *Pennsylvania Dept. of Corrections* v. *Yeskey*, 524 U. S. 206, 208 (1998), and the parties agree that such an entity can be held vicariously liable for money damages for the purposeful or deliberately indifferent conduct of its employees, see Tr. of Oral Arg. 10–12, 22. But we have never decided whether that is correct, and we decline to do so here, in the absence of adversarial briefing.

Because certiorari jurisdiction exists to clarify the law, its exercise "is not a matter of right, but of judicial discretion." This Court's Rule 10. Exercising that discretion, we dismiss the first question presented as improvidently granted. See, *e. g.*, *Board of Trustees of Univ. of Ala.* v. *Garrett*, 531 U. S. 356, 360, n. 1 (2001) (partial dismissal); *Parker* v. *Dugger*, 498 U. S. 308, 323 (1991) (same).

III

The second question presented is whether Reynolds and Holder can be held personally liable for the injuries that

Sheehan suffered. We conclude they are entitled to qualified immunity.[3]

Public officials are immune from suit under 42 U. S. C. § 1983 unless they have "violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Plumhoff*, 572 U. S., at 778 (internal quotation marks omitted). An officer "cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in [his] shoes would have understood that he was violating it," *id.*, at 778–779, meaning that "existing precedent . . . placed the statutory or constitutional question beyond debate," *Ashcroft* v. *al-Kidd*, 563 U. S. 731, 741 (2011). This exacting standard "gives government officials breathing room to make reasonable but mistaken judgments" by "protect[ing] 'all but the plainly incompetent or those who knowingly violate the law.'" *Id.*, at 743.

In this case, although we disagree with the Ninth Circuit's ultimate conclusion on the question of qualified immunity, we

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[3] Not satisfied with dismissing question 1, which concerns *San Francisco's* liability, our dissenting colleagues would further punish San Francisco by dismissing question 2 as well. See *post*, at 620 (opinion of SCALIA, J.) (arguing that deciding the second question would "reward" San Francisco and "spar[e it] the significant expense of defending the suit, and satisfying any judgment, against the individual petitioners"). But question 2 concerns the *liability of the individual officers.* Whatever contractual obligations San Francisco may (or may not) have to represent and indemnify the officers are not our concern. At a minimum, these officers have a personal interest in the correctness of the judgment below, which holds that they may have violated the Constitution. Moreover, when we granted the petition, we determined that both questions independently merited review. Because of the importance of qualified immunity "to society as a whole," *Harlow* v. *Fitzgerald*, 457 U. S. 800, 814 (1982), the Court often corrects lower courts when they wrongly subject individual officers to liability. See, *e. g.*, *Carroll* v. *Carman*, 574 U. S. 13 (2014) (*per curiam*); *Wood* v. *Moss*, 572 U. S. 774 (2014); *Plumhoff* v. *Rickard*, 572 U. S. 765 (2014); *Stanton* v. *Sims*, 571 U. S. 3 (2013) (*per curiam*); *Reichle* v. *Howards*, 566 U. S. 658 (2012).

agree with its analysis in many respects. For instance, there is no doubt that the officers did not violate any federal right when they opened Sheehan's door the first time. See 743 F. 3d, at 1216, 1223. Reynolds and Holder knocked on the door, announced that they were police officers, and informed Sheehan that they wanted to help her. When Sheehan did not come to the door, they entered her room. This was not unconstitutional. "[L]aw enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Brigham City* v. *Stuart*, 547 U. S. 398, 403 (2006). See also *Kentucky* v. *King*, 563 U. S. 452, 460 (2011).

Nor is there any doubt that had Sheehan not been disabled, the officers could have opened her door the second time without violating any constitutional rights. For one thing, "because the two entries were part of a single, continuous search or seizure, the officers [were] not required to justify the continuing emergency with respect to the second entry." 743 F. 3d, at 1224 (following *Michigan* v. *Tyler*, 436 U. S. 499, 511 (1978)). In addition, Reynolds and Holder knew that Sheehan had a weapon and had threatened to use it to kill three people. They also knew that delay could make the situation more dangerous. The Fourth Amendment standard is reasonableness, and it is reasonable for police to move quickly if delay "would gravely endanger their lives or the lives of others." *Warden, Md. Penitentiary* v. *Hayden*, 387 U. S. 294, 298–299 (1967). This is true even when, judged with the benefit of hindsight, the officers may have made "some mistakes." *Heien* v. *North Carolina*, 574 U. S. 54, 61 (2014). The Constitution is not blind to "the fact that police officers are often forced to make split-second judgments." *Plumhoff*, *supra*, at 775.

We also agree with the Ninth Circuit that after the officers opened Sheehan's door the second time, their use of force was reasonable. Reynolds tried to subdue Sheehan with pepper

spray, but Sheehan kept coming at the officers until she was "only a few feet from a cornered Officer Holder." 743 F. 3d, at 1229. At this point, the use of potentially deadly force was justified. See *Scott* v. *Harris*, 550 U. S. 372, 384 (2007). Nothing in the Fourth Amendment barred Reynolds and Holder from protecting themselves, even though it meant firing multiple rounds. See *Plumhoff*, *supra*, at 777.

The real question, then, is whether, despite these dangerous circumstances, the officers violated the Fourth Amendment when they decided to reopen Sheehan's door rather than attempting to accommodate her disability. Here we come to another problem. San Francisco, whose attorneys represent Reynolds and Holder, devotes scant briefing to this question. Instead, San Francisco argues almost exclusively that even if it is assumed that there was a Fourth Amendment violation, the right was not clearly established. This Court, of course, could decide the constitutional question anyway. See *Pearson* v. *Callahan*, 555 U. S. 223, 242 (2009) (recognizing discretion). But because this question has not been adequately briefed, we decline to do so. See *id.*, at 239. Rather, we simply decide whether the officers' failure to accommodate Sheehan's illness violated clearly established law. It did not.

To begin, nothing in our cases suggests the constitutional rule applied by the Ninth Circuit. The Ninth Circuit focused on *Graham* v. *Connor*, 490 U. S. 386 (1989), but *Graham* holds only that the " 'objective reasonableness' " test applies to excessive-force claims under the Fourth Amendment. See *id.*, at 388. That is far too general a proposition to control this case. "We have repeatedly told courts—and the Ninth Circuit in particular—not to define clearly established law at a high level of generality." *al-Kidd*, *supra*, at 742 (citation omitted); cf. *Lopez* v. *Smith*, 574 U. S. 1, 6 (2014) (*per curiam*). Qualified immunity is no immunity at all if "clearly established" law can simply be defined as the right to be free from unreasonable searches and seizures.

Even a cursory glance at the facts of *Graham* confirms just how different that case is from this one. That case did not involve a dangerous, obviously unstable person making threats, much less was there a weapon involved. There is a world of difference between needlessly withholding sugar from an innocent person who is suffering from an insulin reaction, see *Graham*, *supra*, at 388–389, and responding to the perilous situation Reynolds and Holder confronted. *Graham* is a nonstarter.

Moving beyond *Graham*, the Ninth Circuit also turned to two of its own cases. But even if "a controlling circuit precedent could constitute clearly established federal law in these circumstances," *Carroll* v. *Carman*, 574 U. S. 13, 17 (2014) (*per curiam*), it does not do so here.

The Ninth Circuit first pointed to *Deorle* v. *Rutherford*, 272 F. 3d 1272 (CA9 2001), but from the very first paragraph of that opinion we learn that *Deorle* involved an officer's use of a beanbag gun to subdue "an emotionally disturbed" person who "was unarmed, had not attacked or even touched anyone, had generally obeyed the instructions given him by various police officers, and had not committed any serious offense." *Id.*, at 1275. The officer there, moreover, "observed Deorle at close proximity for about five to ten minutes before shooting him" in the face. See *id.*, at 1281. Whatever the merits of the decision in *Deorle*, the differences between that case and the case before us leap from the page. Unlike Deorle, Sheehan was dangerous, recalcitrant, law breaking, and out of sight.

The Ninth Circuit also leaned on *Alexander* v. *City and County of San Francisco*, 29 F. 3d 1355 (CA9 1994), another case involving mental illness. There, officials from San Francisco attempted to enter Henry Quade's home "for the primary purpose of arresting him" even though they lacked an arrest warrant. *Id.*, at 1361. Quade, in response, fired a handgun; police officers "shot back, and Quade died from gunshot wounds shortly thereafter." *Id.*, at 1358. The

panel concluded that a jury should decide whether the officers used excessive force. The court reasoned that the officers provoked the confrontation because there were no "exigent circumstances" excusing their entrance. *Id.*, at 1361.

Alexander too is a poor fit. As Judge Graber observed below in her dissent, the Ninth Circuit has long read *Alexander* narrowly. See 743 F. 3d, at 1235 (opinion concurring in part and dissenting in part) (citing *Billington* v. *Smith*, 292 F. 3d 1177 (CA9 2002)). Under Ninth Circuit law,[4] an entry that otherwise complies with the Fourth Amendment is not rendered unreasonable because it provokes a violent reaction. See *id.*, at 1189–1190. Under this rule, qualified immunity necessarily applies here because, as explained above, competent officers could have believed that the second entry was justified under both continuous search and exigent circumstance rationales. Indeed, even if Reynolds and Holder misjudged the situation, Sheehan cannot "establish a Fourth Amendment violation based merely on bad tactics that result in a deadly confrontation that could have been avoided." *Id.*, at 1190. Courts must not judge officers with "the '20/20 vision of hindsight.'" *Ibid.* (quoting *Graham*, *supra*, at 396).

When *Graham*, *Deorle*, and *Alexander* are viewed together, the central error in the Ninth Circuit's reasoning is apparent. The panel majority concluded that these three cases "would have placed any reasonable, competent officer on notice that it is unreasonable to forcibly enter the home of an armed, mentally ill suspect who had been acting irratio-

[4] Our citation to Ninth Circuit cases should not be read to suggest our agreement (or, for that matter, disagreement) with them. The Ninth Circuit's "provocation" rule, for instance, has been sharply questioned elsewhere. See *Livermore* v. *Lubelan*, 476 F. 3d 397, 406–407 (CA6 2007); see also, *e. g.*, *Hector* v. *Watt*, 235 F. 3d 154, 160 (CA3 2001) ("[I]f the officers' use of force was reasonable given the plaintiff's acts, then despite the illegal entry, the plaintiff's own conduct would be an intervening cause"). Whatever their merits, all that matters for our qualified immunity analysis is that they do not clearly establish any right that the officers violated.

nally and had threatened anyone who entered when there was no objective need for immediate entry." 743 F. 3d, at 1229. But even assuming that is true, *no precedent clearly established that there was not "an objective need for immediate entry" here.* No matter how carefully a reasonable officer read *Graham*, *Deorle*, and *Alexander* beforehand, that officer could not know that reopening Sheehan's door to prevent her from escaping or gathering more weapons would violate the Ninth Circuit's test, even if all the disputed facts are viewed in respondent's favor. Without that "fair notice," an officer is entitled to qualified immunity. See, *e. g.*, *Plumhoff*, 572 U. S., at 779.

Nor does it matter for purposes of qualified immunity that Sheehan's expert, Reiter, testified that the officers did not follow their training. According to Reiter, San Francisco trains its officers when dealing with the mentally ill to "ensure that sufficient resources are brought to the scene," "contain the subject" and "respect" the suspect's "comfort zone," "use time to their advantage," and "employ non-threatening verbal communication and open-ended questions to facilitate the subject's participation in communication." Brief for Respondent 7. Likewise, San Francisco's policy is "'to use hostage negotiators'" when dealing with "'a suspect [who] resists arrest by barricading himself.'" *Id.*, at 8 (quoting San Francisco Police Department General Order 8.02, § II(B) (Aug. 3, 1994), online at http://www.sf-police.org (as visited May 14, 2015, and available in Clerk of Court's case file)).

Even if an officer acts contrary to her training, however (and here, given the generality of that training, it is not at all clear that Reynolds and Holder did so), that does not itself negate qualified immunity where it would otherwise be warranted. Rather, so long as "a reasonable officer could have believed that his conduct was justified," a plaintiff cannot "avoi[d] summary judgment by simply producing an expert's report that an officer's conduct leading up to a deadly confrontation was imprudent, inappropriate, or even reckless."

Billington, *supra*, at 1189. Cf. *Saucier* v. *Katz*, 533 U. S. 194, 216, n. 6 (2001) (GINSBURG, J., concurring in judgment) ("'[I]n close cases, a jury does not automatically get to second-guess these life and death decisions, even though a plaintiff has an expert and a plausible claim that the situation could better have been handled differently'" (quoting *Roy* v. *Inhabitants of Lewiston*, 42 F. 3d 691, 695 (CA1 1994))). Considering the specific situation confronting Reynolds and Holder, they had sufficient reason to believe that their conduct was justified.

Finally, to the extent that a "robust 'consensus of cases of persuasive authority'" could itself clearly establish the federal right respondent alleges, *al-Kidd*, 563 U. S., at 742, no such consensus exists here. If anything, the opposite may be true. See, *e. g.*, *Bates* v. *Chesterfield County*, 216 F. 3d 367, 372 (CA4 2000) ("Knowledge of a person's disability simply cannot foreclose officers from protecting themselves, the disabled person, and the general public"); *Sanders* v. *Minneapolis*, 474 F. 3d 523, 527 (CA8 2007) (following *Bates*, *supra*); *Menuel* v. *Atlanta*, 25 F. 3d 990 (CA11 1994) (upholding use of deadly force to try to apprehend a mentally ill man who had a knife and was hiding behind a door).

In sum, we hold that qualified immunity applies because these officers had no "'fair and clear warning' of what the Constitution requires." *al-Kidd*, *supra*, at 746 (KENNEDY, J., concurring). Because the qualified immunity analysis is straightforward, we need not decide whether the Constitution was violated by the officers' failure to accommodate Sheehan's illness.

* * *

For these reasons, the first question presented is dismissed as improvidently granted. On the second question, we reverse the judgment of the Ninth Circuit. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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

JUSTICE SCALIA, with whom JUSTICE KAGAN joins, concurring in part and dissenting in part.

The first question presented (QP) in the petition for certiorari was "Whether Title II of the Americans with Disabilities Act [(ADA)] requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody." Pet. for Cert. i. The petition assured us (quite accurately), and devoted a section of its argument to the point, that "The Circuits Are In Conflict On This Question." *Id.*, at 18. And petitioners faulted the Ninth Circuit for "holding that the ADA's reasonable accommodation requirement applies to officers facing violent circumstances," a conclusion that was "in direct conflict with the categorical prohibition on such claims adopted by the Fifth and Sixth Circuits." *Ibid.* Petitioners had expressly advocated for the Fifth and Sixth Circuits' position in the Court of Appeals. See Appellees' Answering Brief in No. 11–16401 (CA9), pp. 35–37 ("[T]he ADA does not apply to police officers' responses to violent individuals who happen to be mentally ill, where officers have not yet brought the violent situation under control").

Imagine our surprise, then, when the petitioners' principal brief, reply brief, and oral argument had nary a word to say about that subject. Instead, petitioners bluntly announced in their principal brief that they "do not assert that the actions of individual police officers [in arresting violent and armed disabled persons] are never subject to scrutiny under Title II," and proclaimed that "[t]he only ADA issue here is *what* Title II requires of individual officers who are facing an armed and dangerous suspect." Brief for Petitioners 34 (emphasis added). In other words, the issue is not (as the petition had asserted) *whether* Title II applies to arrests of violent, mentally ill individuals, but rather *how* it applies

under the circumstances of this case, where the plaintiff threatened officers with a weapon. We were thus deprived of the opportunity to consider, and settle, a controverted question of law that has divided the Circuits, and were invited instead to decide an ADA question that has relevance only if we assume the Ninth Circuit correctly resolved the antecedent, unargued question on which we granted certiorari. The Court is correct to dismiss the first QP as improvidently granted.

Why, one might ask, would a petitioner take a position on a Circuit split that it had no intention of arguing, or at least was so little keen to argue that it cast the argument aside uninvited? The answer is simple. Petitioners included that issue to induce us to grant certiorari. As the Court rightly observes, there are numerous reasons why we would not have agreed to hear petitioners' first QP if their petition for certiorari presented it in the same form that it was argued on the merits. See *ante,* at 608–610. But it is also true that there was little chance that we would have taken this case to decide only the second, fact-bound QP—that is, whether the individual petitioners are entitled to qualified immunity on respondent's Fourth Amendment claim.

This Court's Rule 10, entitled "Considerations Governing Review on Certiorari," says that certiorari will be granted "only for compelling reasons," which include the existence of conflicting decisions on issues of law among federal courts of appeals, among state courts of last resort, or between federal courts of appeals and state courts of last resort. The Rule concludes: "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." The second QP implicates, at most, the latter. It is unlikely that we would have granted certiorari on that question alone.

But (and here is what lies beneath the present case) when we do grant certiorari on a question for which there is a

"compelling reason" for our review, we often also grant certiorari on attendant questions that are not independently "certworthy," but that are sufficiently connected to the ultimate disposition of the case that the efficient administration of justice supports their consideration. In other words, by promising argument on the Circuit conflict that their first question presented, petitioners got us to grant certiorari not only on the first question but also on the second.

I would not reward such bait-and-switch tactics by proceeding to decide the independently "uncertworthy" second question. And make no mistake about it: Today's judgment is a reward. It gives the individual petitioners all that they seek, and spares San Francisco the significant expense of defending the suit, and satisfying any judgment, against the individual petitioners.* I would not encourage future litigants to seek review premised on arguments they never plan to press, secure in the knowledge that once they find a toehold on this Court's docket, we will consider whatever workaday arguments they choose to present in their merits briefs.

There is no injustice in my vote to dismiss both questions as improvidently granted. To be sure, *ex post*—after the Court has improvidently decided the uncertworthy question—it appears that refusal to reverse the judgment below would have left a wrong unrighted. *Ex ante*, however—before we considered and deliberated upon the second QP but after petitioners' principal brief made clear that they would not address the Circuit conflict presented by the first QP—we had no more assurance that this question was decided incorrectly than we do for the thousands of other uncertworthy questions we refuse to hear each Term. *Many* of them have undoubtedly been decided wrongly, but we are not, and

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*San Francisco will still be subject to liability under the ADA if the trial court determines that the facts demanded accommodation. The Court of Appeals vacated the District Court's judgment that the ADA was inapplicable to police arrests of violent and armed disabled persons, and remanded for the accommodation determination.

for well over a century have not been, a court of error correction. The fair course—the just course—is to treat this nownakedly uncertworthy question the way we treat all others: by declining to decide it. In fact, there is in this case an even greater reason to decline: to avoid being snookered, and to deter future snookering.

Because I agree with the Court that "certiorari jurisdiction exists to clarify the *law*," *ante*, at 610 (emphasis added), I would dismiss both questions presented as improvidently granted.

Syllabus

HENDERSON *v.* UNITED STATES

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

No. 13–1487. Argued February 24, 2015—Decided May 18, 2015

After being charged with the felony offense of distributing marijuana, petitioner Tony Henderson was required as a condition of his bail to turn over firearms that he lawfully owned. Henderson ultimately pleaded guilty, and, as a felon, was prohibited under 18 U. S. C. § 922(g) from possessing his (or any other) firearms. Henderson therefore asked the Federal Bureau of Investigation, which had custody of his firearms, to transfer them to his friend. But the agency refused to do so. Henderson then filed a motion in Federal District Court seeking to transfer his firearms, but the court denied the motion on the ground that Henderson's requested transfer would give him constructive possession of the firearms in violation of § 922(g). The Eleventh Circuit affirmed.

Held: A court-ordered transfer of a felon's lawfully owned firearms from Government custody to a third party is not barred by § 922(g) if the court is satisfied that the recipient will not give the felon control over the firearms, so that he could either use them or direct their use. Federal courts have equitable authority to order law enforcement to return property obtained during the course of a criminal proceeding to its rightful owner. Section 922(g), however, bars a court from ordering guns returned to a felon-owner like Henderson, because that would place the owner in violation of the law. And because § 922(g) bans constructive as well as actual possession, it also prevents a court from ordering the transfer of a felon's guns to someone willing to give the felon access to them or to accede to the felon's instructions about their future use.

The Government goes further, arguing that § 922(g) prevents *all* transfers to a third party, no matter how independent of the felon's influence, unless that recipient is a licensed firearms dealer or other third party who will sell the guns on the open market. But that view conflates possession, which § 922(g) prohibits, with an owner's right merely to alienate his property, which it does not. After all, the Government's reading of § 922(g) would prohibit a felon from disposing of his firearms even when he would lack any control over and thus not possess them before, during, or after the disposition. That reading would also extend § 922(g)'s scope far beyond its purpose; preventing a felon like Henderson from disposing of his firearms, even in ways that

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guarantee he never uses them again, does nothing to advance the statute's goal of keeping firearms away from felons. Finally, the Government's insistence that a felon cannot select a third-party recipient over whom he exercises no influence fits poorly with its concession that a felon may select a firearms dealer or third party to sell his guns. The Government's reading of § 922(g) is thus overbroad.

Accordingly, a court may approve the transfer of a felon's guns consistently with § 922(g) if, but only if, the recipient will not grant the felon control over those weapons. One way to ensure that result is to order that the guns be turned over to a firearms dealer, himself independent of the felon's control, for subsequent sale on the open market. But that is not the only option; a court, with proper assurances from the recipient, may also grant a felon's request to transfer his guns to a person who expects to maintain custody of them. Either way, once a court is satisfied that the transferee will not allow the felon to exert any influence over the firearms, the court has equitable power to accommodate the felon's transfer request. Pp. 625–631.

555 Fed. Appx. 851, vacated and remanded.

KAGAN, J., delivered the opinion for a unanimous Court.

Daniel R. Ortiz argued the cause for petitioner. With him on the briefs were *Toby J. Heytens*, *John P. Elwood*, *Mark T. Stancil*, and *David T. Goldberg.*

Ann O'Connell argued the cause for the United States. With her on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Caldwell*, *Deputy Solicitor General Dreeben*, and *Vijay Shanker.**

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*Briefs of *amici curiae* urging reversal were filed for Commonwealth Second Amendment, Inc., et al. by *David D. Jensen*; for the CRPA Foundation et al. by *C. D. Michel*, *Clinton B. Monfort*, and *Anna M. Barvir*; for Gun Owners of America, Inc., et al. by *William J. Olson*, *Herbert W. Titus*, *Jeremiah L. Morgan*, and *John S. Miles*; for the Institute for Justice by *David G. Post* and *Scott Bullock*; for the National Association of Criminal Defense Lawyers by *Stephen P. Halbrook* and *Jonathan D. Hacker*; and for the National Rifle Association of America, Inc., by *James M. Baranowski*.

Sean A. Lev, *Gregory G. Rapawy*, and *Jonathan E. Lowy* filed a brief for the Brady Center to Prevent Gun Violence as *amicus curiae* urging affirmance.

JUSTICE KAGAN delivered the opinion of the Court.

Government agencies sometimes come into possession of firearms lawfully owned by individuals facing serious criminal charges. If convicted, such a person cannot recover his guns because a federal statute, 18 U. S. C. § 922(g), prohibits any felon from possessing firearms. In this case, we consider what § 922(g) allows a court to do when a felon instead seeks the transfer of his guns to either a firearms dealer (for future sale on the open market) or some other third party. We hold that § 922(g) does not bar such a transfer unless it would allow the felon to later control the guns, so that he could either use them or direct their use.

I

The Federal Government charged petitioner Tony Henderson, then a U. S. Border Patrol agent, with the felony offense of distributing marijuana. See 21 U. S. C. §§ 841(a)(1), (b)(1)(D). A Magistrate Judge required that Henderson surrender all his firearms as a condition of his release on bail. Henderson complied, and the Federal Bureau of Investigation (FBI) took custody of the guns. Soon afterward, Henderson pleaded guilty to the distribution charge; as a result of that conviction, § 922(g) prevents him from legally repossessing his firearms.

Following his release from prison, Henderson asked the FBI to transfer the guns to Robert Rosier, a friend who had agreed to purchase them for an unspecified price. The FBI denied the request. In a letter to Henderson, it explained that "the release of the firearms to [Rosier] would place you in violation of [§ 922(g)], as it would amount to constructive possession" of the guns. App. 121.

Henderson then returned to the court that had handled his criminal case to seek release of his firearms. Invoking the court's equitable powers, Henderson asked for an order directing the FBI to transfer the guns either to his wife or to Rosier. The District Court denied the motion, concluding

(as the FBI had) that Henderson could not "transfer the firearms or receive money from their sale" without "constructive[ly] possessi[ng]" them in violation of § 922(g). No. 3:06–cr–211 (MD Fla., Aug. 8, 2012), App. to Pet. for Cert. 5a–6a, 12a. The Court of Appeals for the Eleventh Circuit affirmed on the same ground, reasoning that granting Henderson's motion would amount to giving a felon "constructive possession" of his firearms. 555 Fed. Appx. 851, 853 (2014) (*per curiam*).[1]

We granted certiorari, 574 U. S. 958 (2014), to resolve a circuit split over whether, as the courts below held, § 922(g) categorically prohibits a court from approving a convicted felon's request to transfer his firearms to another person.[2] We now vacate the decision below.

II

A federal court has equitable authority, even after a criminal proceeding has ended, to order a law enforcement agency to turn over property it has obtained during the case to the

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[1] The Court of Appeals added that Henderson's "equitable argument rings hollow" because a convicted felon has "unclean hands to demand return [or transfer] of his firearms." 555 Fed. Appx., at 854. That view is wrong, as all parties now agree. See Brief for Petitioner 35–39; Brief for United States 31, n. 8; Tr. of Oral Arg. 33, 42. The unclean hands doctrine proscribes equitable relief when, but only when, an individual's misconduct has "immediate and necessary relation to the equity that he seeks." *Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240, 245 (1933). The doctrine might apply, for example, if a felon requests the return or transfer of property used in furtherance of his offense. See, *e. g.*, *United States* v. *Kaczynski*, 551 F. 3d 1120, 1129–1130 (CA9 2009) (holding that the Unabomber had unclean hands to request the return of bomb-making materials). But Henderson's felony conviction had nothing to do with his firearms, so the unclean hands rule has no role to play here.

[2] Compare 555 Fed. Appx. 851, 853–854 (CA11 2014) (*per curiam*) (case below) (holding that § 922(g) bars any transfer); *United States* v. *Felici*, 208 F. 3d 667, 670 (CA8 2000) (same), with *United States* v. *Zaleski*, 686 F. 3d 90, 92–94 (CA2 2012) (holding that § 922(g) permits some transfers); *United States* v. *Miller*, 588 F. 3d 418, 419–420 (CA7 2009) (same).

rightful owner or his designee. See, *e. g.*, *United States* v. *Martinez*, 241 F. 3d 1329, 1330–1331 (CA11 2001) (citing numerous appellate decisions to that effect); Tr. of Oral Arg. 41 (Solicitor General agreeing). Congress, however, may cabin that power in various ways. As relevant here, § 922(g) makes it unlawful for any person convicted of a felony to "possess in or affecting commerce[ ] any firearm or ammunition." That provision prevents a court from instructing an agency to return guns in its custody to a felon-owner like Henderson, because that would place him in violation of the law. The question here is how § 922(g) affects a court's authority to instead direct the transfer of such firearms to a third party.

Section 922(g) proscribes possession alone, but covers possession in every form. By its terms, § 922(g) does not prohibit a felon from *owning* firearms. Rather, it interferes with a single incident of ownership—one of the proverbial sticks in the bundle of property rights—by preventing the felon from knowingly *possessing* his (or another person's) guns. But that stick is a thick one, encompassing what the criminal law recognizes as "actual" and "constructive" possession alike. 2A K. O'Malley, J. Grenig, & W. Lee, Federal Jury Practice and Instructions, Criminal § 39.12, p. 55 (6th ed. 2009) (hereinafter O'Malley); see *National Safe Deposit Co.* v. *Stead*, 232 U. S. 58, 67 (1914) (noting that in "legal terminology" the word "possession" is "interchangeably used to describe" both the actual and the constructive kinds). Actual possession exists when a person has direct physical control over a thing. See Black's Law Dictionary 1047 (5th ed. 1979) (hereinafter Black's); 2A O'Malley § 39.12, at 55. Constructive possession is established when a person, though lacking such physical custody, still has the power and intent to exercise control over the object. See Black's 1047; 2A O'Malley § 39.12, at 55. Section 922(g) thus prevents a felon not only from holding his firearms himself but also from maintaining control over those guns in the hands of others.

That means, as all parties agree, that § 922(g) prevents a court from ordering the sale or other transfer of a felon's guns to someone willing to give the felon access to them or to accede to the felon's instructions about their future use. See Brief for United States 23; Reply Brief 12. In such a case, the felon would have control over the guns, even while another person kept physical custody. The idea of constructive possession is designed to preclude just that result, "allow[ing] the law to reach beyond puppets to puppeteers." *United States* v. *Al-Rekabi*, 454 F. 3d 1113, 1118 (CA10 2006). A felon cannot evade the strictures of § 922(g) by arranging a sham transfer that leaves him in effective control of his guns. And because that is so, a court may no more approve such a transfer than order the return of the firearms to the felon himself.

The Government argues that § 922(g) prohibits still more—that it bars a felon, except in one circumstance, from transferring his firearms to another person, no matter how independent of the felon's influence. According to the Government, a felon "exercises his right to control" his firearms, and thus violates § 922(g)'s broad ban on possession, merely by "select[ing] the[ir] first recipient," because that choice "determine[s] who [will] (and who [will] not) next have access to the firearms." Brief for United States 24. And that remains so even if a felon never retakes physical custody of the guns and needs a court order to approve and effectuate the proposed transfer. The felon (so says the Government) still exerts enough sway over the guns' disposition to "have constructive possession" of them. *Id.*, at 25. The only time that is not true, the Government claims, is when a felon asks the court to transfer the guns to a licensed dealer or other party who will sell the guns for him on the open market. See *id.*, at 20–22; Tr. of Oral Arg. 18–21. Because the felon then does not control the firearms' final destination, the Government avers, he does not constructively possess them and a court may approve the transfer. See *ibid.*

But the Government's theory wrongly conflates the right to possess a gun with another incident of ownership, which § 922(g) does not affect: the right merely to sell or otherwise dispose of that item. Cf. *Andrus* v. *Allard*, 444 U. S. 51, 65–66 (1979) (distinguishing between entitlements to possess and sell property). Consider the scenario that the Government claims would violate § 922(g). The felon has nothing to do with his guns before, during, or after the transaction in question, except to nominate their recipient. Prior to the transfer, the guns sit in an evidence vault, under the sole custody of law enforcement officers. Assuming the court approves the proposed recipient, FBI agents handle the firearms' physical conveyance, without the felon's participation. Afterward, the purchaser or other custodian denies the felon any access to or influence over the guns; the recipient alone decides where to store them, when to loan them out, how to use them, and so on. In short, the arrangement serves only to divest the felon of his firearms—and even that much depends on a court's approving the designee's fitness and ordering the transfer to go forward. Such a felon exercises not a possessory interest (whether directly or through another), but instead a naked right of alienation—the capacity to sell or transfer his guns, unaccompanied by any control over them.[3]

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[3] The Government calls our attention to several cases in which courts have found constructive possession of firearms based on evidence that a felon negotiated and arranged a sale of guns while using a third party to make the physical handoff to the buyer. See, *e. g.*, *United States* v. *Nungaray*, 697 F. 3d 1114, 1116–1119 (CA9 2012); *United States* v. *Virciglio*, 441 F. 2d 1295, 1297–1298 (CA5 1971). But the facts in the cited cases bear no similarity to those here. In each, the defendant-felon controlled the guns' movement both before and during the transaction at issue (and even was present at the delivery site). As the Government explains, the felon could "make a gun appear" at the time and place of his choosing and decide what would happen to it once it got there. Tr. of Oral Arg. 27. Indeed, he could have chosen to take the firearms for himself or direct them to

The Government's view of what counts as "possession" would also extend § 922(g)'s scope far beyond its purpose. Congress enacted that ban to keep firearms away from felons like Henderson, for fear that they would use those guns irresponsibly. See *Small* v. *United States*, 544 U. S. 385, 393 (2005). Yet on the Government's construction, § 922(g) would prevent Henderson from disposing of his firearms even in ways that guarantee he never uses them again, solely because he played a part in selecting their transferee. He could not, for example, place those guns in a secure trust for distribution to his children after his death. He could not sell them to someone halfway around the world. He could not even donate them to a law enforcement agency. See Tr. of Oral Arg. 22. Results of that kind would do nothing to advance § 922(g)'s purpose.

Finally, the Government's expansive idea of constructive possession fits poorly with its concession that a felon in Henderson's position may select a firearms dealer or other third party to sell his guns and give him the proceeds. After all, the felon chooses the guns' "first recipient" in that case too, deciding who "next ha[s] access to the firearms." Brief for United States 24; see *supra*, at 627. If (as the Government argues) that is all it takes to exercise control over and thus constructively possess an item, then (contrary to the Government's view) the felon would violate § 922(g) merely by selecting a dealer to sell his guns. To be sure, that person will predictably convey the firearms to someone whom the

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someone under his influence. The felon's management of the sale thus exemplified, and served as evidence of, his broader command over the guns' location and use—the very hallmark of possession. But as just explained, that kind of control is absent when a felon can do no more than nominate an independent recipient for firearms in a federal agency's custody. The decisions the Government invokes thus have no bearing on this case; nor does our decision here, which addresses only § 922(g)'s application to court-supervised transfers of guns, prevent the Government from bringing charges under § 922(g) in cases resembling those cited.

felon does not know and cannot control: That is why the Government, as a practical matter, has no worries about the transfer. See Tr. of Oral Arg. 19–21. But that fact merely demonstrates how the Government's view of § 922(g) errs in its focus in a case like this one. What matters here is *not* whether a felon plays a role in deciding where his firearms should go next: That test would logically prohibit a transfer even when the chosen recipient will later sell the guns to someone else. What matters instead is whether the felon will have the ability to use or direct the use of his firearms after the transfer. That is what gives the felon constructive possession.

Accordingly, a court facing a motion like Henderson's may approve the transfer of guns consistently with § 922(g) if, but only if, that disposition prevents the felon from later exercising control over those weapons, so that he could either use them or tell someone else how to do so. One way to ensure that result, as the Government notes, is to order that the guns be turned over to a firearms dealer, himself independent of the felon's control, for subsequent sale on the open market. See, *e. g.*, *United States* v. *Zaleski*, 686 F. 3d 90, 92–94 (CA2 2012). Indeed, we can see no reason, absent exceptional circumstances, to disapprove a felon's motion for such a sale, whether or not he has picked the vendor. That option, however, is not the only one available under § 922(g). A court may also grant a felon's request to transfer his guns to a person who expects to maintain custody of them, so long as the recipient will not allow the felon to exert any influence over their use. In considering such a motion, the court may properly seek certain assurances: for example, it may ask the proposed transferee to promise to keep the guns away from the felon, and to acknowledge that allowing him to use them would aid and abet a § 922(g) violation. See *id.*, at 94; *United States* v. *Miller*, 588 F. 3d 418, 420 (CA7 2009). Even such a pledge, of course, might fail to provide an adequate safeguard, and a court should then disapprove the transfer.

See, *e. g.*, *State* v. *Fadness*, 363 Mont. 322, 341–342, 268 P. 3d 17, 30 (2012) (upholding a trial court's finding that the assurances given by a felon's parents were not credible). But when a court is satisfied that a felon will not retain control over his guns, § 922(g) does not apply, and the court has equitable power to accommodate the felon's request.

Neither of the courts below assessed Henderson's motion for a transfer of his firearms in accord with these principles. We therefore vacate the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

COMMIL USA, LLC *v.* CISCO SYSTEMS, INC.

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

No. 13–896. Argued March 31, 2015—Decided May 26, 2015

Petitioner Commil USA, LLC, holder of a patent for a method of implementing short-range wireless networks, filed suit, claiming that respondent Cisco Systems, Inc., a maker and seller of wireless networking equipment, had directly infringed Commil's patent in its networking equipment and had induced others to infringe the patent by selling the infringing equipment for them to use. After two trials, Cisco was found liable for both direct and induced infringement. With regard to inducement, Cisco had raised the defense that it had a good-faith belief that Commil's patent was invalid, but the District Court found Cisco's supporting evidence inadmissible. The Federal Circuit affirmed the District Court's judgment in part, vacated in part, and remanded, holding, as relevant here, that the trial court erred in excluding Cisco's evidence of its good-faith belief that Commil's patent was invalid.

Held: A defendant's belief regarding patent validity is not a defense to an induced infringement claim. Pp. 638–647.

(a) While this case centers on inducement liability, 35 U. S. C. § 271(b), which attaches only if the defendant knew of the patent and that "the induced acts constitute patent infringement," *Global-Tech Appliances, Inc.* v. *SEB S. A.*, 563 U. S. 754, 766, the discussion here also refers to direct infringement, § 271(a), a strict-liability offense in which a defendant's mental state is irrelevant, and contributory infringement, § 271(c), which, like inducement liability, requires knowledge of the patent in suit and knowledge of patent infringement, *Aro Mfg. Co.* v. *Convertible Top Replacement Co.*, 377 U. S. 476, 488 (*Aro II*). Pp. 638–639.

(b) In *Global-Tech*, this Court held that "induced infringement . . . requires knowledge that the induced acts constitute patent infringement," 563 U. S., at 766, relying on the reasoning of *Aro II*, a contributory infringement case, because the mental state imposed in each instance is similar. Contrary to the claim of Commil and the Government as *amicus*, it was not only knowledge of the existence of respondent's patent that led the Court to affirm the liability finding in *Global-Tech*, but also the fact that petitioner's actions demonstrated that it knew it would be causing customers to infringe respondent's patent. 563 U. S., at 771. Qualifying or limiting that holding could make a person, or entity, liable for induced or contributory infringement even though he

did not know the acts were infringing. *Global-Tech* requires more, namely proof the defendant knew the acts were infringing. And that opinion was clear in rejecting any lesser mental state as the standard. *Id.*, at 769–770. Pp. 640–642.

(c) Because induced infringement and validity are separate issues and have separate defenses under the Act, belief regarding validity cannot negate §271(b)'s scienter requirement of "actively induce[d] infringement," *i. e.*, the intent to "bring about the desired result" of infringement, 563 U. S., at 760. When infringement is the issue, the patent's validity is not the question to be confronted. See *Cardinal Chemical Co.* v. *Morton Int'l, Inc.*, 508 U. S. 83. Otherwise, the long held presumption that a patent is valid, §282(a), would be undermined, permitting circumvention of the high bar—the clear and convincing standard—that defendants must surmount to rebut the presumption. See *Microsoft Corp.* v. *i4i Ltd. Partnership*, 564 U. S. 91, 102–104. To be sure, if a patent is shown to be invalid, there is no patent to be infringed. But the orderly administration of the patent system requires courts to interpret and implement the statutory framework to determine the procedures and sequences that the parties must follow to prove the act of wrongful inducement and any related issues of patent validity.

There are practical reasons not to create a defense of belief in invalidity for induced infringement. Accused inducers who believe a patent is invalid have other, proper ways to obtain a ruling to that effect, including, *e. g.*, seeking *ex parte* reexamination of the patent by the Patent and Trademark Office, something Cisco did here. Creating such a defense could also have negative consequences, including, *e. g.*, rendering litigation more burdensome for all involved. Pp. 642–646.

(d) District courts have the authority and responsibility to ensure that frivolous cases—brought by companies using patents as a sword to go after defendants for money—are dissuaded, though no issue of frivolity has been raised here. Safeguards—including, *e. g.,* sanctioning attorneys for bringing such suits, see Fed. Rule Civ. Proc. 11—combined with the avenues that accused inducers have to obtain rulings on the validity of patents, militate in favor of maintaining the separation between infringement and validity expressed in the Patent Act. Pp. 646–647.

720 F. 3d 1361, vacated and remanded.

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, ALITO, SOTOMAYOR, and KAGAN, JJ., joined, and in which THOMAS, J., joined as to Parts II–B and III. SCALIA, J., filed a dissenting opinion, in

which ROBERTS, C. J., joined, *post*, p. 647. BREYER, J., took no part in the consideration or decision of the case.

Mark S. Werbner argued the cause for petitioner. With him on the briefs were *Richard A. Sayles*, *Mark D. Strachan*, *Darren P. Nicholson*, *Leslie V. Payne*, *Nathan J. Davis*, and *Miranda Y. Jones*.

Ginger D. Anders argued the cause for the United States as *amicus curiae* urging vacatur and remand. With her on the brief were *Solicitor General Verrilli*, *Acting Assistant Attorney General Branda*, *Deputy Solicitor General Stewart*, *Mark R. Freeman*, *Thomas Pulham*, and *Thomas W. Krause*.

Seth P. Waxman argued the cause for respondent. With him on the brief were *William F. Lee*, *Mark C. Fleming*, *Felicia H. Ellsworth*, *Jeffrey E. Ostrow*, *Harrison J. Frahn IV*, *Patrick E. King*, and *Henry B. Gutman*.*

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*Briefs of *amici curiae* urging reversal were filed for Abbvie Inc. by *J. Michael Jakes*, *William B. Raich*, and *Jason W. Melvin*; for the Biotechnology Industry Organization by *Mark P. Walters* and *Lawrence D. Graham*; for Gilead Sciences, Inc., by *Jonathan E. Singer* and *Craig E. Countryman*; and for the Pharmaceutical Research and Manufacturers of America by *Carter G. Phillips*, *Jeffrey P. Kushan*, *Ryan C. Morris*, *James M. Spears*, *David E. Korn*, and *Melissa B. Kimmel*.

Briefs of *amici curiae* urging affirmance were filed for Askeladden L. L. C. by *Kevin J. Culligan* and *John P. Hanish*; for the Computer & Communications Industry Association by *Jonathan Band* and *Matthew Levy*; for the Electronic Frontier Foundation by *Vera Ranieri*, *Daniel K. Nazer*, and *Michael Barclay*; for EMC Corp. et al. by *Thomas G. Hungar*, *Matthew D. McGill*, *Paul T. Dacier*, and *Thomas A. Brown*; for the Generic Pharmaceutical Association by *William A. Rakoczy* and *Deanne M. Mazzochi*; for Public Knowledge et al. by *Charles Duan*, *Phillip R. Malone*, and *Krista Cox*; for Sixteen Intellectual Property Law Professors by *Timothy R. Holbrook*, *pro se*, and *Sarah M. Shalf*; and for Saurabh Vishnubhakat by *Mr. Vishnubhakat*, *pro se*.

Briefs of *amici curiae* were filed for the American Intellectual Property Law Association by *John T. Johnson*; for the Intellectual Property Owners Association by *Paul H. Berghoff*, *Philip S. Johnson*, and *Kevin H. Rhodes*; and for the MUSC Foundation for Research Development by *Peter J. Corcoran III* and *Samuel F. Baxter*.

JUSTICE KENNEDY delivered the opinion of the Court.†

A patent holder, and the holder's lawful licensees, can recover for monetary injury when their exclusive rights are violated by others' wrongful conduct. One form of patent injury occurs if unauthorized persons or entities copy, use, or otherwise infringe upon the patented invention. Another form of injury to the patent holder or his licensees can occur when the actor induces others to infringe the patent. In the instant case, both forms of injury—direct infringement and wrongful inducement of others to commit infringement—were alleged. After two trials, the defendant was found liable for both types of injury. The dispute now before the Court concerns the inducement aspect of the case.

I

The patent holder who commenced this action is the petitioner here, Commil USA, LLC. The technical details of Commil's patent are not at issue. So it suffices to say, with much oversimplification, that the patent is for a method of implementing short-range wireless networks. Suppose an extensive business headquarters or a resort or a college campus wants a single, central wireless system (sometimes called a Wi-Fi network). In order to cover the large space, the system needs multiple base stations so a user can move around the area and still stay connected. Commil's patent relates to a method of providing faster and more reliable communications between devices and base stations. The particular claims of Commil's patent are discussed in the opinion of the United States Court of Appeals for the Federal Circuit. 720 F. 3d 1361, 1364–1365, 1372 (2013).

Commil brought this action against Cisco Systems, Inc., which makes and sells wireless networking equipment. In 2007, Commil sued Cisco in the United States District Court for the Eastern District of Texas. Cisco is the respondent

†JUSTICE THOMAS joins Parts II–B and III of this opinion.

here. Commil alleged that Cisco had infringed Commil's patent by making and using networking equipment. In addition Commil alleged that Cisco had induced others to infringe the patent by selling the infringing equipment for them to use, in contravention of Commil's exclusive patent rights.

At the first trial, the jury concluded that Commil's patent was valid and that Cisco had directly infringed. The jury awarded Commil $3.7 million in damages. As to induced infringement, the jury found Cisco not liable. Commil filed a motion for a new trial on induced infringement and damages, which the District Court granted because of certain inappropriate comments Cisco's counsel had made during the first trial.

A month before the second trial Cisco went to the United States Patent and Trademark Office and asked it to reexamine the validity of Commil's patent. The Office granted the request; but, undoubtedly to Cisco's disappointment, it confirmed the validity of Commil's patent. App. 159, 162.

Back in the District Court, the second trial proceeded, limited to the issues of inducement and damages on that issue and direct infringement. As a defense to the claim of inducement, Cisco argued it had a good-faith belief that Commil's patent was invalid. It sought to introduce evidence to support that assertion. The District Court, however, ruled that Cisco's proffered evidence of its good-faith belief in the patent's invalidity was inadmissible. While the District Court's order does not provide the reason for the ruling, it seems the court excluded this evidence on the assumption that belief in invalidity is not a defense to a plaintiff's claim that the defendant induced others to infringe.

At the close of trial, and over Cisco's objection, the District Court instructed the jury that it could find inducement if "Cisco actually intended to cause the acts that constitute . . . direct infringement and that Cisco knew or should have known that its actions would induce actual infringement."

Id., at 21. The jury returned a verdict for Commil on induced infringement and awarded $63.7 million in damages.

After the verdict, but before judgment, this Court issued its decision in *Global-Tech Appliances, Inc.* v. *SEB S. A.*, 563 U. S. 754 (2011). That case, as will be discussed in more detail, held that, in an action for induced infringement, it is necessary for the plaintiff to show that the alleged inducer knew of the patent in question and knew the induced acts were infringing. *Id.*, at 766. Relying on that case, Cisco again urged that the jury instruction was incorrect because it did not state knowledge as the governing standard for inducement liability. The District Court denied Cisco's motion and entered judgment in Commil's favor.

Cisco appealed to the United States Court of Appeals for the Federal Circuit. The Court of Appeals affirmed in part, vacated in part, and remanded for further proceedings. The court concluded it was error for the District Court to have instructed the jury that Cisco could be liable for induced infringement if it "'knew or should have known'" that its customers infringed. 720 F. 3d, at 1366. The panel held that "induced infringement 'requires knowledge that the induced acts constitute patent infringement.'" *Ibid.* (quoting *Global-Tech*, *supra*, at 766. By stating that Cisco could be found liable if it "'knew or should have known that its actions would induce actual infringement,'" the Court of Appeals explained, the District Court had allowed "the jury to find [Cisco] liable based on mere negligence where knowledge is required." 720 F. 3d, at 1366. That ruling, which requires a new trial on the inducement claim with a corrected instruction on knowledge, is not in question here.

What is at issue is the second holding of the Court of Appeals, addressing Cisco's contention that the trial court committed further error in excluding Cisco's evidence that it had a good-faith belief that Commil's patent was invalid. Beginning with the observation that it is "axiomatic that one cannot infringe an invalid patent," the Court of Appeals rea-

soned that "evidence of an accused inducer's good-faith belief of invalidity may negate the requisite intent for induced infringement." *Id.*, at 1368. The court saw "no principled distinction between a good-faith belief of invalidity and a good-faith belief of non-infringement for the purpose of whether a defendant possessed the specific intent to induce infringement of a patent." *Ibid.*

Judge Newman dissented on that point. In Judge Newman's view a defendant's good-faith belief in a patent's invalidity is not a defense to induced infringement. She reasoned that "whether there is infringement in fact does not depend on the belief of the accused infringer that it might succeed in invalidating the patent." *Id.*, at 1374 (opinion concurring in part and dissenting in part). Both parties filed petitions for rehearing en banc, which were denied. 737 F. 3d 699, 700 (2013). Five judges, however, would have granted rehearing en banc to consider the question whether a good-faith belief in invalidity is a defense to induced infringement. *Ibid.* (Reyna, J., dissenting from denial of rehearing en banc).

This Court granted certiorari to decide that question. 574 U. S. 1045 (2014).

II

Although the precise issue to be addressed concerns a claim of improper inducement to infringe, the discussion to follow refers as well to direct infringement and contributory infringement, so it is instructive at the outset to set forth the statutory provisions pertaining to these three forms of liability. These three relevant provisions are found in § 271 of the Patent Act. 35 U. S. C. § 271.

Subsection (a) governs direct infringement and provides:

> "Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent."

Under this form of liability, a defendant's mental state is irrelevant. Direct infringement is a strict-liability offense. *Global-Tech*, 563 U. S., at 761, n. 2.

Subsection (b) governs induced infringement:

> "Whoever actively induces infringement of a patent shall be liable as an infringer."

In contrast to direct infringement, liability for inducing infringement attaches only if the defendant knew of the patent and that "the induced acts constitute patent infringement." *Id.*, at 766. In Commil and the Government's view, not only is knowledge or belief in the patent's validity irrelevant, they further argue the party charged with inducing infringement need not know that the acts it induced would infringe. On this latter point, they are incorrect, as will be explained below.

Subsection (c) deals with contributory infringement:

> "Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer."

Like induced infringement, contributory infringement requires knowledge of the patent in suit and knowledge of patent infringement. *Aro Mfg. Co.* v. *Convertible Top Replacement Co.*, 377 U. S. 476, 488 (1964) (*Aro II*).

This case asks a question of first impression: whether knowledge of, or belief in, a patent's validity is required for induced infringement under § 271(b).

A

Before turning to the question presented, it is necessary to reaffirm what the Court held in *Global-Tech*. Commil and the Government (which supports Commil in this case) argue that *Global-Tech* should be read as holding that only knowledge of the patent is required for induced infringement. That, as will be explained, would contravene *Global-Tech*'s explicit holding that liability for induced infringement can only attach if the defendant knew of the patent and knew as well that "the induced acts constitute patent infringement." 563 U. S., at 766.

In *Global-Tech*, the plaintiff, SEB, had invented and patented a deep fryer. A few years later, Sunbeam asked Pentalpha to supply deep fryers for Sunbeam to sell. To make the deep fryer, Pentalpha bought an SEB fryer and copied all but the cosmetic features. Pentalpha then sold the fryers to Sunbeam, which in turn sold them to customers. SEB sued Pentalpha for induced infringement, arguing Pentalpha had induced Sunbeam and others to sell the infringing fryers in violation of SEB's patent rights. In defense, Pentalpha argued it did not know the deep fryer it copied was patented and therefore could not be liable for inducing anyone to infringe SEB's patent. The question presented to this Court was "whether a party who 'actively induces infringement of a patent' under 35 U. S. C. § 271(b) must know that the induced acts constitute patent infringement." *Id.*, at 757.

After noting the language of § 271(b) and the case law prior to passage of the Patent Act did not resolve the question, the *Global-Tech* Court turned to *Aro II*, a case about contributory infringement. The *Global-Tech* Court deemed that rules concerning contributory infringement were relevant to induced infringement, because the mental state imposed in each instance is similar. Before the Patent Act, inducing infringement was not a separate theory of indirect liability but was evidence of contributory infringement. 563

U. S., at 761–762. Thus, in many respects, it is proper to find common ground in the two theories of liability.

Aro II concluded that to be liable for contributory infringement, a defendant must know the acts were infringing. 377 U. S., at 488. In *Global-Tech*, the Court said this reasoning was applicable, explaining as follows:

> "Based on this premise, it follows that the same knowledge is needed for induced infringement under § 271(b). As noted, the two provisions have a common origin in the pre-1952 understanding of contributory infringement, and the language of the two provisions creates the same difficult interpretive choice. It would thus be strange to hold that knowledge of the relevant patent is needed under § 271(c) but not under § 271(b).
>
> "Accordingly, we now hold that induced infringement under § 271(b) requires knowledge that the induced acts constitute patent infringement." 563 U. S., at 765–766.

In support of Commil, the Government argues against the clear language of *Global-Tech*. According to the Government, all *Global-Tech* requires is knowledge of the patent: "The Court did not definitively resolve whether Section 271(b) additionally requires knowledge of the infringing nature of the induced acts." Brief for United States as *Amicus Curiae* 9. See also Brief for Petitioner 17. Together, Commil and the Government claim the "factual circumstances" of *Global-Tech* "did not require" the Court to decide whether knowledge of infringement is required for inducement liability. Brief for United States as *Amicus Curiae* 12. See also Brief for Petitioner 23–24. But in the Court's *Global-Tech* decision, its description of the factual circumstances suggests otherwise. The Court concluded there was enough evidence to support a finding that Pentalpha knew "the infringing nature of the sales it encouraged Sunbeam to make." 563 U. S., at 770. It was not only knowledge of the existence of SEB's patent that led the Court to affirm

the liability finding but also it was the fact that Pentalpha copied "all but the cosmetic features of SEB's fryer," demonstrating Pentalpha knew it would be causing customers to infringe SEB's patent. *Id.*, at 771.

Accepting the Government and Commil's argument would require this Court to depart from its prior holding. See *id.*, at 766. See also *id.*, at 772 (KENNEDY, J., dissenting) ("The Court is correct, in my view, to conclude that . . . to induce infringement a defendant must know the acts constitute patent infringement" (internal quotation marks omitted)). And the *Global-Tech* rationale is sound. Qualifying or limiting its holding, as the Government and Commil seek to do, would lead to the conclusion, both in inducement and contributory infringement cases, that a person, or entity, could be liable even though he did not know the acts were infringing. In other words, even if the defendant reads the patent's claims differently from the plaintiff, and that reading is reasonable, he would still be liable because he knew the acts might infringe. *Global-Tech* requires more. It requires proof the defendant knew the acts were infringing. And the Court's opinion was clear in rejecting any lesser mental state as the standard. *Id.*, at 769–770.

B

The question the Court confronts today concerns whether a defendant's belief regarding patent validity is a defense to a claim of induced infringement. It is not. The scienter element for induced infringement concerns infringement; that is a different issue than validity. Section 271(b) requires that the defendant "actively induce[d] infringement." That language requires intent to "bring about the desired result," which is infringement. *Id.*, at 760. And because infringement and validity are separate issues under the Act, belief regarding validity cannot negate the scienter required under § 271(b).

When infringement is the issue, the validity of the patent is not the question to be confronted. In *Cardinal Chemical Co.* v. *Morton Int'l, Inc.*, 508 U. S. 83 (1993), the Court explained, "A party seeking a declaratory judgment of invalidity presents a claim independent of the patentee's charge of infringement." *Id.*, at 96. It further held noninfringement and invalidity were "alternative grounds" for dismissing the suit. *Id.*, at 98. And in *Deposit Guaranty Nat. Bank* v. *Roper*, 445 U. S. 326 (1980), the Court explained that an accused infringer "may prevail either by successfully attacking the validity of the patent or by successfully defending the charge of infringement." *Id.*, at 334. These explanations are in accord with the long-accepted truth—perhaps the axiom—that infringement and invalidity are separate matters under patent law. See *Pandrol USA, LP* v. *Airboss R. Prods., Inc.*, 320 F. 3d 1354, 1365 (CA Fed. 2003).

Indeed, the issues of infringement and validity appear in separate parts of the Patent Act. Part III of the Act deals with "Patents and Protection of Patent Rights," including the right to be free from infringement. §§ 251–329. Part II, entitled "Patentability of Inventions and Grants of Patents," defines what constitutes a valid patent. §§ 100–212. Further, noninfringement and invalidity are listed as two separate defenses, see §§ 282(b)(1), (2), and defendants are free to raise either or both of them. See *Cardinal*, *supra*, at 98. Were this Court to interpret § 271(b) as permitting a defense of belief in invalidity, it would conflate the issues of infringement and validity.

Allowing this new defense would also undermine a presumption that is a "common core of thought and truth" reflected in this Court's precedents for a century. *Radio Corp. of America* v. *Radio Engineering Laboratories, Inc.*, 293 U. S. 1, 8 (1934). Under the Patent Act, and the case law before its passage, a patent is "presumed valid." § 282(a); *id.*, at 8. That presumption takes away any need for a plaintiff to prove his patent is valid to bring a claim. But if belief

in invalidity were a defense to induced infringement, the force of that presumption would be lessened to a drastic degree, for a defendant could prevail if he proved he reasonably believed the patent was invalid. That would circumvent the high bar Congress is presumed to have chosen: the clear and convincing standard. See *Microsoft Corp.* v. *i4i Ltd. Partnership*, 564 U. S. 91, 102–104 (2011). Defendants must meet that standard to rebut the presumption of validity. *Ibid.*

To say that an invalid patent cannot be infringed, or that someone cannot be induced to infringe an invalid patent, is in one sense a simple truth, both as a matter of logic and semantics. See *M. Swift & Sons, Inc.* v. *W. H. Coe Mfg. Co.*, 102 F. 2d 391, 396 (CA1 1939). But the questions courts must address when interpreting and implementing the statutory framework require a determination of the procedures and sequences that the parties must follow to prove the act of wrongful inducement and any related issues of patent validity. "Validity and infringement are distinct issues, bearing different burdens, different presumptions, and different evidence." 720 F. 3d, at 1374 (opinion of Newman, J.). To be sure, if at the end of the day, an act that would have been an infringement or an inducement to infringe pertains to a patent that is shown to be invalid, there is no patent to be infringed. But the allocation of the burden to persuade on these questions, and the timing for the presentations of the relevant arguments, are concerns of central relevance to the orderly administration of the patent system.

Invalidity is an affirmative defense that "can preclude enforcement of a patent against otherwise infringing conduct." 6A Chisum on Patents § 19.01, p. 19–5 (2015). An accused infringer can, of course, attempt to prove that the patent in suit is invalid; if the patent is indeed invalid, and shown to be so under proper procedures, there is no liability. See *i4i*, *supra*, at 105–106. That is because invalidity is not a defense to infringement, it is a defense to liability. And be-

cause of that fact, a belief as to invalidity cannot negate the scienter required for induced infringement.

There are also practical reasons not to create a defense based on a good-faith belief in invalidity. First and foremost, accused inducers who believe a patent is invalid have various proper ways to obtain a ruling to that effect. They can file a declaratory judgment action asking a federal court to declare the patent invalid. See *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U. S. 118, 137 (2007). They can seek *inter partes* review at the Patent Trial and Appeal Board and receive a decision as to validity within 12 to 18 months. See § 316. Or they can, as Cisco did here, seek *ex parte* reexamination of the patent by the Patent and Trademark Office. § 302. And, of course, any accused infringer who believes the patent in suit is invalid may raise the affirmative defense of invalidity. § 282(b)(2). If the defendant is successful, he will be immune from liability.

Creating a defense of belief in invalidity, furthermore, would have negative consequences. It can render litigation more burdensome for everyone involved. Every accused inducer would have an incentive to put forth a theory of invalidity and could likely come up with myriad arguments. See Sloan, Think It Is Invalid? A New Defense To Negate Intent for Induced Infringement, 23 Fed. Cir. B. J. 613, 618 (2013). And since "it is often more difficult to determine whether a patent is valid than whether it has been infringed," *Cardinal*, 508 U. S., at 99, accused inducers would likely find it easier to prevail on a defense regarding the belief of invalidity than noninfringement. In addition the need to respond to the defense will increase discovery costs and multiply the issues the jury must resolve. Indeed, the jury would be put to the difficult task of separating the defendant's belief regarding validity from the actual issue of validity.

As a final note, "[o]ur law is . . . no stranger to the possibility that an act may be 'intentional' for purposes of civil liability, even if the actor lacked actual knowledge that her

conduct violated the law." *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich, L. P. A.*, 559 U. S. 573, 582–583 (2010). Tortious interference with a contract provides an apt example. While the invalidity of a contract is a defense to tortious interference, belief in validity is irrelevant. Restatement (Second) of Torts § 766, Comment *i* (1979). See also W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 110 (5th ed. 1984). In a similar way, a trespass "can be committed despite the actor's mistaken belief that she has a legal right to enter the property." *Jerman*, *supra*, at 583 (citing Restatement (Second) of Torts § 164, and Comment *e* (1963–1964)). And of course, "[t]he general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system." *Cheek* v. *United States*, 498 U. S. 192, 199 (1991). In the usual case, "I thought it was legal" is no defense. That concept mirrors this Court's holding that belief in invalidity will not negate the scienter required under § 271(b).

III

The Court is well aware that an "industry has developed in which firms use patents not as a basis for producing and selling goods but, instead, primarily for obtaining licensing fees." *eBay Inc.* v. *MercExchange, L. L. C.*, 547 U. S. 388, 396 (2006) (KENNEDY, J., concurring). Some companies may use patents as a sword to go after defendants for money, even when their claims are frivolous. This tactic is often pursued through demand letters, which "may be sent very broadly and without prior investigation, may assert vague claims of infringement, and may be designed to obtain payments that are based more on the costs of defending litigation than on the merit of the patent claims." L. Greisman, Prepared Statement of the Federal Trade Commission on Discussion Draft of Patent Demand Letter Legislation before the Subcommittee on Commerce, Manufacturing, and Trade of the House Committee on Energy and Commerce 2

(2014). This behavior can impose a "harmful tax on innovation." *Ibid.*

No issue of frivolity has been raised by the parties in this case, nor does it arise on the facts presented to this Court. Nonetheless, it is still necessary and proper to stress that district courts have the authority and responsibility to ensure frivolous cases are dissuaded. If frivolous cases are filed in federal court, it is within the power of the court to sanction attorneys for bringing such suits. Fed. Rule Civ. Proc. 11. It is also within the district court's discretion to award attorney's fees to prevailing parties in "exceptional cases." 35 U. S. C. § 285; see also *Octane Fitness, LLC* v. *ICON Health & Fitness, Inc.*, 572 U. S. 545, 554–555 (2014). These safeguards, combined with the avenues that accused inducers have to obtain rulings on the validity of patents, militate in favor of maintaining the separation expressed throughout the Patent Act between infringement and validity. This dichotomy means that belief in invalidity is no defense to a claim of induced infringement.

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

It is so ordered.

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

JUSTICE SCALIA, with whom THE CHIEF JUSTICE joins, dissenting.

I agree with the Court's rejection of the main argument advanced by Commil and the United States, that induced infringement under 35 U. S. C. § 271(b) does not "requir[e] knowledge of the infringing nature of the induced acts." Brief for United States as *Amicus Curiae* 9; see also Brief for Petitioner 15–44. I disagree, however, with the Court's

holding that good-faith belief in a patent's invalidity is not a defense to induced infringement.

Infringing a patent means invading a patentee's exclusive right to practice his claimed invention. *Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U. S. 24, 40 (1923) (quoting 3 W. Robinson, Law of Patents § 937, pp. 122–123 (1890)). Only valid patents confer this right to exclusivity—invalid patents do not. *FTC* v. *Actavis, Inc.*, 570 U. S. 136, 147 (2013). It follows, as night the day, that only valid patents can be infringed. To talk of infringing an invalid patent is to talk nonsense.

Induced infringement, we have said, "requires knowledge that the induced acts constitute patent infringement." *Global-Tech Appliances, Inc.* v. *SEB S. A.*, 563 U. S. 754, 766 (2011). Because only valid patents can be infringed, anyone with a good-faith belief in a patent's *in*validity necessarily believes the patent *cannot* be infringed. And it is impossible for anyone who believes that a patent cannot be infringed to induce actions that he *knows* will infringe it. A good-faith belief that a patent is invalid is therefore a defense to induced infringement of that patent.

The Court makes four arguments in support of the contrary position. None seems to me persuasive. First, it notes that the Patent Act treats infringement and validity as distinct issues. *Ante*, at 643. That is true. It is also irrelevant. Saying that infringement cannot exist without a valid patent does not "conflate the issues of infringement and validity," *ibid.*, any more than saying that water cannot exist without oxygen "conflates" water and oxygen. Recognizing that infringement requires validity is entirely consistent with the "long-accepted truth . . . that infringement and invalidity are separate matters under patent law." *Ibid.*

The Court next insists that permitting the defense at issue would undermine the statutory presumption of validity. *Ante*, at 643–644. It would do no such thing. By reason of the statutory presumption of validity, § 282(a), patents can

be held invalid only by "clear and convincing evidence." *Microsoft Corp.* v. *i4i Ltd. Partnership*, 564 U. S. 91, 95 (2011). This presumption is not weakened by treating a good-faith belief in invalidity as a defense to induced infringement. An alleged inducer who succeeds in this defense does not thereby call a patent's validity into question. He merely avoids liability for a third party's infringement of a *valid* patent, in no way undermining that patent's presumed validity.

Next, the Court says that "invalidity is not a defense to infringement, it is a defense to liability." *Ante*, at 644. That is an assertion, not an argument. Again, to infringe a patent is to invade the patentee's right of exclusivity. An invalid patent confers no such right. How is it possible to interfere with rights that do not exist? The Court has no answer.

That brings me to the Court's weakest argument: that there are "practical reasons not to *create* a defense based on a good-faith belief in invalidity." *Ante*, at 645 (emphasis added); see also *ibid.* ("*Creating* a defense of belief in invalidity, furthermore, would have negative consequences" (emphasis added)). Ours is not a common-law court. *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 78 (1938). We do not, or at least should not, *create* defenses to statutory liability—and that is not what this dissent purports to do. Our task is to interpret the Patent Act, and to decide whether *it* makes a good-faith belief in a patent's invalidity a defense to induced infringement. Since, as we said in *Global-Tech*, *supra*, the Act makes knowledge of infringement a requirement for induced-infringement liability; and since there can be no infringement (and hence no knowledge of infringement) of an invalid patent; good-faith belief in invalidity is a defense. I may add, however, that if the desirability of the rule we adopt were a proper consideration, it is by no means clear that the Court's holding, which increases the *in terrorem* power of patent trolls, is preferable. The Court seemingly acknowledges that consequence in Part III of its opinion.

For the foregoing reasons, I respectfully dissent.

Syllabus

KELLOGG BROWN & ROOT SERVICES, INC., ET AL. *v.* UNITED STATES EX REL. CARTER

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

No. 12–1497. Argued January 13, 2015—Decided May 26, 2015

Private parties may file civil *qui tam* actions to enforce the False Claims Act (FCA), which prohibits making "a false or fraudulent claim for payment or approval," 31 U. S. C. § 3729(a)(1), "to . . . the United States," 3729(b)(2)(A)(i). A *qui tam* action must generally be brought within six years of a violation, § 3731(b), but the Wartime Suspension of Limitations Act (WSLA) suspends "the running of any statute of limitations applicable to any offense" involving fraud against the Federal Government. 18 U. S. C. § 3287. Separately, the FCA's "first-to-file bar" precludes a *qui tam* suit "based on the facts underlying [a] pending action," § 3730(b)(5).

In 2005, respondent worked for one of the petitioners, providing logistical services to the United States military in Iraq. He subsequently filed a *qui tam* complaint (*Carter I*), alleging that petitioners, who are defense contractors and related entities, had fraudulently billed the Government for water purification services that were not performed or not performed properly. In 2010, shortly before trial, the Government informed the parties that an earlier filed *qui tam* suit (*Thorpe*) had similar claims, leading the District Court to dismiss *Carter I* without prejudice under the first-to-file bar. While respondent's appeal was pending, *Thorpe* was dismissed for failure to prosecute. Respondent quickly filed a new complaint (*Carter II*), but the court dismissed it under the first-to-file rule because *Carter I*'s appeal was pending. Respondent then dismissed that appeal, and in June 2011, more than six years after the alleged fraud, filed the instant complaint (*Carter III*). The District Court dismissed this complaint with prejudice under the first-to-file rule because of a pending Maryland suit. Further, because the WSLA applies only to criminal charges, the court reasoned, all but one of respondent's civil actions were untimely. Reversing, the Fourth Circuit concluded that the WSLA applied to civil claims and that the first-to-file bar ceases to apply once a related action is dismissed. Since any pending suits had by then been dismissed, the court held, respondent had the right to refile his case. It thus remanded *Carter III* with instructions to dismiss without prejudice.

Syllabus

Held:

1. As shown by the WSLA's text, structure, and history, the Act applies only to criminal offenses, not to civil claims like those in this case. Pp. 656–662.

(a) The 1921 and 1942 versions of the WSLA were enacted to address war-related fraud during, respectively, the First and Second World Wars. Both extended the statute of limitations for fraud offenses "now indictable under any existing statutes." Since only crimes are "indictable," these provisions quite clearly were limited to criminal charges. In 1944, Congress made the WSLA prospectively applicable to future wartime frauds rather than merely applicable to past frauds as earlier versions had been. In doing so, it deleted the phrase "now indictable under any statute," so that the WSLA now applied to "any offense against the laws of the United States." Congress made additional changes in 1948 and codified the WSLA in Title 18 U. S. C. Pp. 656–658.

(b) Section 3287's text supports limiting the WSLA to criminal charges. The term "offense" is most commonly used to refer to crimes, especially given the WSLA's location in Title 18, titled "Crimes and Criminal Procedure," where no provision appears to employ "offense" to denote a civil violation rather than a civil penalty attached to a criminal offense. And when Title 18 was enacted in 1948, its very first provision classified all offenses as crimes. In similar circumstances, this Court has regarded a provision's placement as relevant in determining whether its content is civil or criminal. *Kansas* v. *Hendricks*, 521 U. S. 346, 361. The WSLA's history provides further support for this reading. The term "offenses" in the 1921 and 1942 statutes, the parties agree, applied only to crimes. And it is improbable that the 1944 Act's removal of the phrase "now indictable under any statute" had the effect of sweeping in civil claims, a fundamental change in scope not typically accomplished with so subtle a move. The more plausible explanation is that Congress removed that phrase in order to change the WSLA from a retroactive measure designed to deal exclusively with past fraud into a permanent measure applicable to future fraud as well. If there were any ambiguity in the WSLA's use of the term "offense," that ambiguity should be resolved in favor of a narrower definition. See *Bridges* v. *United States*, 346 U. S. 209, 216. Pp. 658–662.

2. The FCA's first-to-file bar keeps new claims out of court only while related claims are still alive, not in perpetuity. Thus, dismissal with prejudice was not called for in this case. This reading of § 3730(b)(5) is in accordance with the ordinary dictionary meaning of the term "pend-

ing." Contrary to petitioners' reading, the term "pending" cannot be seen as a sort of "short-hand" for first-filed, which is neither a lengthy nor a complex term. Petitioners' reading would also bar even a suit dismissed for a reason having nothing to do with the merits, such as *Thorpe,* which was dismissed for failure to prosecute. Pp. 662–664.

710 F. 3d 171, reversed in part, affirmed in part, and remanded.

ALITO, J., delivered the opinion for a unanimous Court.

John P. Elwood argued the cause for petitioners. With him on the briefs were *Craig D. Margolis*, *Jeremy C. Marwell*, and *John M. Faust.*

David S. Stone argued the cause for respondent. With him on the brief were *Robert A. Magnanini*, *Amy Walker Wagner*, *Jason C. Spiro*, *Thomas M. Dunlap*, and *David Ludwig.*

Deputy Solicitor General Stewart argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Verrilli*, *Acting Assistant Attorney Branda*, *Nicole A. Saharsky*, *Michael S. Raab*, and *Jeffrey E. Sandberg.**

JUSTICE ALITO delivered the opinion of the Court.

Wars have often provided "exceptional opportunities" for fraud on the United States Government. See *United States* v. *Smith*, 342 U. S. 225, 228 (1952). "The False Claims Act was adopted in 1863 and signed into law by President Abraham Lincoln in order to combat rampant fraud in Civil

*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America et al. by *Jonathan S. Franklin*, *Mark Emery*, *Rachel Brand*, and *Melissa B. Kimmel*; for the National Defense Industrial Association et al. by *Douglas W. Baruch*; for the New England Legal Foundation by *Benjamin G. Robbins* and *Martin J. Newhouse*; and for Verizon by *Seth P. Waxman* and *Brian M. Boynton.*

Briefs of *amici curiae* urging affirmance were filed for the National Whistleblower Center by *Stephen M. Kohn*, *Michael D. Kohn*, and *David K. Colapinto*; and for the Taxpayers Against Fraud Education Fund by *Joseph E. B. White.*

War defense contracts." S. Rep. No. 99–345, p. 8 (1986). Predecessors of the Wartime Suspension of Limitations Act were enacted to address similar problems that arose during the First and Second World Wars. See *Smith*, *supra*, at 228–229.

In this case, we must decide two questions regarding those laws: first, whether the Wartime Suspension of Limitations Act applies only to criminal charges or also to civil claims; second, whether the False Claims Act's first-to-file bar keeps new claims out of court only while related claims are still alive or whether it may bar those claims in perpetuity.

I

A

The False Claims Act (FCA) imposes liability on any person who "knowingly presents . . . a false or fraudulent claim for payment or approval," 31 U. S. C. § 3729(a)(1)(A), "to an officer, employee, or agent of the United States," § 3729(b)(2)(A)(i). The FCA may be enforced not just through litigation brought by the Government itself, but also through civil *qui tam* actions that are filed by private parties, called relators, "in the name of the Government." § 3730(b).

In a *qui tam* suit under the FCA, the relator files a complaint under seal and serves the United States with a copy of the complaint and a disclosure of all material evidence. § 3730(b)(2). After reviewing these materials, the United States may "proceed with the action, in which case the action shall be conducted by the Government," or it may "notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action." § 3730(b)(4). Regardless of the option that the United States selects, it retains the right at any time to dismiss the action entirely, § 3730(c)(2)(A), or to settle the case, § 3730(c)(2)(B).

The FCA imposes two restrictions on *qui tam* suits that are relevant here. One, the "first-to-file" bar, precludes a *qui tam* suit "based on the facts underlying [a] pending action." § 3730(b)(5). The other, the FCA's statute of limitations provision, states that a *qui tam* action must be brought within six years of a violation or within three years of the date by which the United States should have known about a violation. In no circumstances, however, may a suit be brought more than 10 years after the date of a violation. § 3731(b).

B

The Wartime Suspension of Limitations Act (WSLA) suspends the statute of limitations for "any offense" involving fraud against the Federal Government. 18 U. S. C. § 3287. Before 2008, this provision was activated only "[w]hen the United States [was] at war." *Ibid.* (2006 ed.). In 2008, however, this provision was made to apply as well whenever Congress has enacted "a specific authorization for the use of the Armed Forces, as described in section 5(b) of the War Powers Resolution (50 U. S. C. 1544(b))." *Ibid.* (2012 ed.).

II

Petitioners are defense contractors and related entities that provided logistical services to the United States military during the armed conflict in Iraq. From January to April 2005, respondent worked in Iraq for one of the petitioners as a water purification operator. He subsequently filed a *qui tam* complaint against petitioners (*Carter I*), alleging that they had fraudulently billed the Government for water purification services that were not performed or not performed properly. The Government declined to intervene.

In 2010, shortly before trial, the Government informed the parties about an earlier filed *qui tam* lawsuit, *United States ex rel. Thorpe* v. *Halliburton Co.*, No. 05–cv–08924 (CD Cal., filed Dec. 23, 2005), that arguably contained similar claims.

This initiated a remarkable sequence of dismissals and filings.

The District Court held that respondent's suit was related to *Thorpe* and thus dismissed his case without prejudice under the first-to-file bar. Respondent appealed, and while his appeal was pending, *Thorpe* was dismissed for failure to prosecute. Respondent quickly filed a new complaint (*Carter II*), but the District Court dismissed this second complaint under the first-to-file rule because respondent's own earlier case was still pending on appeal. Respondent then voluntarily dismissed this appeal, and in June 2011, more than six years after the alleged fraud, he filed yet another complaint (*Carter III*), and it is this complaint that is now at issue.

Petitioners sought dismissal of this third complaint under the first-to-file rule, pointing to two allegedly related cases, one in Maryland and one in Texas, that had been filed in the interim between the filing of *Carter I* and *Carter III*. This time, the court dismissed respondent's complaint with prejudice. The court held that the latest complaint was barred under the first-to-file rule because the Maryland suit was already pending when that complaint was filed. The court also ruled that the WSLA applies only to criminal charges and thus did not suspend the time for filing respondent's civil claims. As a result, the court concluded, all but one of those claims were untimely because they were filed more than six years after the alleged wrongdoing.

The Fourth Circuit reversed, rejecting the District Court's analysis of both the WSLA and first-to-file issues. *United States ex rel. Carter* v. *Halliburton Co.*, 710 F. 3d 171 (2013). Concluding that the WSLA applies to civil claims based on fraud committed during the conflict in Iraq,[1] the Court of

[1] The Court of Appeals held that the Authorization for Use of Military Force Against Iraq Resolution of 2002, 116 Stat. 1498, note following 50 U. S. C. § 1541, p. 312, was sufficient to satisfy the "at war" requirement in the pre-2008 version of the WSLA. The Court of Appeals consequently

Appeals held that respondent's claims had been filed on time. The Court of Appeals also held that the first-to-file bar ceases to apply once a related action is dismissed. Since the Maryland and Texas cases had been dismissed by the time of the Fourth Circuit's decision, the court held that respondent had the right to refile his case. The Court of Appeals thus remanded *Carter III* with instructions to dismiss without prejudice.

After this was done, respondent filed *Carter IV*, but the District Court dismissed *Carter IV* on the ground that the petition for a writ of certiorari in *Carter III* (the case now before us) was still pending.

We granted that petition, 573 U. S. 957 (2014), and we now reverse in part and affirm in part.

III

The text, structure, and history of the WSLA show that the Act applies only to criminal offenses.

A

The WSLA's roots extend back to the time after the end of World War I. Concerned about war-related frauds, Congress in 1921 enacted a statute that extended the statute of limitations for such offenses. The new law provided as follows: "[I]n offenses involving the defrauding or attempts to defraud the United States or any agency thereof . . . and *now indictable under any existing statutes*, the period of limitation shall be six years." Act of Nov. 17, 1921, ch. 124, 42 Stat. 220 (emphasis added). Since only crimes are "indictable," this provision quite clearly was limited to the filing of criminal charges.

In 1942, after the United States entered World War II, Congress enacted a similar suspension statute. This law, like its

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found it unnecessary to decide whether the pre- or post-2008 version of the WSLA governed respondent's claims.

predecessor, applied to fraud "offenses . . . now indictable under any existing statutes," but this time the law suspended "any" "existing statute of limitations" until the fixed date of June 30, 1945. Act of Aug. 24, 1942, ch. 555, 56 Stat. 747–748.

As that date approached, Congress decided to adopt a suspension statute which would remain in force for the duration of the war. Congress amended the 1942 WSLA in three important ways. First, Congress deleted the phrase "now indictable under any statute," so that the WSLA was made to apply simply to "any offense against the laws of the United States." 58 Stat. 667. Second, although previous versions of the WSLA were of definite duration, Congress now suspended the limitations period for the open-ended timeframe of "three years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress." *Ibid.* Third, Congress expanded the statute's coverage beyond offenses "involving defrauding or attempts to defraud the United States" to include other offenses pertaining to Government contracts and the handling and disposal of Government property. *Ibid.*, and § 28, 58 Stat. 781.

Congress made more changes in 1948. From then until 2008, the WSLA's relevant language was as follows:

> "When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not . . . shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress." Act of June 25, 1948, § 3287, 62 Stat. 828.

In addition, Congress codified the WSLA in Title 18 of the United States Code, titled "Crimes and Criminal Procedure."

Finally, in 2008, Congress once again amended the WSLA, this time in two relevant ways. First, as noted, Congress

changed the Act's triggering event, providing that tolling is available not only "[w]hen the United States is at war," but also when Congress has enacted a specific authorization for the use of military force. Second, Congress extended the suspension period from three to five years. § 855, 122 Stat. 4545.[2]

B

With this background in mind, we turn to the question whether the WSLA applies to civil claims as well as criminal charges. We hold that the Act applies only to the latter.

We begin with the WSLA's text. The WSLA suspends "the running of any statute of limitations applicable to any *offense* . . . involving fraud or attempted fraud against the United States or any agency thereof." 18 U. S. C. § 3287 (emphasis added). The term "offense" is most commonly used to refer to crimes. At the time of both the 1948 and 2008 amendments to the Act, the primary definition of "offense" in Black's Law Dictionary referred to crime. Black's Law Dictionary 1110 (8th ed. 2004) (Black's) ("A violation of the law; a crime, often a minor one. See CRIME"); *id.*, at 1232 (4th ed. 1951) ("A crime or misdemeanor; a breach of the criminal laws"); *id.*, at 1282 (3d ed. 1933) (same). The 1942 edition of Webster's similarly states that "offense" "has no technical legal meaning; but it is sometimes used specifically for an indictable crime . . . and sometimes for a misdemeanor or wrong punishable only by fine or penalty." Webster's New International Dictionary 1690 (2d ed.). See also Webster's Third New International Dictionary 1566 (1976) (Webster's Third) ("an infraction of law: CRIME, MISDEMEANOR"); American Heritage Dictionary 1255 (3d ed. 1992) ("A transgression of law; a crime").

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[2] The claims giving rise to the present suit originated in 2005, but respondent filed the operative complaint in 2011. Resolution of the questions before us in this case does not require us to decide which of these two versions of the WSLA applies to respondent's claims.

It is true that the term "offense" is sometimes used more broadly. For instance, the 1948 edition of Ballentine's Law Dictionary cautions: "The words 'crime' and 'offense' are not necessarily synonymous. All crimes are offenses, but some offenses are not crimes." Ballentine's Law Dictionary 900.

But while the term "offense" is sometimes used in this way, that is not how the word is used in Title 18. Although the term appears hundreds of times in Title 18, neither respondent nor the Solicitor General, appearing as an *amicus* in support of respondent, has been able to find a single provision of that title in which "offense" is employed to denote a civil violation. The Solicitor General cites eight provisions,[3] but not one actually labels a civil wrong as an "offense." Instead, they all simply attach civil penalties to criminal offenses—as the Deputy Solicitor General acknowledged at oral argument. See Tr. of Oral Arg. 28–29.

Not only is this pattern of usage telling, but when Title 18 was enacted in 1948, the very first provision, what was then 18 U. S. C. § 1, classified all offenses as crimes. That provision read in pertinent part as follows:

> "§ 1. Offenses classified.
>
> "Notwithstanding any Act of Congress to the contrary:
>
> "(1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.
>
> "(2) Any other offense is a misdemeanor." 62 Stat. 684 (repealed Oct. 12, 1984).

The Solicitor General correctly points out that regulatory provisions outside Title 18 sometimes use the term "offense" to describe a civil violation, see Brief for United States as *Amicus Curiae* 10 (United States Brief), but it is significant that Congress chose to place the WSLA in Title 18. Although we have cautioned against "plac[ing] too much significance on the location of a statute in the United States

[3] 18 U. S. C. §§ 38, 248, 670, 1033(a), 1964, 2292(a), 2339B, 2339C.

Code," *Jones* v. *R. R. Donnelley & Sons Co.*, 541 U. S. 369, 376 (2004), we have in similar circumstances regarded the placement of a provision as relevant in determining whether its content is civil or criminal in nature, see *Kansas* v. *Hendricks*, 521 U. S. 346, 361 (1997). It is also revealing that Congress has used clearer and more specific language when it has wanted to toll the statutes of limitations for civil suits as well as crimes. Only two months after enacting the WSLA, Congress passed a tolling statute for "violations of the antitrust laws . . . now indictable *or subject to civil proceedings*." Act of Oct. 10, 1942, ch. 589, 56 Stat. 781 (emphasis added). Congress obviously could have included a similar "civil proceedings" clause in the WSLA, but it did not do so.

The WSLA's history provides what is perhaps the strongest support for the conclusion that it applies only to criminal charges. The parties do not dispute that the term "offenses" in the 1921 and 1942 suspension statutes applied only to crimes, Brief for Petitioners 23; Brief for Respondent 24–25, and after 1942, the WSLA continued to use that same term. The retention of the same term in the later laws suggests that no fundamental alteration was intended.

Respondent and the Government latch onto the 1944 Act's removal of the phrase "now indictable under any statute" and argue that this deletion had the effect of sweeping in civil claims, but this argument is most improbable. Simply deleting the phrase "now indictable under the statute," while leaving the operative term "offense" unchanged would have been an obscure way of substantially expanding the WSLA's reach. Fundamental changes in the scope of a statute are not typically accomplished with so subtle a move. Converting the WSLA from a provision that suspended the statute of limitations for criminal prosecutions into one that also suspended the time for commencing a civil action would have been a big step. If Congress had meant to make such a change, we would expect it to have used language that made this important modification clear to litigants and courts.

Respondent's and the Government's interpretation of the significance of the deletion of the phrase "now indictable" ignores a more plausible explanation, namely, Congress' decision to make the WSLA applicable, not just to offenses committed in the past during or in the aftermath of particular wars, but also to future offenses committed during future wars. When the phrase "now indictable" first appeared in the 1921 Act, it meant that the statute of limitations was suspended for only those crimes that had already been committed when the Act took effect. This made sense because the 1921 Act was a temporary measure enacted to deal with problems resulting from the First World War. The 1942 Act simply "readopt[ed] the [same] World War I policy" to deal with claims during World War II. *Bridges* v. *United States*, 346 U. S. 209, 219 (1953).

The 1944 amendments, however, changed the WSLA from a retroactive measure designed to deal exclusively with past fraud into a measure applicable to future fraud as well. In order to complete this transformation, it was necessary to remove the phrase "now indictable," which, as noted, limited the applicability of the suspension to offenses committed in the past. Thus, the removal of the "now indictable" provision was more plausibly driven by Congress' intent to apply the WSLA prospectively, not by any desire to expand the WSLA's reach to civil suits. For all these reasons, we think it clear that the term "offense" in the WSLA applies solely to crimes.

But even if there were some ambiguity in the WSLA's use of that term, our cases instruct us to resolve that ambiguity in favor of the narrower definition. We have said that the WSLA should be "narrowly construed" and "'interpreted in favor of repose.'" *Id.*, at 216 (quoting *United States* v. *Scharton*, 285 U. S. 518, 521–522 (1932)). Applying that principle here means that the term "offense" must be construed to refer only to crimes. Because this case involves civil claims, the WSLA does not suspend the applicable stat-

ute of limitations under either the 1948 or the 2008 version of the statute.[4]

IV

Petitioners acknowledge that respondent has raised other arguments that, if successful, could render at least one claim timely on remand. We therefore consider whether respondent's claims must be dismissed with prejudice under the first-to-file rule. We conclude that dismissal with prejudice was not called for.

The first-to-file bar provides that "[w]hen a person brings an action . . . no person other than the Government may intervene or bring a related action based on the facts underlying the *pending* action." 31 U. S. C. § 3730(b)(5) (emphasis added). The term "pending" means "[r]emaining undecided; awaiting decision." Black's 1314 (10th ed. 2014). See also Webster's Third 1669 (1976) (defining "pending" to mean "not yet decided: in continuance: in suspense"). If the reference to a "pending" action in the FCA is interpreted in this way, an earlier suit bars a later suit while the earlier suit remains undecided but ceases to bar that suit once it is dismissed. We see no reason not to interpret the term "pending" in the FCA in accordance with its ordinary meaning.

Petitioners argue that Congress used the term "pending" in a very different—and very peculiar—way. In the FCA, according to petitioners, the term "pending" "is 'used as a short-hand for the first-filed action.' " Brief for Petitioners 44. Thus, as petitioners see things, the first-filed action remains "pending" even after it has been dismissed, and it forever bars any subsequent related action.

This interpretation does not comport with any known usage of the term "pending." Under this interpretation,

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[4] This holding obviates any need to determine which version of the WSLA applies or whether the term "war" in the 1948 Act applies only when Congress has formally declared war.

Marbury v. *Madison*, 1 Cranch 137 (1803), is still "pending." So is the trial of Socrates.

Petitioners say that Congress used the term "pending" in the FCA as a sort of "short-hand," but a shorthand phrase or term is employed to provide a succinct way of expressing a concept that would otherwise require a lengthy or complex formulation. Here, we are told that "pending" is shorthand for "first-filed," a term that is neither lengthy nor complex. And if Congress had wanted to adopt the rule that petitioners favor, the task could have been accomplished in other equally economical ways—for example, by replacing "pending," with "earlier" or "prior."

Not only does petitioners' argument push the term "pending" far beyond the breaking point, but it would lead to strange results that Congress is unlikely to have wanted. Under petitioners' interpretation, a first-filed suit would bar all subsequent related suits even if that earlier suit was dismissed for a reason having nothing to do with the merits. Here, for example, the *Thorpe* suit, which provided the ground for the initial invocation of the first-to-file rule, was dismissed for failure to prosecute. Why would Congress want the abandonment of an earlier suit to bar a later potentially successful suit that might result in a large recovery for the Government?

Petitioners contend that interpreting "pending" to mean pending would produce practical problems, and there is some merit to their arguments. In particular, as petitioners note, if the first-to-file bar is lifted once the first-filed action ends, defendants may be reluctant to settle such actions for the full amount that they would accept if there were no prospect of subsequent suits asserting the same claims. See Brief for Petitioners 56–57. Respondent and the United States argue that the doctrine of claim preclusion may protect defendants if the first-filed action is decided on the merits, *id.*, at 60–61; United States Brief 30, but that issue is not before us in this

case. The FCA's *qui tam* provisions present many interpretive challenges, and it is beyond our ability in this case to make them operate together smoothly like a finely tuned machine. We hold that a *qui tam* suit under the FCA ceases to be "pending" once it is dismissed. We therefore agree with the Fourth Circuit that the dismissal with prejudice of respondent's one live claim was error.

* * *

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

It is so ordered.

Syllabus

WELLNESS INTERNATIONAL NETWORK, LTD., ET AL. *v.* SHARIF

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

No. 13–935. Argued January 14, 2015—Decided May 26, 2015

Respondent Richard Sharif tried to discharge a debt he owed petitioners, Wellness International Network, Ltd., and its owners (collectively, Wellness), in his Chapter 7 bankruptcy. Wellness sought, *inter alia*, a declaratory judgment from the Bankruptcy Court, contending that a trust Sharif claimed to administer was in fact Sharif's alter ego, and that its assets were his personal property and part of his bankruptcy estate. The Bankruptcy Court eventually entered a default judgment against Sharif. While Sharif's appeal was pending in District Court, but before briefing concluded, this Court held that Article III forbids bankruptcy courts to enter a final judgment on claims that seek only to "augment" the bankruptcy estate and would otherwise "exis[t] without regard to any bankruptcy proceeding." *Stern* v. *Marshall*, 564 U. S. 462, 492, 499. After briefing closed, Sharif sought permission to file a supplemental brief raising a *Stern* objection. The District Court denied the motion, finding it untimely, and affirmed the Bankruptcy Court's judgment. As relevant here, the Seventh Circuit determined that Sharif's *Stern* objection could not be waived because it implicated structural interests and reversed on the alter-ego claim, holding that the Bankruptcy Court lacked constitutional authority to enter final judgment on that claim.

Held:

1. Article III permits bankruptcy judges to adjudicate *Stern* claims with the parties' knowing and voluntary consent. Pp. 674–683.

(a) The foundational case supporting the adjudication of legal disputes by non-Article III judges with the consent of the parties is *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833. There, the Court held that the right to adjudication before an Article III court is "personal" and therefore "subject to waiver." *Id.*, at 848. The Court also recognized that if Article III's structural interests as "'an inseparable element of the constitutional system of checks and balances'" are implicated, "the parties cannot by consent cure the constitutional difficulty." *Id.*, at 850–851. The importance of consent was reiterated in two later cases involving the Federal Magistrates Act's assignment of non-Article III magistrate judges to supervise *voir dire* in felony trials. In *Gomez* v. *United States*, 490 U. S. 858, the Court held that a

magistrate judge was not permitted to select a jury without the defendant's consent, *id.*, at 864. But in *Peretz* v. *United States*, 501 U. S. 923, the Court stated that "the defendant's consent significantly changes the constitutional analysis," *id.*, at 932. Because an Article III court retained supervisory authority over the process, the Court found "no structural protections . . . implicated" and upheld the Magistrate Judge's action. *Id.*, at 937. Pp. 674–678.

(b) The question whether allowing bankruptcy courts to decide *Stern* claims by consent would "impermissibly threate[n] the institutional integrity of the Judicial Branch," *Schor*, 478 U. S., at 851, must be decided "with an eye to the practical effect that the" practice "will have on the constitutionally assigned role of the federal judiciary," *ibid.* For several reasons, this practice does not usurp the constitutional prerogatives of Article III courts. Bankruptcy judges are appointed and may be removed by Article III judges, see 28 U. S. C. §§ 152(a)(1), (e); "serve as judicial officers of the United States district court," § 152(a)(1); and collectively "constitute a unit of the district court" for the district in which they serve, § 151. Bankruptcy courts hear matters solely on a district court's reference, § 157(a), and possess no free-floating authority to decide claims traditionally heard by Article III courts, see *Schor*, 478 U. S., at 854, 856. "[T]he decision to invoke" the bankruptcy court's authority "is left entirely to the parties," *id.*, at 855, and "the power of the federal judiciary to take jurisdiction" remains in place, *ibid.* Finally, there is no indication that Congress gave bankruptcy courts the ability to decide *Stern* claims in an effort to aggrandize itself or humble the Judiciary. See, *e. g.*, *Peretz*, 501 U. S., at 937. Pp. 678–681.

(c) *Stern* does not compel a different result. It turned on the fact that the litigant "did not truly consent to" resolution of the claim against it in a non-Article III forum, 564 U. S., at 493, and thus, does not govern the question whether litigants may validly consent to adjudication by a bankruptcy court. Moreover, expanding *Stern* to hold that a litigant may not waive the right to an Article III court through consent would be inconsistent with that opinion's own description of its holding as "a 'narrow' one" that did "not change all that much" about the division of labor between district and bankruptcy courts. *Id.*, at 502. Pp. 681–683.

2. Consent to adjudication by a bankruptcy court need not be express, but must be knowing and voluntary. Neither the Constitution nor the relevant statute—which requires "the consent of all parties to the proceeding" to hear a *Stern* claim, § 157(c)(2)—mandates express consent. Such a requirement would be in great tension with this Court's holding that substantially similar language in § 636(c)—which authorizes magistrate judges to conduct proceedings "[u]pon consent of the parties"—

permits waiver based on "actions rather than words," *Roell* v. *Withrow*, 538 U. S. 580, 589. *Roell*'s implied consent standard supplies the appropriate rule for bankruptcy court adjudications and makes clear that a litigant's consent—whether express or implied—must be knowing and voluntary. Pp. 683–685.

3. The Seventh Circuit should decide on remand whether Sharif's actions evinced the requisite knowing and voluntary consent and whether Sharif forfeited his *Stern* argument below. Pp. 685–686.

727 F. 3d 751, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, BREYER, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 686. ROBERTS, C. J., filed a dissenting opinion, in which SCALIA, J., joined, and in which THOMAS, J., joined as to Part I, *post*, p. 687. THOMAS, J., filed a dissenting opinion, *post*, p. 706.

Catherine Steege argued the cause for petitioners. With her on the briefs were *Barry Levenstam*, *Melissa M. Hinds*, *Landon Raiford*, *Matthew S. Hellman*, *Michael J. Lang*, and *John A. E. Pottow*.

Curtis E. Gannon argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Delery*, *Deputy Solicitor General Stewart*, *Michael S. Raab*, and *Jeffrey Clair*.

Jonathan D. Hacker argued the cause for respondent. With him on the brief were *Peter Friedman*, *Ben H. Logan*, and *Anton Metlitsky*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Bar Association by *William C. Hubbard*, *Donald L. Gaffney*, and *Kurt F. Gwynne*; for the American College of Bankruptcy by *Craig Goldblatt*, *Danielle Spinelli*, and *Isley M. Gostin*; for the National Association of Bankruptcy Trustees by *William C. Heuer*; and for G. Eric Brunstad, Jr., by *Mr. Brunstad*, *pro se*, and *Kate M. O'Keeffe*.

Andrew M. LeBlanc, *Atara Miller*, and *Robert L. Lindholm* filed a brief for *TOUSA* Defendants as *amici curiae* urging affirmance.

Paul Steven Singerman and *Arthur J. Spector* filed a brief for the Business Law Section of the Florida Bar as *amicus curiae*.

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Article III, § 1, of the Constitution provides that "[t]he 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." Congress has in turn established 94 District Courts and 13 Courts of Appeals, composed of judges who enjoy the protections of Article III: life tenure and pay that cannot be diminished. Because these protections help to ensure the integrity and independence of the Judiciary, "we have long recognized that, in general, Congress may not withdraw from" the Article III courts "any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty." *Stern* v. *Marshall*, 564 U. S. 462, 484 (2011) (internal quotation marks omitted).

Congress has also authorized the appointment of bankruptcy and magistrate judges, who do not enjoy the protections of Article III, to assist Article III courts in their work. The number of magistrate and bankruptcy judgeships exceeds the number of circuit and district judgeships.[1] And it is no exaggeration to say that without the distinguished service of these judicial colleagues, the work of the federal court system would grind nearly to a halt.[2]

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[1] Congress has authorized 179 circuit judgeships and 677 district judgeships, a total of 856. United States Courts, Status of Article III Judgeships, http://www.uscourts.gov/Statistics/JudicialBusiness/2014/status-article-iii-judgeships.aspx (all Internet materials as visited May 22, 2015, and available in Clerk of Court's case file). The number of authorized magistrate and bankruptcy judgeships currently stands at 883: 534 full-time magistrate judgeships and 349 bankruptcy judgeships. United States Courts, Appointments of Magistrate Judges, http://www.uscourts.gov/Statistics/JudicialBusiness/2014/appointments-magistrate-judges.aspx; United States Courts, Status of Bankruptcy Judgeships, http://www.uscourts.gov/Statistics/JudicialBusiness/2014/status-bankruptcy-judgeships.aspx.

[2] Between October 1, 2013, and September 30, 2014, for example, litigants filed 963,739 cases in bankruptcy courts—more than double the total

Congress' efforts to align the responsibilities of non-Article III judges with the boundaries set by the Constitution have not always been successful. In *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U. S. 50 (1982) (plurality opinion), and more recently in *Stern*, this Court held that Congress violated Article III by authorizing bankruptcy judges to decide certain claims for which litigants are constitutionally entitled to an Article III adjudication. This case presents the question whether Article III allows bankruptcy judges to adjudicate such claims with the parties' consent. We hold that Article III is not violated when the parties knowingly and voluntarily consent to adjudication by a bankruptcy judge.

I

A

Before 1978, district courts typically delegated bankruptcy proceedings to "referees." *Executive Benefits Ins. Agency* v. *Arkison*, 573 U. S. 25, 31 (2014). Under the Bankruptcy Act of 1898, bankruptcy referees had "[s]ummary jurisdiction" over "claims involving 'property in the actual or constructive possession of the bankruptcy court' "—that is, over the apportionment of the bankruptcy estate among creditors. *Ibid.* (alteration omitted). They could preside over other proceedings—matters implicating the court's "plenary jurisdiction"—by consent. *Id.*, at 32; see also *MacDonald* v. *Plymouth County Trust Co.*, 286 U. S. 263, 266–267 (1932).

In 1978, Congress enacted the Bankruptcy Reform Act, which repealed the 1898 Act and gave the newly created bankruptcy courts power "much broader than that exercised under the former referee system." *Northern Pipeline*, 458 U. S., at 54. The Act "[e]liminat[ed] the distinction between 'summary' and 'plenary' jurisdiction" and enabled bank-

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number filed in district and circuit courts. United States Courts, Judicial Caseload Indicators, http://www.uscourts.gov/Statistics/JudicialBusiness/2014/judicial-caseload-indicators.aspx.

ruptcy courts to decide "all 'civil proceedings arising under title 11 [the Bankruptcy title] or arising in or related to cases under title 11.'" *Ibid.* (emphasis deleted). Congress thus vested bankruptcy judges with most of the "'powers of a court of equity, law, and admiralty,'" *id.*, at 55, without affording them the benefits of Article III. This Court therefore held parts of the system unconstitutional in *Northern Pipeline*.

Congress responded by enacting the Bankruptcy Amendments and Federal Judgeship Act of 1984. Under that Act, district courts have original jurisdiction over bankruptcy cases and related proceedings. 28 U. S. C. §§ 1334(a), (b). But "[e]ach district court may provide that any or all" bankruptcy cases and related proceedings "shall be referred to the bankruptcy judges for the district." § 157(a). Bankruptcy judges are "judicial officers of the United States district court," appointed to 14-year terms by the courts of appeals, and subject to removal for cause. §§ 152(a)(1), (e). "The district court may withdraw" a reference to the bankruptcy court "on its own motion or on timely motion of any party, for cause shown." § 157(d).

When a district court refers a case to a bankruptcy judge, that judge's statutory authority depends on whether Congress has classified the matter as a "[c]ore proceedin[g]" or a "[n]on-core proceedin[g]," §§ 157(b)(2), (4)—much as the authority of bankruptcy referees, before the 1978 Act, depended on whether the proceeding was "summary" or "plenary." Congress identified as "[c]ore" a nonexclusive list of 16 types of proceedings, § 157(b)(2), in which it thought bankruptcy courts could constitutionally enter judgment.[3] Congress gave bankruptcy courts the power to "hear and determine" core proceedings and to "enter appropriate orders and judgments," subject to appellate review by the district court.

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[3] Congress appears to have drawn the term "core" from *Northern Pipeline*'s description of "the restructuring of debtor-creditor relations" as "the core of the federal bankruptcy power." *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U. S. 50, 71 (1982).

§ 157(b)(1); see § 158. But it gave bankruptcy courts more limited authority in non-core proceedings: They may "hear and determine" such proceedings, and "enter appropriate orders and judgments," only "with the consent of all the parties to the proceeding." § 157(c)(2). Absent consent, bankruptcy courts in non-core proceedings may only "submit proposed findings of fact and conclusions of law," which the district courts review *de novo*. § 157(c)(1).

B

Petitioner Wellness International Network is a manufacturer of health and nutrition products.[4] Wellness and respondent Sharif entered into a contract under which Sharif would distribute Wellness' products. The relationship quickly soured, and in 2005, Sharif sued Wellness in the United States District Court for the Northern District of Texas. Sharif repeatedly ignored Wellness' discovery requests and other litigation obligations, resulting in an entry of default judgment for Wellness. The District Court eventually sanctioned Sharif by awarding Wellness over $650,000 in attorney's fees. This case arises from Wellness' long-running—and so far unsuccessful—efforts to collect on that judgment.

In February 2009, Sharif filed for Chapter 7 bankruptcy in the Northern District of Illinois. The bankruptcy petition listed Wellness as a creditor. Wellness requested documents concerning Sharif's assets, which Sharif did not provide. Wellness later obtained a loan application Sharif had filed in 2002, listing more than $5 million in assets. When confronted, Sharif informed Wellness and the Chapter 7 trustee that he had lied on the loan application. The listed assets, Sharif claimed, were actually owned by the Soad Wattar Living Trust (Trust), an entity Sharif said he administered on behalf of his mother, and for the benefit of his sister.

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[4] Individual petitioners Ralph and Cathy Oats are Wellness' founders. This opinion refers to all petitioners collectively as "Wellness."

Wellness pressed Sharif for information on the Trust, but Sharif again failed to respond.

Wellness filed a five-count adversary complaint against Sharif in the Bankruptcy Court. See App. 5–22. Counts I–IV of the complaint objected to the discharge of Sharif's debts because, among other reasons, Sharif had concealed property by claiming that it was owned by the Trust. Count V of the complaint sought a declaratory judgment that the Trust was Sharif's alter ego and that its assets should therefore be treated as part of Sharif's bankruptcy estate. *Id.*, at 21. In his answer, Sharif admitted that the adversary proceeding was a "core proceeding" under 28 U. S. C. § 157(b)—*i. e.*, a proceeding in which the Bankruptcy Court could enter final judgment subject to appeal. See §§ 157(b)(1), (2)(J); App. 24. Indeed, Sharif requested judgment in his favor on all counts of Wellness' complaint and urged the Bankruptcy Court to "find that the Soad Wattar Living Trust is not property of the [bankruptcy] estate." *Id.*, at 44.

A familiar pattern of discovery evasion ensued. Wellness responded by filing a motion for sanctions, or, in the alternative, to compel discovery. Granting the motion to compel, the Bankruptcy Court warned Sharif that if he did not respond to Wellness' discovery requests a default judgment would be entered against him. Sharif eventually complied with some discovery obligations, but did not produce any documents related to the Trust.

In July 2010, the Bankruptcy Court issued a ruling finding that Sharif had violated the court's discovery order. See App. to Pet. for Cert. 92a–120a. It accordingly denied Sharif's request to discharge his debts and entered a default judgment against him in the adversary proceeding. And it declared, as requested by count V of Wellness' complaint, that the assets supposedly held by the Trust were in fact property of Sharif's bankruptcy estate because Sharif "treats [the Trust's] assets as his own property." *Id.*, at 119a.

Sharif appealed to the District Court. Six weeks before Sharif filed his opening brief in the District Court, this Court decided *Stern*. In *Stern*, the Court held that Article III prevents bankruptcy courts from entering final judgment on claims that seek only to "augment" the bankruptcy estate and would otherwise "exis[t] without regard to any bankruptcy proceeding." 564 U. S., at 492, 499. Sharif did not cite *Stern* in his opening brief. Rather, after the close of briefing, Sharif moved for leave to file a supplemental brief, arguing that in light of *In re Ortiz*, 665 F. 3d 906 (CA7 2011)—a recently issued decision interpreting *Stern*—"the bankruptcy court's order should only be treated as a report and recommendation." App. 145. The District Court denied Sharif's motion for supplemental briefing as untimely and affirmed the Bankruptcy Court's judgment.

The Court of Appeals for the Seventh Circuit affirmed in part and reversed in part. 727 F. 3d 751 (2013). The Seventh Circuit acknowledged that ordinarily Sharif's *Stern* objection would "not [be] preserved because he waited too long to assert it." 727 F. 3d, at 767.[5] But the court determined that the ordinary rule did not apply because Sharif's argument concerned "the allocation of authority between bankruptcy courts and district courts" under Article III, and thus "implicate[d] structural interests." *Id.*, at 771. Based on those separation-of-powers considerations, the court held that "a litigant may not waive" a *Stern* objection. 727 F. 3d, at 773. Turning to the merits of Sharif's contentions, the Seventh Circuit agreed with the Bankruptcy Court's resolution of counts I–IV of Wellness' adversary complaint. It further concluded, however, that count V of the complaint alleged a so-called "*Stern* claim," that is, "a claim designated

[5] Although the Seventh Circuit referred to Sharif's failure to raise his *Stern* argument in a timely manner as a waiver, that court has since clarified that its decision rested on forfeiture. See *Peterson* v. *Somers Dublin Ltd.*, 729 F. 3d 741, 747 (2013) ("The issue in *Wellness International Network* was forfeiture rather than waiver").

for final adjudication in the bankruptcy court as a statutory matter, but prohibited from proceeding in that way as a constitutional matter." *Executive Benefits*, 573 U. S., at 30–31. The Seventh Circuit therefore ruled that the Bankruptcy Court lacked constitutional authority to enter final judgment on count V.[6]

We granted certiorari, 573 U. S. 957 (2014), and now reverse the judgment of the Seventh Circuit.[7]

II

Our precedents make clear that litigants may validly consent to adjudication by bankruptcy courts.

A

Adjudication by consent is nothing new. Indeed, "[d]uring the early years of the Republic, federal courts, with the consent of the litigants, regularly referred adjudication of entire disputes to non-Article III referees, masters, or arbitrators, for entry of final judgment in accordance with the referee's report." Brubaker, The Constitutionality of Litigant Consent to Non-Article III Bankruptcy Adjudications, 32 Bkrtcy. L. Letter No. 12, p. 6 (Dec. 2012); see, *e. g.*,

[6] The Seventh Circuit concluded its opinion by considering the remedy for the Bankruptcy Court's purportedly unconstitutional issuance of a final judgment. The court determined that if count V of Wellness' complaint raised a core claim, the only statutorily authorized remedy would be for the District Court to withdraw the reference to the Bankruptcy Court and set a new discovery schedule. The Seventh Circuit's reasoning on this point was rejected by our decision last Term in *Executive Benefits*, which held that district courts may treat *Stern* claims like non-core claims and thus are not required to restart proceedings entirely when a bankruptcy court improperly enters final judgment.

[7] Because the Court concludes that the Bankruptcy Court could validly enter judgment on Wellness' claim with the parties' consent, this opinion does not address, and expresses no view on, Wellness' alternative contention that the Seventh Circuit erred in concluding the claim in count V of its complaint was a *Stern* claim.

Thornton v. *Carson*, 7 Cranch 596, 597 (1813) (affirming damages awards in two actions that "were referred, by consent under a rule of Court to arbitrators"); *Heckers* v. *Fowler*, 2 Wall. 123, 131 (1865) (observing that the "[p]ractice of referring pending actions under a rule of court, by consent of parties, was well known at common law" and "is now universally regarded . . . as the proper foundation of judgment"); *Newcomb* v. *Wood*, 97 U. S. 581, 583 (1878) (recognizing "[t]he power of a court of justice, with the consent of the parties, to appoint arbitrators and refer a case pending before it").

The foundational case in the modern era is *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833 (1986). The Commodity Futures Trading Commission (CFTC), which Congress had authorized to hear customer complaints against commodities brokers, issued a regulation allowing itself to hear state-law counterclaims as well. William Schor filed a complaint with the CFTC against his broker, and the broker, which had previously filed claims against Schor in federal court, refiled them as counterclaims in the CFTC proceeding. The CFTC ruled against Schor on the counterclaims. This Court upheld that ruling against both statutory and constitutional challenges.

On the constitutional question (the one relevant here) the Court began by holding that Schor had "waived any right he may have possessed to the full trial of [the broker's] counterclaim before an Article III court." *Id.*, at 849. The Court then explained why this waiver legitimated the CFTC's exercise of authority: "[A]s a personal right, Article III's guarantee of an impartial and independent federal adjudication is subject to waiver, just as are other personal constitutional rights"—such as the right to a jury—"that dictate the procedures by which civil and criminal matters must be tried." *Id.*, at 848–849.

The Court went on to state that a litigant's waiver of his "personal right" to an Article III court is not always dispositive because Article III "not only preserves to litigants their

interest in an impartial and independent federal adjudication of claims . . . , but also serves as 'an inseparable element of the constitutional system of checks and balances.' . . . To the extent that this structural principle is implicated in a given case"—but only to that extent—"the parties cannot by consent cure the constitutional difficulty . . . ." *Id.*, at 850–851.

Leaning heavily on the importance of Schor's consent, the Court found no structural concern implicated by the CFTC's adjudication of the counterclaims against him. While "Congress gave the CFTC the authority to adjudicate such matters," the Court wrote,

> "the decision to invoke this forum is left entirely to the parties and the power of the federal judiciary to take jurisdiction of these matters is unaffected. In such circumstances, separation of powers concerns are diminished, for it seems self-evident that just as Congress may encourage parties to settle a dispute out of court or resort to arbitration without impermissible incursions on the separation of powers, Congress may make available a quasi-judicial mechanism through which willing parties may, at their option, elect to resolve their differences." *Id.*, at 855.

The option for parties to submit their disputes to a non-Article III adjudicator was at most a "*de minimis*" infringement on the prerogative of the federal courts. *Id.*, at 856.

A few years after *Schor*, the Court decided a pair of cases—*Gomez* v. *United States*, 490 U. S. 858 (1989), and *Peretz* v. *United States*, 501 U. S. 923 (1991)—that reiterated the importance of consent to the constitutional analysis. Both cases concerned whether the Federal Magistrates Act authorized magistrate judges to preside over jury selection in a felony trial;[8] the difference was that Peretz consented to the practice while Gomez did not. That difference was dispositive.

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[8] In relevant part, the Act provides that district courts may assign magistrate judges certain enumerated duties as well as "such additional duties as are not inconsistent with the Constitution and the laws of the United States." 28 U. S. C. § 636(b)(3).

In *Gomez*, the Court interpreted the statute as not allowing magistrate judges to supervise *voir dire* without consent, emphasizing the constitutional concerns that might otherwise arise. See 490 U. S., at 864. In *Peretz*, the Court upheld the Magistrate Judge's action, stating that "the defendant's consent significantly changes the constitutional analysis." 501 U. S., at 932. The Court concluded that allowing a magistrate judge to supervise jury selection—with consent—does not violate Article III, explaining that "litigants may waive their personal right to have an Article III judge preside over a civil trial," *id.*, at 936 (citing *Schor*, 478 U. S., at 848), and that "[t]he most basic rights of criminal defendants are similarly subject to waiver," 501 U. S., at 936. And "[e]ven assuming that a litigant may not waive structural protections provided by Article III," the Court found "no such structural protections . . . implicated by" a magistrate judge's supervision of *voir dire*:

> "Magistrates are appointed and subject to removal by Article III judges. The 'ultimate decision' whether to invoke the magistrate's assistance is made by the district court, subject to veto by the parties. The decision whether to empanel the jury whose selection a magistrate has supervised also remains entirely with the district court. Because 'the entire process takes place under the district court's total control and jurisdiction,' there is no danger that use of the magistrate involves a 'congressional attemp[t] "to transfer jurisdiction [to non-Article III tribunals] for the purpose of emasculating" constitutional courts.' " *Id.*, at 937 (citations omitted; alteration in original).[9]

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[9] Discounting the relevance of *Gomez* and *Peretz*, the principal dissent emphasizes that neither case concerned the entry of final judgment by a non-Article III actor. See *post*, at 701–702 (opinion of ROBERTS, C. J.). Here again, the principal dissent's insistence on formalism leads it astray. As we explained in *Peretz*, the "responsibility and importance [of] presiding over *voir dire* at a felony trial" is equivalent to the "supervision of entire civil and misdemeanor trials," 501 U. S., at 933, tasks in which mag-

The lesson of *Schor*, *Peretz*, and the history that preceded them is plain: The entitlement to an Article III adjudicator is "a personal right" and thus ordinarily "subject to waiver," *Schor*, 478 U. S., at 848. Article III also serves a structural purpose, "barring congressional attempts 'to transfer jurisdiction [to non-Article III tribunals] for the purpose of emasculating' constitutional courts and thereby prevent[ing] 'the encroachment or aggrandizement of one branch at the expense of the other.'" *Id.*, at 850 (citations omitted). But allowing Article I adjudicators to decide claims submitted to them by consent does not offend the separation of powers so long as Article III courts retain supervisory authority over the process.

B

The question here, then, is whether allowing bankruptcy courts to decide *Stern* claims by consent would "impermissibly threate[n] the institutional integrity of the Judicial Branch." *Schor*, 478 U. S., at 851. And that question must be decided not by "formalistic and unbending rules," but "with an eye to the practical effect that the" practice "will have on the constitutionally assigned role of the federal judiciary." *Ibid.*; see *Thomas* v. *Union Carbide Agricultural Products Co.*, 473 U. S. 568, 587 (1985) ("[P]ractical attention to substance rather than doctrinaire reliance on formal categories should inform application of Article III"). The Court must weigh

> "the extent to which the essential attributes of judicial power are reserved to Article III courts, and, conversely, the extent to which the non-Article III forum exercises the range of jurisdiction and powers normally vested only in Article III courts, the origins and importance of the right to be adjudicated, and the concerns that drove Congress to depart from the requirements of

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istrate judges may "order the entry of judgment" with the parties' consent, § 636(c)(1).

Article III." *Schor*, 478 U. S., at 851 (internal quotation marks omitted).

Applying these factors, we conclude that allowing bankruptcy litigants to waive the right to Article III adjudication of *Stern* claims does not usurp the constitutional prerogatives of Article III courts. Bankruptcy judges, like magistrate judges, "are appointed and subject to removal by Article III judges," *Peretz*, 501 U. S., at 937; see 28 U. S. C. §§ 152(a)(1), (e). They "serve as judicial officers of the United States district court," § 152(a)(1), and collectively "constitute a unit of the district court" for that district, § 151. Just as "[t]he 'ultimate decision' whether to invoke [a] magistrate [judge]'s assistance is made by the district court," *Peretz*, 501 U. S., at 937, bankruptcy courts hear matters solely on a district court's reference, § 157(a), which the district court may withdraw *sua sponte* or at the request of a party, § 157(d). "[S]eparation of powers concerns are diminished" when, as here, "the decision to invoke [a non-Article III] forum is left entirely to the parties and the power of the federal judiciary to take jurisdiction" remains in place. *Schor*, 478 U. S., at 855.

Furthermore, like the CFTC in *Schor*, bankruptcy courts possess no free-floating authority to decide claims traditionally heard by Article III courts. Their ability to resolve such matters is limited to "a narrow class of common law claims as an incident to the [bankruptcy courts'] primary, and unchallenged, adjudicative function." *Id.*, at 854. "In such circumstances, the magnitude of any intrusion on the Judicial Branch can only be termed *de minimis*." *Id.*, at 856.

Finally, there is no indication that Congress gave bankruptcy courts the ability to decide *Stern* claims in an effort to aggrandize itself or humble the Judiciary. As in *Peretz*, "[b]ecause 'the entire process takes place under the district court's total control and jurisdiction,' there is no danger that use of the [bankruptcy court] involves a 'congressional attemp[t] "to transfer jurisdiction [to non-Article III tribunals]

for the purpose of emasculating" constitutional courts.'" 501 U. S., at 937 (citation omitted); see also *Schor*, 478 U. S., at 855 (allowing CFTC's adjudication of counterclaims because of "the degree of judicial control saved to the federal courts, as well as the congressional purpose behind the jurisdictional delegation, the demonstrated need for the delegation, and the limited nature of the delegation" (citation omitted)); *Pacemaker Diagnostic Clinic of America, Inc.* v. *Instromedix, Inc.*, 725 F. 2d 537, 544 (CA9 1984) (en banc) (Kennedy, J.) (magistrate judges may adjudicate civil cases by consent because the Federal Magistrates Act "invests the Article III judiciary with extensive administrative control over the management, composition, and operation of the magistrate system").[10]

Congress could choose to rest the full share of the Judiciary's labor on the shoulders of Article III judges. But doing so would require a substantial increase in the number of dis-

[10] The principal dissent accuses us of making Sharif's consent "'dispositive' in curing [a] structural separation of powers violation," contrary to the holding of *Schor*. *Post*, at 703. That argument misapprehends both *Schor* and the nature of our analysis. What *Schor* forbids is using consent to excuse an actual violation of Article III. See 478 U. S., at 850–851 ("*To the extent* that th[e] structural principle [protected by Article III] is implicated in a given case, the parties cannot by consent cure the constitutional difficulty . . . " (emphasis added)). But *Schor* confirms that consent remains highly relevant when determining, as we do here, whether a particular adjudication in fact raises constitutional concerns. See *id.*, at 855 ("separation of powers concerns are diminished" when "the decision to invoke [a non-Article III] forum is left entirely to the parties"). Thus, we do not rely on Sharif's consent to "cur[e]" a violation of Article III. His consent shows, in part, why no such violation has occurred. Cf. Meltzer, Legislative Courts, Legislative Power, and the Constitution, 65 Ind. L. J. 291, 303 (1990) ("[C]onsent provides, if not complete, at least very considerable reason to doubt that the tribunal poses a serious threat to the ideal of federal adjudicatory independence"); Fallon, Of Legislative Courts, Administrative Agencies, and Article III, 101 Harv. L. Rev. 915, 992 (1988) (When the parties consent, "there is substantial assurance that the agency is not generally behaving arbitrarily or otherwise offending separation-of-powers values. Judicial integrity is not at risk").

trict judgeships. Instead, Congress has supplemented the capacity of district courts through the able assistance of bankruptcy judges. So long as those judges are subject to control by the Article III courts, their work poses no threat to the separation of powers.

C

Our recent decision in *Stern*, on which Sharif and the principal dissent rely heavily, does not compel a different result. That is because *Stern*—like its predecessor, *Northern Pipeline*—turned on the fact that the litigant "did not truly consent to" resolution of the claim against it in a non-Article III forum. 564 U. S., at 493.

To understand *Stern*, it is necessary to first understand *Northern Pipeline*. There, the Court considered whether bankruptcy judges "could 'constitutionally be vested with jurisdiction to decide [a] state-law contract claim' against an entity that was not otherwise part of the bankruptcy proceedings." 564 U. S., at 485. In answering that question in the negative, both the plurality and then-Justice Rehnquist, concurring in the judgment, noted that the entity in question did not consent to the bankruptcy court's adjudication of the claim. See 458 U. S., at 80, n. 31 (plurality opinion); *id.*, at 91 (opinion of Rehnquist, J.). The Court confirmed in two later cases that *Northern Pipeline* turned on the lack of consent. See *Schor*, 478 U. S., at 849 ("[I]n *Northern Pipeline*, . . . the absence of consent to an initial adjudication before a non-Article III tribunal was relied on as a significant factor in determining that Article III forbade such adjudication"); *Thomas*, 473 U. S., at 584.

Stern presented the same scenario. The majority cited the dissent's observation that *Northern Pipeline* "establish[ed] only that Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, *without consent* of the litigants, and subject

only to ordinary appellate review," 564 U. S., at 494 (emphasis added; internal quotation marks omitted). To which the majority responded, "Just so: Substitute 'tort' for 'contract,' and that statement directly covers this case." *Ibid.*; see also *id.*, at 493 (defendant litigated in the Bankruptcy Court because he "had nowhere else to go" to pursue his claim). Because *Stern* was premised on nonconsent to adjudication by the Bankruptcy Court, the "constitutional bar" it announced, see *post*, at 700 (ROBERTS, C. J., dissenting), simply does not govern the question whether litigants may validly consent to adjudication by a bankruptcy court.

An expansive reading of *Stern*, moreover, would be inconsistent with the opinion's own description of its holding. The Court in *Stern* took pains to note that the question before it was "a 'narrow' one," and that its answer did "not change all that much" about the division of labor between district courts and bankruptcy courts. 564 U. S., at 502; see also *id.*, at 503 (stating that Congress had exceeded the limitations of Article III "in one isolated respect"). That could not have been a fair characterization of the decision if it meant that bankruptcy judges could no longer exercise their longstanding authority to resolve claims submitted to them by consent. Interpreting *Stern* to bar consensual adjudications by bankruptcy courts would "meaningfully chang[e] the division of labor" in our judicial system, contra, *id.*, at 502.[11]

In sum, the cases in which this Court has found a violation of a litigant's right to an Article III decisionmaker have involved an objecting defendant forced to litigate involuntarily

[11] In advancing its restrictive view of *Stern*, the principal dissent ignores the sweeping jurisprudential implications of its position. If, as the principal dissent suggests, consent is irrelevant to the Article III analysis, it is difficult to see how *Schor* and *Peretz* were not wrongly decided. But those decisions obviously remain good law. It is the principal dissent's position that breaks with our precedents. See *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 231 (1995) ("[T]he proposition that legal defenses based upon doctrines central to the courts' structural independence can never be waived simply does not accord with our cases").

before a non-Article III court. The Court has never done what Sharif and the principal dissent would have us do—hold that a litigant who has the right to an Article III court may not waive that right through his consent.

D

The principal dissent warns darkly of the consequences of today's decision. See *post*, at 703–705. To hear the principal dissent tell it, the world will end not in fire, or ice, but in a bankruptcy court. The response to these ominous predictions is the same now as it was when Justice Brennan, dissenting in *Schor*, first made them nearly 30 years ago:

> "This is not to say, of course, that if Congress created a phalanx of non-Article III tribunals equipped to handle the entire business of the Article III courts without any Article III supervision or control and without evidence of valid and specific legislative necessities, the fact that the parties had the election to proceed in their forum of choice would necessarily save the scheme from constitutional attack. But this case obviously bears no resemblance to such a scenario . . . ." 478 U. S., at 855 (citations omitted).

Adjudication based on litigant consent has been a consistent feature of the federal court system since its inception. Reaffirming that unremarkable fact, we are confident, poses no great threat to anyone's birthrights, constitutional or otherwise.

III

Sharif contends that to the extent litigants may validly consent to adjudication by a bankruptcy court, such consent must be express. We disagree.

Nothing in the Constitution requires that consent to adjudication by a bankruptcy court be express. Nor does the relevant statute, 28 U. S. C. § 157, mandate express consent; it states only that a bankruptcy court must obtain "the con-

sent"—consent *simpliciter*—"of all parties to the proceeding" before hearing and determining a non-core claim. § 157(c)(2). And a requirement of express consent would be in great tension with our decision in *Roell* v. *Withrow*, 538 U. S. 580 (2003). That case concerned the interpretation of § 636(c), which authorizes magistrate judges to "conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case," with "the consent of the parties."[12] The specific question in *Roell* was whether, as a statutory matter, the "consent" required by § 636(c) had to be express. The dissent argued that "[r]eading § 636(c)(1) to require express consent not only is more consistent with the text of the statute, but also" avoids constitutional concerns by "ensur[ing] that the parties knowingly and voluntarily waive their right to an Article III judge." 538 U. S., at 595 (opinion of THOMAS, J.). But the majority—thus placed on notice of the constitutional concern—was untroubled by it, opining that "the Article III right is substantially honored" by permitting waiver based on "actions rather than words." *Id.*, at 589, 590.

The implied consent standard articulated in *Roell* supplies the appropriate rule for adjudications by bankruptcy courts under § 157. Applied in the bankruptcy context, that stand-

[12] Consistent with our precedents, the Courts of Appeals have unanimously upheld the constitutionality of § 636(c). See *Sinclair* v. *Wainwright*, 814 F. 2d 1516, 1519 (CA11 1987); *Bell & Beckwith* v. *United States*, 766 F. 2d 910, 912 (CA6 1985); *Gairola* v. *Virginia Dept. of Gen. Servs.*, 753 F. 2d 1281, 1285 (CA4 1985); *D. L. Auld Co.* v. *Chroma Graphics Corp.*, 753 F. 2d 1029, 1032 (CA Fed. 1985); *United States* v. *Dobey*, 751 F. 2d 1140, 1143 (CA10 1985); *Fields* v. *Washington Metropolitan Area Transit Auth.*, 743 F. 2d 890, 893 (CADC 1984); *Geras* v. *Lafayette Display Fixtures, Inc.*, 742 F. 2d 1037, 1045 (CA7 1984); *Lehman Bros. Kuhn Loeb Inc.* v. *Clark Oil & Refining Corp.*, 739 F. 2d 1313, 1316 (CA8 1984) (en banc); *Puryear* v. *Ede's Ltd.*, 731 F. 2d 1153, 1154 (CA5 1984); *Goldstein* v. *Kelleher*, 728 F. 2d 32, 36 (CA1 1984); *Collins* v. *Foreman*, 729 F. 2d 108, 115–116 (CA2 1984); *Pacemaker Diagnostic Clinic, Inc.* v. *Instromedix, Inc.*, 725 F. 2d 537, 540 (CA9 1984) (en banc) (Kennedy, J.); *Wharton-Thomas* v. *United States*, 721 F. 2d 922, 929–930 (CA3 1983).

ard possesses the same pragmatic virtues—increasing judicial efficiency and checking gamesmanship—that motivated our adoption of it for consent-based adjudications by magistrate judges. See *id.*, at 590. It bears emphasizing, however, that a litigant's consent—whether express or implied—must still be knowing and voluntary. *Roell* makes clear that the key inquiry is whether "the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case" before the non-Article III adjudicator. *Ibid.*; see also *id.*, at 588, n. 5 ("notification of the right to refuse" adjudication by a non-Article III court "is a prerequisite to any inference of consent").[13]

IV

It would be possible to resolve this case by determining whether Sharif in fact consented to the Bankruptcy Court's adjudication of count V of Wellness' adversary complaint. But reaching that determination would require a deeply fact-bound analysis of the procedural history unique to this protracted litigation. Our resolution of the consent question—unlike the antecedent constitutional question—would provide little guidance to litigants or the lower courts. Thus, consistent with our role as "a court of review, not of first view," *Nautilus, Inc.* v. *Biosig Instruments, Inc.*, 572

[13] Even though the Constitution does not require that consent be express, it is good practice for courts to seek express statements of consent or nonconsent, both to ensure irrefutably that any waiver of the right to Article III adjudication is knowing and voluntary and to limit subsequent litigation over the consent issue. Statutes or judicial rules may require express consent where the Constitution does not. Indeed, the Federal Rules of Bankruptcy Procedure already require that pleadings in adversary proceedings before a bankruptcy court "contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge." Fed. Rule Bkrtcy. Proc. 7008 (opening pleadings); see Rule 7012 (responsive pleadings). The Bankruptcy Court and the parties followed that procedure in this case. See App. 6, 24; *supra*, at 672.

U. S. 898, 913 (2014) (internal quotation marks omitted), we leave it to the Seventh Circuit to decide on remand whether Sharif's actions evinced the requisite knowing and voluntary consent, and also whether, as Wellness contends, Sharif forfeited his *Stern* argument below.

* * *

The Court holds that Article III permits bankruptcy courts to decide *Stern* claims submitted to them by consent. The judgment of the United States Court of Appeals for the Seventh Circuit is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO, concurring in part and concurring in the judgment.

I join the opinion of the Court insofar as it holds that a bankruptcy judge's resolution of a "*Stern* claim"* with the consent of the parties does not violate Article III of the Constitution. The Court faithfully applies *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833 (1986). No one believes that an arbitrator exercises "[t]he judicial Power of the United States," Art. III, § 1, in an ordinary, run-of-the mill arbitration. And whatever differences there may be between an arbitrator's "decision" and a bankruptcy court's "judgment," those differences would seem to fall within the Court's previous rejection of "formalistic and unbending rules." *Schor*, *supra*, at 851. Whatever one thinks of *Schor*, it is still the law of this Court, and the parties do not ask us to revisit it.

Unlike the Court, however, I would not decide whether consent may be implied. While the Bankruptcy Act just

*See *Stern* v. *Marshall*, 564 U. S. 462 (2011). A "*Stern* claim" is a claim that is "core" under the statute but yet "prohibited from proceeding in that way as a constitutional matter." *Executive Benefits Ins. Agency* v. *Arkison*, 573 U. S. 25, 31 (2014).

speaks of "consent," 28 U. S. C. § 157(c)(2), the Federal Rules of Bankruptcy Procedure provide that "[i]n non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties," Rule 7012(b). When this Rule was promulgated, no one was thinking about a *Stern* claim. But now, assuming that Rule 7012(b) represents a permissible interpretation of § 157, the question arises whether a *Stern* claim should be treated as a non-core or core claim for purposes of the bankruptcy rules. See *Executive Benefits Ins. Agency* v. *Arkison*, 573 U. S. 25, 36–37 (2014) (holding that, for reasons of severability, a bankruptcy court should treat a *Stern* claim as a non-core claim).

There is no need to decide that question here. In this case, respondent forfeited any *Stern* objection by failing to present that argument properly in the courts below. *Stern* vindicates Article III, but that does not mean that *Stern* arguments are exempt from ordinary principles of appellate procedure. See *B&B Hardware, Inc.* v. *Hargis Industries, Inc.*, *ante*, at 150.

CHIEF JUSTICE ROBERTS, with whom JUSTICE SCALIA joins, and with whom JUSTICE THOMAS joins as to Part I, dissenting.

The Bankruptcy Court in this case granted judgment to Wellness on its claim that Sharif's bankruptcy estate contained assets he purportedly held in a trust. Provided that no third party asserted a substantial adverse claim to those assets, the Bankruptcy Court's adjudication "stems from the bankruptcy itself" rather than from "the stuff of the traditional actions at common law tried by the courts at Westminster in 1789." *Stern* v. *Marshall*, 564 U. S. 462, 499, 484 (2011) (internal quotation marks omitted). Article III poses no barrier to such a decision. That is enough to resolve this case.

Unfortunately, the Court brushes aside this narrow basis for decision and proceeds to the serious constitutional ques-

tion whether private parties may consent to an Article III violation. In my view, they cannot. By reserving the judicial power to judges with life tenure and salary protection, Article III constitutes "an inseparable element of the constitutional system of checks and balances"—a structural safeguard that must "be jealously guarded." *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U. S. 50, 58, 60 (1982) (plurality opinion).

Today the Court lets down its guard. Despite our precedent directing that "parties cannot by consent cure" an Article III violation implicating the structural separation of powers, *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833, 850–851 (1986), the majority authorizes litigants to do just that. The Court justifies its decision largely on pragmatic grounds. I would not yield so fully to functionalism. The Framers adopted the formal protections of Article III for good reasons, and "the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution." *INS* v. *Chadha*, 462 U. S. 919, 944 (1983).

The impact of today's decision may seem limited, but the Court's acceptance of an Article III violation is not likely to go unnoticed. The next time Congress takes judicial power from Article III courts, the encroachment may not be so modest—and we will no longer hold the high ground of principle. The majority's acquiescence in the erosion of our constitutional power sets a precedent that I fear we will regret. I respectfully dissent.

I

The Court granted certiorari on two questions in this case. The first is whether the Bankruptcy Court's entry of final judgment on Wellness's claim violated Article III based on *Stern*. The second is whether an Article III violation of the kind recognized in *Stern* can be cured by consent. Because the first question can be resolved on narrower grounds, I would answer it alone.

A

The Framers of the Constitution "lived among the ruins of a system of intermingled legislative and judicial powers." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 219 (1995). Under British rule, the King "made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries." The Declaration of Independence ¶11. Between the Revolution and the Constitutional Convention, state legislatures routinely interfered with judgments of the courts. This history created the "sense of a sharp necessity to separate the legislative from the judicial power." *Plaut*, 514 U. S., at 221; see *Perez* v. *Mortgage Bankers Assn.*, 575 U. S. 92, 116–119 (2015) (THOMAS, J., concurring in judgment). The result was Article III, which established a Judiciary "truly distinct from both the legislature and the executive." The Federalist No. 78, p. 466 (C. Rossiter ed. 1961) (A. Hamilton).

Article III vests the "judicial Power of the United States" in "one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Art. III, § 1. The judges of those courts are entitled to hold their offices "during good Behaviour" and to receive compensation "which shall not be diminished" during their tenure. *Ibid.* The judicial power extends "to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties" and to other enumerated matters. Art. III, § 2. Taken together, these provisions define the constitutional birthright of Article III judges: to "render dispositive judgments" in cases or controversies within the bounds of federal jurisdiction. *Plaut*, 514 U. S., at 219 (internal quotation marks omitted).

With narrow exceptions, Congress may not confer power to decide federal cases and controversies upon judges who do not comply with the structural safeguards of Article III. Those narrow exceptions permit Congress to establish non-Article III courts to exercise general jurisdiction in the ter-

ritories and the District of Columbia, to serve as military tribunals, and to adjudicate disputes over "public rights" such as veterans' benefits. *Northern Pipeline*, 458 U. S., at 64–70 (plurality opinion).

Our precedents have also recognized an exception to the requirements of Article III for certain bankruptcy proceedings. When the Framers gathered to draft the Constitution, English statutes had long empowered nonjudicial bankruptcy "commissioners" to collect a debtor's property, resolve claims by creditors, order the distribution of assets in the estate, and ultimately discharge the debts. See 2 W. Blackstone, Commentaries *471–*488. This historical practice, combined with Congress's constitutional authority to enact bankruptcy laws, confirms that Congress may assign to non-Article III courts adjudications involving "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power." *Northern Pipeline*, 458 U. S., at 71 (plurality opinion).

Although Congress may assign some bankruptcy proceedings to non-Article III courts, there are limits on that power. In *Northern Pipeline*, the Court invalidated statutory provisions that permitted a bankruptcy court to enter final judgment on a creditor's state law claim for breach of contract. Because that claim arose not from the bankruptcy but from independent common law sources, a majority of the Court determined that Article III required an adjudicator with life tenure and salary protection. See *id.*, at 84; *id.*, at 90–91 (Rehnquist, J., concurring in judgment).

Congress responded to *Northern Pipeline* by allowing bankruptcy courts to render final judgments only in "core" bankruptcy proceedings. 28 U. S. C. § 157(b). Those judgments may be appealed to district courts and reviewed under deferential standards. § 158(a). In non-core proceedings, bankruptcy judges may submit proposed findings of fact and conclusions of law, which the district court must review *de novo* before entering final judgment. § 157(c)(1).

In *Stern*, we faced the question whether a bankruptcy court could enter final judgment on an action defined by Congress as a "core" proceeding—an estate's counterclaim against a creditor based on state tort law. § 157(b)(2)(C). We said no. Because the tort claim neither "stem[med] from the bankruptcy itself" nor would "necessarily be resolved in the claims allowance process," it fell outside the recognized exceptions to Article III. 564 U. S., at 499. Like the contract claim in *Northern Pipeline*, the tort claim in *Stern* involved "the stuff of the traditional actions at common law tried by the courts at Westminster in 1789." 564 U. S., at 484 (quoting *Northern Pipeline*, 458 U. S., at 90 (Rehnquist, J., concurring in judgment)). Congress had no power under the Constitution to assign the resolution of such a claim to a judge who lacked the structural protections of Article III.

B

The question here is whether the claim Wellness submitted to the Bankruptcy Court is a "*Stern* claim" that requires final adjudication by an Article III court. See *Executive Benefits Ins. Agency* v. *Arkison*, 573 U. S. 25, 35 (2014) (assuming without deciding that a fraudulent conveyance action is a "*Stern* claim"). As the Court recounts, Wellness alleged that Sharif had concealed about $5 million of assets by claiming that they were owned by a trust. Wellness sought a declaratory judgment that the trust was in fact Sharif's alter ego and that its assets should accordingly be part of his bankruptcy estate. The Bankruptcy Court granted final judgment (based on Sharif's default) to Wellness, declaring that the trust assets were part of Sharif's estate because he had treated them as his own property. *Ante*, at 672.

In my view, Article III likely poses no barrier to the Bankruptcy Court's resolution of Wellness's claim. At its most basic level, bankruptcy is "an adjudication of interests claimed in a *res*." *Katchen* v. *Landy*, 382 U. S. 323, 329 (1966) (internal quotation marks omitted). Wellness asked

the Bankruptcy Court to declare that assets held by Sharif are part of that res. Defining what constitutes the estate is the necessary starting point of every bankruptcy; a court cannot divide up the estate without first knowing what's in it. See 11 U. S. C. § 541(a). As the Solicitor General explains, "Identifying the property of the estate is therefore inescapably central to the restructuring of the debtor-creditor relationship." Brief for United States as *Amicus Curiae* 14.

Identifying property that constitutes the estate has long been a central feature of bankruptcy adjudication. English bankruptcy commissioners had authority not only to collect property in the debtor's possession, but also to "cause any house or tenement of the bankrupt to be broken open," in order to uncover and seize property the debtor had concealed. 2 Blackstone, Commentaries, at *485. America's first bankruptcy statute, enacted by Congress in 1800, similarly gave commissioners "power to take into their possession, all the estate, real and personal, of every nature and description to which the [debtor] may be entitled, either in law or equity, in any manner whatsoever." § 5, 2 Stat. 23. That is peculiarly a bankruptcy power.

The Bankruptcy Act of 1898 provides further support for Wellness's position. Under that Act, bankruptcy referees had authority to exercise "summary" jurisdiction over certain claims, while other claims could only be adjudicated in "plenary" proceedings before an Article III district court. See *Arkison*, 573 U. S., at 31–32. This Court interpreted the 1898 Act to permit bankruptcy referees to exercise summary jurisdiction to determine whether property in the actual or constructive possession of a debtor should come within the estate, at least when no third party asserted more than a "merely colorable" claim to the property. *Mueller* v. *Nugent*, 184 U. S. 1, 15 (1902). In the legal parlance of the times, a "merely colorable" claim was one that existed "in appearance only, and not in reality." Black's Law Diction-

ary 223 (1891). So a bankruptcy referee could exercise summary jurisdiction over property in the debtor's possession as long as no third party asserted a "substantial adverse" claim. *Taubel-Scott-Kitzmiller Co.* v. *Fox*, 264 U. S. 426, 431–433 (1924).

Here, Sharif does not contest that he held legal title to the assets in the trust. Assuming that no third party asserted a substantial adverse claim to those assets—an inquiry for the Bankruptcy Court on remand—Wellness's alter ego claim fits comfortably into the category of cases that bankruptcy referees could have decided by themselves under the 1898 Act.

In *Mueller*, for example, this Court held that a bankruptcy referee could exercise summary jurisdiction over property in the possession of a third party acting as the debtor's agent. 184 U. S., at 14–17; see Black's Law Dictionary 302 (10th ed. 2014) (example of a merely "colorable" claim is "one made by a person holding property as an agent or bailee of the bankrupt"). Similarly, this Court held that a bankruptcy referee could exercise summary jurisdiction over a creditor's claim that the debtor had concealed assets under the veil of a corporate entity that was "nothing but a sham and a cloak." *Sampsell* v. *Imperial Paper & Color Corp.*, 313 U. S. 215, 216–217 (1941) (internal quotation marks omitted), rev'g 114 F. 2d 49, 52 (CA9 1940) (describing creditor's claim that corporation was debtor's "alter ego"). As the Court explained in *Sampsell*, the "legal existence of the affiliated corporation" did not automatically require a plenary proceeding, because "[m]ere legal paraphernalia will not suffice to transform into a substantial adverse claimant a corporation whose affairs are so closely assimilated to the affairs of the dominant stockholder that in substance it is little more than his corporate pocket." 313 U. S., at 218. Just as the bankruptcy referee in that case had authority to decide whether assets allegedly concealed behind the corporate veil belonged to the bankruptcy estate, the Bankruptcy Court

here had authority to decide whether the assets allegedly concealed in the trust belonged to Sharif's estate.

Sharif contends that Wellness's alter ego claim is more like an allegation of a fraudulent conveyance, which this Court has implied must be adjudicated by an Article III court. See *Granfinanciera, S. A.* v. *Nordberg*, 492 U. S. 33, 56 (1989); *Arkison*, 573 U. S., at 35. Although both actions aim to remedy a debtor's deception, they differ in a critical respect. A fraudulent conveyance claim seeks assets in the hands of a third party, while an alter ego claim targets only the debtor's "second self." Webster's New International Dictionary 76 (2d ed. 1954). That distinction is significant given bankruptcy's historic domain over property within the actual or constructive "possession [of] the bankrupt at the time of the filing of the petition." *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478, 481 (1940). Through a fraudulent conveyance, a dishonest debtor *relinquishes* possession of assets before filing for bankruptcy. Reclaiming those assets for the estate requires depriving third parties of property within their otherwise lawful possession and control, an action that "quintessentially" required a suit at common law. *Granfinanciera*, 492 U. S., at 56. By contrast, a debtor's possession of property provided "an adequate basis" for a bankruptcy referee to adjudicate a dispute over title in a summary proceeding. *Thompson*, 309 U. S., at 482; see *Mueller*, 184 U. S., at 15–16 (distinguishing claim to property in possession of debtor's agent from fraudulent conveyance claim in determining that bankruptcy referee could exercise summary jurisdiction).

In sum, unlike the fraudulent conveyance claim in *Granfinanciera*, Wellness's alter ego claim alleges that assets within Sharif's actual or constructive possession belong to his estate. And unlike the breach of contract and tort claims at issue in *Northern Pipeline* and *Stern*, Wellness's claim stems not from any independent source of law but "from the bankruptcy itself." *Stern*, 564 U. S. 499. Pro-

vided that no third party asserted a substantial adverse claim to the trust assets, Wellness's claim therefore falls within the narrow historical exception that permits a non-Article III adjudicator in certain bankruptcy proceedings. I would reverse the contrary holding by the Court of Appeals and end our inquiry there, rather than deciding a broader question that may not be necessary to the disposition of this case.

II

The Court "expresses no view" on whether Wellness's claim was a *Stern* claim. *Ante*, at 674, n. 7. Instead, the Court concludes that the Bankruptcy Court had constitutional authority to enter final judgment on Wellness's claim either way. The majority rests its decision on Sharif's purported consent to the Bankruptcy Court's adjudication. But Sharif has no authority to compromise the structural separation of powers or agree to an exercise of judicial power outside Article III. His consent therefore cannot cure a constitutional violation.

A

"[I]f there is a principle in our Constitution . . . more sacred than another," James Madison said on the floor of the First Congress, "it is that which separates the Legislative, Executive, and Judicial powers." 1 Annals of Cong. 581 (1789). A strong word, "sacred." Madison was the principal drafter of the Constitution, and he knew what he was talking about. By diffusing federal powers among three different branches, and by protecting each branch against incursions from the others, the Framers devised a structure of government that promotes both liberty and accountability. See *Bond* v. *United States*, 564 U. S. 211, 222–223 (2011) *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 497–501 (2010) (*PCAOB*); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 635 (1952) (Jackson, J., concurring).

Preserving the separation of powers is one of this Court's most weighty responsibilities. In performing that duty, we have not hesitated to enforce the Constitution's mandate "that one branch of the Government may not intrude upon the central prerogatives of another." *Loving* v. *United States*, 517 U. S. 748, 757 (1996). We have accordingly invalidated executive actions that encroach upon the power of the Legislature, see *NLRB* v. *Noel Canning*, 573 U. S. 513 (2014); *Youngstown*, 343 U. S. 579; legislative actions that invade the province of the Executive, see *PCAOB*, 561 U. S. 477; *Bowsher* v. *Synar*, 478 U. S. 714 (1986); *Chadha*, 462 U. S. 919; *Myers* v. *United States*, 272 U. S. 52 (1926); and actions by either branch that trench upon the territory of the Judiciary, see *Stern*, 564 U. S. 462; *Plaut*, 514 U. S. 211; *United States* v. *Will*, 449 U. S. 200 (1980); *United States* v. *Klein*, 13 Wall. 128 (1872); *Hayburn's Case*, 2 Dall. 409 (1792).

In these and other cases, we have emphasized that the values of liberty and accountability protected by the separation of powers belong not to any branch of the Government but to the Nation as a whole. See *Bowsher*, 478 U. S., at 722. A branch's consent to a diminution of its constitutional powers therefore does not mitigate the harm or cure the wrong. "Liberty is always at stake when one or more of the branches seek to transgress the separation of powers." *Clinton* v. *City of New York*, 524 U. S. 417, 450 (1998) (KENNEDY, J., concurring). When the Executive and the Legislature agreed to bypass the Article I, § 7, requirements of bicameralism and presentment by creating a Presidential line-item veto—a very pragmatic proposal—the Court held that the arrangement violated the Constitution notwithstanding the voluntary participation of both branches. *Id.*, at 421 (majority opinion). Likewise, the Court struck down a one-House "legislative veto" that violated Article I, § 7, even though Presidents and Congresses had agreed to include similar provisions in hundreds of laws for more than 50 years. *Chadha*, 462 U. S., at 944–945.

In neither of these cases did the branches' willing embrace of a separation of powers violation weaken the Court's scrutiny. To the contrary, the branches' "enthusiasm" for the offending arrangements "'sharpened rather than blunted' our review." *Noel Canning*, 573 U. S., at 572 (SCALIA, J., concurring in judgment) (quoting *Chadha*, 462 U. S., at 944). In short, because the structural provisions of the Constitution protect liberty and not just government entities, "the separation of powers does not depend on . . . whether 'the encroached-upon branch approves the encroachment.'" *PCAOB*, 561 U. S., at 497 (quoting *New York* v. *United States*, 505 U. S. 144, 182 (1992)).

B

If a branch of the Federal Government may not consent to a violation of the separation of powers, surely a private litigant may not do so. Just as a branch of Government may not consent away the individual liberty interest protected by the separation of powers, so too an individual may not consent away the institutional interest protected by the separation of powers. To be sure, a private litigant may consensually relinquish *individual* constitutional rights. A federal criminal defendant, for example, may knowingly and voluntarily waive his Sixth Amendment right to a jury trial by pleading guilty to a charged offense. See *Brady* v. *United States*, 397 U. S. 742, 748 (1970). But that same defendant may not agree to stand trial on federal charges before a state court, a foreign court, or a moot court, because those courts have no constitutional authority to exercise judicial power over his case, and he has no power to confer it. A "lack of federal jurisdiction cannot be waived or be overcome by an agreement of the parties." *Mitchell* v. *Maurer*, 293 U. S. 237, 244 (1934).

As the majority recognizes, the Court's most extensive discussion of litigant consent in a separation of powers case occurred in *Commodity Futures Trading Comm'n* v. *Schor*,

478 U. S. 833 (1986). There the Court held that Article III confers both a "personal right" that can be waived through consent and a structural component that "safeguards the role of the Judicial Branch in our tripartite system." *Id.*, at 848, 850. "To the extent that this structural principle is implicated in a given case, the parties cannot by consent cure the constitutional difficulty for the same reason that the parties by consent cannot confer on federal courts subject-matter jurisdiction beyond the limitations imposed by Article III." *Id.*, at 850–851. Thus, when "Article III limitations are at issue, notions of consent and waiver cannot be dispositive because the limitations serve institutional interests that the parties cannot be expected to protect." *Id.*, at 851.

Schor's holding that a private litigant can consent to an Article III violation that affects only his "personal right" has been vigorously contested. See *id.*, at 867 (Brennan, J., dissenting) ("Because the individual and structural interests served by Article III are coextensive, I do not believe that a litigant may ever waive his right to an Article III tribunal where one is constitutionally required"); *Granfinanciera*, 492 U. S., at 70 (SCALIA, J., concurring in part and concurring in judgment). But whatever the merits of that position, nobody disputes that *Schor* forbids a litigant from consenting to a constitutional violation when the structural component of Article III "is implicated." 478 U. S., at 850–851. Thus, the key inquiry in this case—as the majority puts it—is "whether allowing bankruptcy courts to decide *Stern* claims by consent would 'impermissibly threaten the institutional integrity of the Judicial Branch.'" *Ante*, at 678 (quoting *Schor*, 478 U. S., at 851; alteration omitted).

One need not search far to find the answer. In *Stern*, this Court applied the analysis from *Schor* to bankruptcy courts and concluded that they lack Article III authority to enter final judgments on matters now known as *Stern* claims. The Court noted that bankruptcy courts, unlike the administrative agency in *Schor*, were endowed by Congress with

"substantive jurisdiction reaching any area of the *corpus juris*," power to render final judgments enforceable without any action by Article III courts, and authority to adjudicate counterclaims entirely independent of the bankruptcy itself. 564 U. S., at 491–495. The Court concluded that allowing Congress to bestow such authority on non-Article III courts would "compromise the integrity of the system of separated powers and the role of the Judiciary in that system." *Id.*, at 503. If there was any room for doubt about the basis for its holding, the Court dispelled it by asking a question: "Is there really a threat to the separation of powers where Congress has conferred the judicial power outside Article III only over certain counterclaims in bankruptcy?" *Id.*, at 502. "The short but emphatic answer is yes." *Ibid.*

In other words, allowing bankruptcy courts to decide *Stern* claims by consent would "impermissibly threaten the institutional integrity of the Judicial Branch." *Ante*, at 678 (internal quotation marks and alteration omitted). It is little wonder that the Court of Appeals felt itself bound by *Stern* and *Schor* to hold that Sharif's consent could not cure the *Stern* violation. 727 F. 3d 751, 771 (CA7 2013). Other Courts of Appeals have adopted the same reading. See *In re BP RE, L. P.*, 735 F. 3d 279, 287 (CA5 2013); *Waldman* v. *Stone*, 698 F. 3d 910, 917–918 (CA6 2012).

The majority attempts to avoid this conclusion through an imaginative reconstruction of *Stern*. As the majority sees it, *Stern* "turned on the fact that the litigant 'did not truly consent to' resolution of the claim" against him in the Bankruptcy Court. *Ante*, at 681 (quoting 564 U. S., at 493). That is not a proper reading of the decision. The constitutional analysis in *Stern*, spanning 22 pages, contained exactly one affirmative reference to the lack of consent. See *ibid.* That reference came amid a long list of factors distinguishing the proceeding in *Stern* from the proceedings in *Schor* and other "public rights" cases. 564 U. S., at 493–495. *Stern*'s subsequent sentences made clear that the notions of consent relied

upon by the Court in *Schor* did not apply in bankruptcy because "creditors lack an alternative forum to the bankruptcy court in which to pursue their claims." 564 U. S., at 493 (quoting *Granfinanciera*, 492 U. S., at 59, n. 14). Put simply, the litigant in *Stern* did not consent because he *could not* consent given the nature of bankruptcy.

There was an opinion in *Stern* that turned heavily on consent: the dissent. 564 U. S., at 516–517 (opinion of BREYER, J.). The *Stern* majority responded to the dissent with a counterfactual: *Even if* consent were relevant to the analysis, that factor would not change the result because the litigant did not truly consent. *Id.*, at 493. Moreover, *Stern* held that "it does not matter who" authorizes a bankruptcy judge to render final judgments on *Stern* claims, because the "constitutional bar remains." *Id.*, at 501. That holding is incompatible with the majority's conclusion today that two litigants can authorize a bankruptcy judge to render final judgments on *Stern* claims, despite the constitutional bar that remains.

The majority also relies heavily on the supervision and control that Article III courts exercise over bankruptcy courts. *Ante*, at 679–681. As the majority notes, court of appeals judges appoint bankruptcy judges, and bankruptcy judges receive cases only on referral from district courts (although every district court in the country has adopted a standing rule automatically referring all bankruptcy filings to bankruptcy judges, see 1 Collier on Bankruptcy ¶3.02[1], p. 3–26 (16th ed. 2014)). The problem is that Congress has also given bankruptcy courts authority to enter final judgments subject only to deferential appellate review, and Article III precludes those judgments when they involve *Stern* claims. The fact that Article III judges played a role in the Article III violation does not remedy the constitutional harm. We have already explained why.

It is a fundamental principle that no branch of government can delegate its constitutional functions to an actor who lacks

authority to exercise those functions. See *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 472 (2001); *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 311 (1936). Such delegations threaten liberty and thwart accountability by empowering entities that lack the structural protections the Framers carefully devised. See *Department of Transportation* v. *Association of American Railroads*, 575 U. S. 43, 61–62 (2015) (ALITO, J., concurring); *id.*, at 67–68 (THOMAS, J., concurring in judgment); *Mistretta* v. *United States*, 488 U. S. 361, 417–422 (1989) (SCALIA, J., dissenting). Article III judges have no constitutional authority to delegate the judicial power—the power to "render dispositive judgments"—to non-Article III judges, no matter how closely they control or supervise their work. *Plaut*, 514 U. S., at 219 (internal quotation marks omitted).

In any event, the majority's arguments about supervision and control are not new. They were considered and rejected in *Stern*. See 564 U. S., at 501 ("it does not matter who appointed the bankruptcy judge or authorized the judge to render final judgments"); see also *Northern Pipeline*, 458 U. S., at 84–86 (plurality opinion); *id.*, at 91 (Rehnquist, J., concurring in judgment). The majority points to no differences between the bankruptcy proceeding in *Stern* and the bankruptcy proceeding here, except for Sharif's purported consent. The majority thus treats consent as "dispositive" in curing the structural separation of powers violation—precisely what *Schor* said consent could not do. 478 U. S., at 851.

C

Eager to change the subject from *Stern*, the majority devotes considerable attention to defending the authority of magistrate judges, who may conduct certain proceedings with the consent of the parties under 28 U. S. C. § 636. No one here challenges the constitutionality of magistrate judges or disputes that they, like bankruptcy judges, may issue reports and recommendations that are reviewed *de*

novo by Article III judges. The cases about magistrate judges cited by the majority therefore have little bearing on this case, because none of them involved a constitutional challenge to the entry of final judgment by a non-Article III actor. See *Roell* v. *Withrow*, 538 U. S. 580 (2003) (statutory challenge only); *Peretz* v. *United States*, 501 U. S. 923 (1991) (challenge to a magistrate judge's conduct of *voir dire* in a felony trial); *Gomez* v. *United States*, 490 U. S. 858 (1989) (same).

The majority also points to 19th-century cases in which courts referred disputes to non-Article III referees, masters, or arbitrators. *Ante*, at 674–675. In those cases, however, it was the Article III court that ultimately entered final judgment. *E. g.*, *Thornton* v. *Carson*, 7 Cranch 596, 600 (1813) ("the Court was right in entering the judgment for the sums awarded"). Article III courts do refer matters to non-Article III actors for assistance from time to time. This Court does so regularly in original jurisdiction cases. See, *e. g.*, *Kansas* v. *Nebraska*, 574 U. S. 445, 449 (2015). But under the Constitution, the "ultimate responsibility for deciding" the case must remain with the Article III court. *Id.*, at 453 (quoting *Colorado* v. *New Mexico*, 467 U. S. 310, 317 (1984)).

The concurrence's comparison of bankruptcy judges to arbitrators is similarly inapt. *Ante*, at 686 (opinion of ALITO, J.). Arbitration is "a matter of contract" by which parties agree to resolve their disputes in a private forum. *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U. S. 63, 67 (2010). Such an arrangement does not implicate Article III any more than does an agreement between two business partners to submit a difference of opinion to a mutually trusted friend. Arbitration agreements, like most private contracts, can be enforced in court. And Congress, pursuant to its Commerce Clause power, has authorized district courts to enter judgments enforcing arbitration awards under certain circumstances. See 9 U. S. C. § 9. But this ordinary scheme of contract enforcement creates no constitutional concern. As the concur-

rence acknowledges, only Article III judges—not arbitrators—may enter final judgments enforcing arbitration awards. *Ante*, at 686.

The discussion of magistrate judges, masters, arbitrators, and the like fits with the majority's focus on the supposedly dire consequences that would follow a decision that parties cannot consent to the final adjudication of *Stern* claims in bankruptcy courts. Of course, it "goes without saying" that practical considerations of efficiency and convenience cannot trump the structural protections of the Constitution. *Stern*, 564 U. S., at 501; see *Perez*, 575 U. S., at 130 (THOMAS, J., concurring in judgment) ("Even in the face of a perceived necessity, the Constitution protects us from ourselves."). And I find it hard to believe that the Framers in Philadelphia, who took great care to ensure that the Judiciary was "truly distinct" from the Legislature, would have been comforted to know that Congress's incursion here could "only be termed *de minimis*." *Ante*, at 679 (quoting *Schor*, 478 U. S., at 856).

In any event, the majority overstates the consequences of enforcing the requirements of Article III in this case. As explained in Part I, Wellness's claim may not be a *Stern* claim, in which case the bankruptcy statute would apply precisely as Congress wrote it. Even if Wellness's claim were a *Stern* claim, the District Court would not need to start from scratch. As this Court held in *Arkison*, the District Court could treat the bankruptcy judge's decision as a recommendation and enter judgment after performing *de novo* review. 573 U. S., at 31.

In *Stern*, the Court cautioned that Congress "may no more lawfully chip away at the authority of the Judicial Branch than it may eliminate it entirely." 564 U. S., at 502–503. The majority sees no reason to fret, however, so long as two private parties consent. *Ante*, at 680, n. 10. But such parties are unlikely to carefully weigh the long-term structural independence of the Article III Judiciary against their own

short-term priorities. Perhaps the majority's acquiescence in this diminution of constitutional authority will escape notice. Far more likely, however, it will amount to the kind of "blueprint for extensive expansion of the legislative power" that we have resisted in the past. *PCAOB*, 561 U. S., at 500 (quoting *Metropolitan Washington Airports Authority* v. *Citizens for Abatement of Aircraft Noise, Inc.*, 501 U. S. 252, 277 (1991)).

The encroachment at issue here may seem benign enough. Bankruptcy judges are devoted professionals who strive to be fair to all sides, and litigants can be trusted to protect their own interests when deciding whether to consent. But the fact remains that Congress controls the salary and tenure of bankruptcy judges, and the Legislature's present solicitude provides no guarantee of its future restraint. See *Glidden Co.* v. *Zdanok*, 370 U. S. 530, 534 (1962) (plurality opinion). Once Congress knows that it can assign federal claims to judges outside Article III with the parties' consent, nothing would limit its exercise of that power to bankruptcy. Congress may consider it advantageous to allow claims to be heard before judges subject to greater legislative control in any number of areas of federal concern. As for the requirement of consent, Congress can find ways to "encourage" consent, say by requiring it as a condition of federal benefits. That has worked to expand Congress's power before. See, *e. g.*, *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666, 686 (1999) ("Congress may, in the exercise of its spending power, condition its grant of funds to the States upon their taking certain actions that Congress could not require them to take"); *South Dakota* v. *Dole*, 483 U. S. 203, 207 (1987) (same).

Legislative designs of this kind would not displace the Article III Judiciary overnight. But steady erosion of Article III authority, no less than a brazen usurpation, violates the constitutional separation of powers. In a Federal Government of limited powers, one branch's loss is another branch's

gain, see *PCAOB*, 561 U. S., at 500, so whether a branch aims to "arrogate power to itself" or to "impair another in the performance of its constitutional duties," the Constitution forbids the transgression all the same. *Loving*, 517 U. S., at 757. As we have cautioned, "[s]light encroachments create new boundaries from which legions of power can seek new territory to capture." *Stern*, 564 U. S., at 503 (internal quotation marks omitted).

The Framers understood this danger. They warned that the Legislature would inevitably seek to draw greater power into its "impetuous vortex," The Federalist No. 48, at 309 (J. Madison), and that "power over a man's subsistence amounts to a power over his will," *id.*, No. 79, at 472 (A. Hamilton) (emphasis deleted). In response, the Framers adopted the structural protections of Article III, "establishing high walls and clear distinctions because low walls and vague distinctions will not be judicially defensible in the heat of interbranch conflict." *Plaut*, 514 U. S., at 239. As this Court once put it, invoking Frost, "Good fences make good neighbors." *Id.*, at 240.

Ultimately, however, the structural protections of Article III are only as strong as this Court's will to enforce them. In Madison's words, the "great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others." The Federalist No. 51, at 321–322. The Court today declines to resist encroachment by the Legislature. Instead it holds that a single federal judge, for reasons adequate to him, may assign away our hard-won constitutional birthright so long as two private parties agree. I hope I will be wrong about the consequences of this decision for the independence of the Judicial Branch. But for now, another literary passage comes to mind: It profits the Court nothing to give its soul for the whole world . . . but to avoid *Stern* claims?

I respectfully dissent.

JUSTICE THOMAS, dissenting.

Like THE CHIEF JUSTICE, I would have remanded this case to the lower courts to determine, under the proper standard, whether Wellness' alter-ego claim is a *Stern* claim. See *Stern* v. *Marshall*, 564 U. S. 462 (2011). I write separately to highlight a few questions touching on the consent issue that merit closer attention than either the Court or THE CHIEF JUSTICE gives them.

I agree with THE CHIEF JUSTICE that individuals cannot consent to violations of the Constitution, but this principle has nothing to do with whose interest the violated provision protects. Anytime the Federal Government acts in a manner inconsistent with the separation of powers, it acts in excess of its constitutional authority. That authority is carefully defined by the Constitution, and, except through Article V's amendment process, that document does not permit individuals to bestow additional power upon the Government.

The majority today authorizes non-Article III courts to adjudicate, with consent, claims that we have held to require an exercise of the judicial power based on its assessment that few "structural interests" are implicated by consent to the adjudication of *Stern* claims. See *ante*, at 673, 678. That reasoning is flawed. It matters not whether *we* think the particular violation threatens the structure of our Government. Our duty is to enforce the Constitution as written, not as revised by private consent, innocuous or otherwise. Worse, amidst the tempest over whether "structural interests" are implicated when an individual consents to adjudication of *Stern* claims by a non-Article III court, both the majority and THE CHIEF JUSTICE fail to grapple with the antecedent question: whether a violation of the Constitution has actually occurred. That question is a difficult one, and the majority makes a grave mistake by skipping over it in its quest to answer the question whether consent can authorize a constitutional violation. Because I would resolve this case on nar-

rower grounds, I need not decide that question here. I nevertheless write separately to highlight the complexity of the issues the majority simply brushes past.

I

A

"The principle, that [the Federal Government] can exercise only the powers granted to it, . . . is now universally admitted." *McCulloch* v. *Maryland*, 4 Wheat. 316, 405 (1819). A corollary to this principle is that each branch of the Government is limited to the exercise of those powers granted to it. Every violation of the separation of powers thus involves an exercise of power in excess of the Constitution. And because the only authorities capable of granting power are the Constitution itself, and the people acting through the amendment process, individual consent cannot authorize the Government to exceed constitutional boundaries.

This does not mean, however, that consent is invariably irrelevant to the constitutional inquiry. Although it may not authorize a constitutional violation, consent may prevent one from occurring in the first place. This concept is perhaps best understood with the example on which the majority and THE CHIEF JUSTICE both rely: the right to a jury trial. *Ante*, at 675 (majority opinion); *ante*, at 697 (ROBERTS, C. J., dissenting).[1] Although the Government incurably contravenes the Constitution when it acts in *violation* of the jury

[1] There is some dispute whether the guarantee of a jury trial protects an individual right, a structural right, or both, raising serious questions about how it should be treated under *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833 (1986). My view, which does not turn on such taxonomies, leaves no doubt: It is a "fundamental reservation of power in our constitutional structure," *Blakely* v. *Washington*, 542 U. S. 296, 306 (2004), meaning its *violation* may not be authorized by the consent of the individual.

trial right, our precedents permit the Government to convict a criminal defendant without a jury trial when he waives that right. See *Brady* v. *United States*, 397 U. S. 742, 748 (1970). The defendant's waiver is thus a form of consent that lifts a limitation on government action by satisfying its terms—that is, the right is exercised and honored, not disregarded. See *Patton* v. *United States*, 281 U. S. 276, 296–298 (1930), abrogated on other grounds by *Williams* v. *Florida*, 399 U. S. 78 (1970). Provided the Government otherwise acts within its powers, there is no constitutional violation.

B

Consent to the adjudication of *Stern* claims by bankruptcy courts is a far more complex matter than waiver of a jury trial. Two potential violations of the separation of powers occur whenever bankruptcy courts adjudicate *Stern* claims. First, the bankruptcy courts purport to exercise power that the Constitution vests exclusively in the Judiciary, even though they are not Article III courts because bankruptcy judges do not enjoy the tenure and salary protections required by Article III. See Art. III, § 1. Second, the bankruptcy courts act pursuant to statutory authorization that is itself invalid. For even when acting pursuant to an enumerated power, such as the bankruptcy power, Congress exceeds its authority when it purports to authorize a person or entity to perform a function that requires the exercise of a power vested elsewhere by the Constitution. See *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 472 (2001).

Rather than attempt to grapple with these problems, the majority seizes on some statements from *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833 (1986), to resolve the difficult constitutional issue before us. See *ante*, at 675–678. But to the extent *Schor* suggests that individual consent could authorize non-Article III courts to exercise the judicial power, 478 U. S., at 850–851, it was wrongly decided and should be abandoned. Consent to adjudication by non-

Article III judges may waive whatever individual right to impartial adjudication Article III implies, thereby lifting that affirmative barrier on Government action. But non-Article III courts must still act within the bounds of their constitutional authority. That is, they must act through a power properly delegated to the Federal Government and not vested by the Constitution in a different governmental actor. Because the judicial power is vested exclusively in Article III courts, non-Article III courts may not exercise it.

Schor's justification for authorizing such a transgression was that it judged the "practical effect [the allocation would] have on the constitutionally assigned role of the federal judiciary" not to be too great. *Id.*, at 851. But we "can[not] preserve a system of separation of powers on the basis of such intuitive judgments regarding 'practical effects.'" *Granfinanciera, S. A.* v. *Nordberg*, 492 U. S. 33, 70 (1989) (SCALIA, J., concurring in part and concurring in judgment). Put more starkly, "[t]o uphold" a violation of the Constitution because one perceives "the infraction assailed [a]s unimportant when compared with similar but more serious infractions which might be conceived . . . is not to interpret that instrument, but to disregard it." *Patton*, *supra*, at 292. Our Constitution is not a matter of convenience, to be invoked when we feel uncomfortable with some Government action and cast aside when we do not. See *Perez* v. *Mortgage Bankers Assn.*, *ante*, at 115–116 (THOMAS, J., concurring in judgment).

II

Properly understood, then, the answer to the consent question in this case depends on whether bankruptcy courts act within the bounds of their constitutional authority when they adjudicate *Stern* claims with the consent of the parties. In order to answer that question, we must consider what form of governmental power that type of adjudication requires and whether bankruptcy courts are qualified to exer-

cise that power. *Department of Transportation* v. *Association of American Railroads*, *ante*, at 88 (THOMAS, J., concurring in judgment).

Many Government functions "may be performed by two or more branches without either exceeding its enumerated powers under the Constitution." *Association of American Railroads*, *ante*, at 69. Certain core functions, however, demand the exercise of legislative, executive, or judicial power, and their allocation is controlled by the Vesting Clauses contained in the first three articles of the Constitution. *Ibid.* We have already held that adjudicating *Stern* claims, at least *without* consent of the parties, requires an exercise of the judicial power vested exclusively in Article III courts. *Stern*, 564 U. S., at 493–494. The difficult question presented by this case, which the Court glosses over, is whether the parties' consent somehow transforms the nature of the power exercised.

A

As the concepts were understood at the time of the founding, the legislative, executive, and judicial powers played different roles in the resolution of cases and controversies. In this context, the judicial power is the power "to determine all differences according to the established law"; the legislative power is the power to make that "established law"; and the executive power is the power "to back and support the sentence, and to give it due execution." J. Locke, Second Treatise of Civil Government §§ 124–126, pp. 62–63 (J. Gough ed. 1947); see also *Wayman* v. *Southard*, 10 Wheat. 1, 46 (1825).

It should be immediately apparent that consent does not transform the adjudication of *Stern* claims into a function that requires the exercise of legislative or executive power. Parties by their consent do not transform the function of adjudicating controversies into the functions of creating rules or enforcing judgments.

The more difficult question is whether consent somehow eliminates the need for an exercise of the judicial power.

Our precedents reveal that the resolution of certain cases or controversies requires the exercise of that power, but that others "may or may not" be brought "within the cognizance of [Article III courts], as [Congress] deem[s] proper." *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272, 284 (1856). The distinction generally has to do with the types of rights at issue. Disposition of private rights to life, liberty, and property falls within the core of the judicial power, whereas disposition of public rights does not. From that core of the judicial power, we have identified two narrow historical exceptions. Those exceptions, along with the treatment of cases or controversies not falling within that core, provide useful guidance for understanding whether bankruptcy courts' adjudication of *Stern* claims with the consent of the parties requires the exercise of Article III judicial power.

1

Under our precedents, the three categories of cases that may be adjudicated by Article III courts but that do not demand the exercise of the judicial power are those arising in the territories, those arising in the Armed Forces, and those involving public rights disputes. *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U. S. 50, 63–67 (1982) (plurality opinion).

The first two represent unique historical exceptions that tell us little about the overall scope of the judicial power. From an early date, this Court has long upheld laws authorizing the adjudication of cases arising in the territories in non-Article III "territorial courts" on the ground that such courts exercise power "conferred by Congress, in the execution of those general powers which [Congress] possesses over the territories of the United States." *American Ins. Co.* v. *356 Bales of Cotton*, 1 Pet. 511, 546 (1828) (*Canter*).[2] And

[2] Chief Justice Marshall's explanation in *Canter* has come under attack on the ground that it fails to clarify the precise constitutional status of the power exercised by the territorial courts. Lawson, Territorial Govern-

the Court has upheld laws authorizing the adjudication of cases arising in the Armed Forces in non-Article III courts-martial, inferring from a constellation of constitutional provisions that Congress has the power to provide for the adjudication of disputes among the Armed Forces it creates and that Article III extends only to *civilian* judicial power. *Dynes* v. *Hoover*, 20 How. 65, 78–79 (1858). Whatever their historical validity, these precedents exempt cases arising in the territories and in the land and naval forces from Article III because of other provisions of the Constitution, not because of the definition of judicial power in Article III itself. See Nelson, Adjudication in the Political Branches, 107 Colum. L. Rev. 559, 576 (2007) (noting that both exceptions enjoy "special textual rationales that d[o] not spill over into other areas").

The third category consists of so-called "public rights" cases. Unlike the other two categories, which reflect carve-outs from the core of the judicial power, this category describes cases outside of that core and therefore has more to tell us about the scope of the judicial power.

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ments and the Limits of Formalism, 78 Cal. L. Rev. 853, 892 (1990) (criticizing it as "fatuous" dictum). On the one hand, some early evidence suggests that the courts were thought to be dealing primarily with local matters that lie *beyond* federal judicial cognizance. Pfander, Article I Tribunals, Article III Courts, and the Judicial Power of the United States, 118 Harv. L. Rev. 643, 706–711 (2004). Yet *Canter* involved a controversy indisputably *capable* of adjudication by Article III courts, because it both arose in admiralty and fell within the Supreme Court's appellate jurisdiction. Pfander, *supra*, at 713–714, n. 314. The best explanation for this apparent tension is that territorial courts adjudicate matters that Congress may or may not assign to Article III courts, as it wishes. Nelson, Adjudication in the Political Branches, 107 Colum. L. Rev. 559, 575–576 (2007). To recognize Congress' discretion requires no distortion of the meaning of judicial power because Chief Justice Marshall's reasoning has nothing to do with the intrinsic qualities of the adjudication itself—*e. g.*, whether it involves "the stuff of the traditional actions at common law tried by the courts of Westminster in 1789," *Stern* v. *Marshall*, 564 U. S. 462, 484 (2011) (internal quotation marks omitted).

The distinction between disputes involving "public rights" and those involving "private rights" is longstanding, but the contours of the "public rights" doctrine have been the source of much confusion and controversy. See generally *Granfinanciera*, 492 U. S., at 66–70 (opinion of SCALIA, J.) (tracing the evolution of the doctrine). Our cases attribute the doctrine to this Court's mid-19th-century decision, *Murray's Lessee*, *supra*. In that case, the Court observed that there are certain cases addressing "*public rights*, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper." *Id.*, at 284 (emphasis added).

Historically, "*public* rights" were understood as "rights belonging to the people at large," as distinguished from "the *private* unalienable rights of each individual." *Lansing* v. *Smith*, 4 Wend. 9, 21 (N. Y. 1829) (Walworth, C.). This distinction is significant to our understanding of Article III, for while the legislative and executive branches may dispose of public rights at will—including through non-Article III adjudications—an exercise of the judicial power is required "when the government want[s] to act authoritatively upon core private rights that had vested in a particular individual." Nelson, *supra,* at 569; see *B&B Hardware, Inc.* v. *Hargis Industries, Inc.*, *ante*, at 171 (THOMAS, J., dissenting).

The distinction was well known at the time of the founding. In the tradition of John Locke, William Blackstone in his Commentaries identified the private rights to life, liberty, and property as the three "absolute" rights—so called because they "appertain[ed] and belong[ed] to particular men . . . merely as individuals," not "to them as members of society [or] standing in various relations to each other"—that is, not dependent upon the will of the government. 1 W. Blackstone, Commentaries on the Laws of England 119

(1765) (Commentaries); see also Nelson, *supra*, at 567.[3] Public rights, by contrast, belonged to "the whole community, considered as a community, in its social aggregate capacity." 4 Commentaries 5 (1769); see also Nelson, *supra*, at 567. As the modern doctrine of the separation of powers emerged, "the courts became identified with the enforcement of private right, and administrative agencies with the execution of public policy." Jaffe, The Right to Judicial Review I, 71 Harv. L. Rev. 401, 413 (1958).

The Founders carried this idea forward into the Vesting Clauses of our Constitution. Those Clauses were understood to play a role in ensuring that the federal courts alone could act to deprive individuals of private rights because the power to act conclusively against those rights was the core of the judicial power. As one early treatise explained, the judiciary is "that department of the government to whom the protection of the rights of the individual is by the constitution especially confided." 1 St. George Tucker, Blackstone's Commentaries, App. 357 (1803). If "public rights" were not thought to fall within the core of the judicial power, then that could explain why Congress would be able to perform or authorize non-Article III adjudications of public rights without transgressing Article III's Vesting Clause.

Nineteenth-century American jurisprudence confirms that an exercise of the judicial power was thought to be necessary for the disposition of private, but not public, rights.[4] See

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[3] The protection of private rights in the Anglo-American tradition goes back to at least Magna Carta. The original 1215 charter is replete with restrictions on the King's ability to proceed against private rights, including most notably the provision that "[n]o free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, . . . except by the lawful judgment of his peers and by the law of the land." A. Howard, Magna Carta: Text and Commentary 43 (1964).

[4] Contemporary state-court decisions provide even more explication of the distinction between public and private rights, and many expressly tie the distinction to the separation of powers. See, *e. g.*, *Newland* v. *Marsh*, 19 Ill. 376, 383 (1857) ("The legislative power . . . cannot directly reach the

B&B Hardware, *ante*, at 171–172. The treatment of land patents illustrates the point well: Although Congress could authorize executive agencies to dispose of *public* rights in land—often by means of adjudicating a claimant's qualifications for a land grant under a statute—the United States had to go to the courts if it wished to revoke a patent. See generally Nelson, *supra*, at 577–578 (discussing land patents). That differential treatment reflected the fact that, once "legal title passed out of the United States," the patent "[u]ndoubtedly" constituted "a vested right" and consequently could "only be divested according to law." *Johnson* v. *Towsley*, 13 Wall. 72, 84–85 (1871). By contrast, a party who sought to protect only a "public right" in the land had no such vested right and could not invoke the intervention of Article III courts. See *Smelting Co.* v. *Kemp*, 104 U. S. 636, 647 (1882) ("It does not lie in the mouth of a stranger to the title to complain of the act of the government with respect to it"); see also *Bagnell* v. *Broderick*, 13 Pet. 436, 450 (1839) (refusing to examine the propriety of a land patent on the ground that "Congress has the sole power to declare the dignity and effect of titles emanating from the United States").

Over time, the line between public and private rights has blurred, along with the Court's treatment of the judicial power. See *B&B Hardware*, *ante*, at 168–170, 171–172. The source of the confusion may be *Murray's Lessee*—the

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property or vested rights of the citizen, by providing for their forfeiture or transfer to another, without trial and judgment in the courts; for to do so, would be the exercise of a power which belongs to another branch of the government, and is forbidden to the legislat[ure]"); see also *Gaines* v. *Gaines*, 48 Ky. 295, 301 (1848) (describing the judiciary as "the tribunal appointed by the Constitution and the law, for the ascertainment of private rights and the redress of private wrongs"); *State ex rel. Atty. Gen.* v. *Hawkins*, 44 Ohio St. 98, 109, 5 N. E. 228, 232 (1886) ("[P]ower to hear and determine rights of property and of person between private parties is judicial, and can only be conferred on the courts"); see generally T. Cooley, Constitutional Limitations 175 (1868) (explaining that only the judicial power was thought capable of disposing of private rights).

putative source of the public rights doctrine itself. Dictum in the case muddles the distinction between private and public rights, and the decision is perhaps better read as an expression of the principle of sovereign immunity. *Granfinanciera*, 492 U. S., at 68–69 (opinion of SCALIA, J.).[5] Some cases appear to have done just that, thus reading *Murray's Lessee* to apply only in disputes arising between the Government and others. See, *e. g.*, *Crowell* v. *Benson*, 285 U. S. 22, 50 (1932).

Another strain of cases has confused the distinction between private and public rights, with some cases treating public rights as the equivalent of private rights entitled to full judicial review, *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94, 108 (1902), and others treating what appear to be private rights as public rights on which executive action could be conclusive, see, *e. g.*, *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 401–404 (1940); see also *B&B Hardware*, *ante*, at 172 (observing that *Sunshine Anthracite* may reflect a unique historical exception for tax cases). Cf. *Northern Pipeline*, 458 U. S., at 84–85 (plurality opinion) (discussing other cases that appear to reflect the historical distinction between private rights and rights created by Congress). Perhaps this confusion explains why the Court has more recently expanded the concept of public rights to include any right "so closely integrated into a public regulatory scheme as to be a matter appropriate for agency

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[5] Another potential explanation is that *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272 (1856), recognized yet another special exception to Article III's allocation of judicial power, applicable whenever the Government exercises its power of taxation. Nelson, 107 Colum. L. Rev., at 588–589; see also *B&B Hardware, Inc.* v. *Hargis Industries, Inc.*, *ante*, at 172 (THOMAS, J., dissenting) (discussing other decisions that appear to rest on this exception). To the extent that *Murray's Lessee* purported to recognize such an exception, however, it did so only in dictum after noting that the statute provided a mechanism for judicial review of the accounting decision on which the distress warrant was based. 18 How., at 280–281.

resolution with limited involvement by the Article III judiciary." *Thomas* v. *Union Carbide Agricultural Products Co.*, 473 U. S. 568, 593–594 (1985). A return to the historical understanding of "public rights," however, would lead to the conclusion that the inalienable core of the judicial power vested by Article III in the federal courts is the power to adjudicate *private* rights disputes.

2

Although Congress did not enact a permanent federal bankruptcy law until the late 19th century, it has assigned the adjudication of certain bankruptcy disputes to non-Article III actors since as early as 1800. Plank, Why Bankruptcy Judges Need Not and Should Not Be Article III Judges, 72 Am. Bankr. L. J. 567, 608 (1998) (describing the bankruptcy powers vested by Congress in non-Article III judges). Modern bankruptcy courts, however, adjudicate a far broader array of disputes than their earliest historical counterparts. And this Court has remained carefully noncommittal about the source of their authority to do so. See *Northern Pipeline*, 458 U. S., at 71 (plurality opinion).

Applying the historical categories of cases discussed above, one can understand why. Bankruptcy courts clearly do not qualify as territorial courts or courts-martial, but they are not an easy fit in the "public rights" category, either. No doubt certain aspects of bankruptcy involve rights lying outside the core of the judicial power. The most obvious of these is the right to discharge, which a party may obtain if he satisfies certain statutory criteria. *Ibid.* Discharge is not itself a private right, but, together with the claims allowance process that precedes it, it can act conclusively on the core private rights of the debtor's creditors. We have nevertheless implicitly recognized that the claims allowance process may proceed in a bankruptcy court, as can any matter that would necessarily be resolved by that process, even one that affects core private rights. *Stern*, 564 U. S., at 495–

497. For this reason, bankruptcy courts and their predecessors more likely enjoy a unique, textually based exception, much like territorial courts and courts-martial do. See *id.*, at 504–505 (SCALIA, J., concurring). That is, Article I's Bankruptcy Clause serves to carve cases and controversies traditionally subject to resolution by bankruptcy commissioners out of Article III, giving Congress the discretion, within those historical boundaries, to provide for their resolution outside of Article III courts.

3

Because *Stern* claims by definition fall outside of the historical boundaries of the bankruptcy carveout, they are subject to Article III. This means that, if their adjudication requires the exercise of the judicial power, then only Article III courts may perform it.

Although *Stern* claims indisputably involve private rights, the "public rights" doctrine suggests a way in which party consent may transform the function of adjudicating *Stern* claims into one that does not require the exercise of the judicial power. The premise of the "public rights" doctrine, as described above, is not that public rights affirmatively require adjudication by some other governmental power, but that the Government has a freer hand when private rights are not at issue. Accordingly, this premise may not require the presence of a public right at all, but may apply equally to any situation in which private rights are not asserted.

Party consent, in turn, may have the effect of lifting that "private rights" bar, much in the way that waiver lifts the bar imposed by the right to a jury trial. Individuals may dispose of their own private rights freely, without judicial intervention. A party who consents to adjudication of a *Stern* claim by a bankruptcy court is merely making a conditional surrender of whatever private right he has on the line, contingent on some future event—namely, that the bankruptcy court rules against him. Indeed, it is on this logic

that the law has long encouraged and permitted private settlement of disputes, including through the action of an arbitrator not vested with the judicial power. See *ante*, at 686 (ALITO, J., concurring in part and concurring in judgment); T. Cooley, Constitutional Limitations 399 (1868). Perhaps for this reason, decisions discussing the relationship between private rights and the judicial power have emphasized the "*involuntary* divestiture" of a private right. *Newland* v. *Marsh*, 19 Ill. 376, 382–383 (1857) (emphasis added).

But all of this does not necessarily mean that the majority has wound up in the right place by the wrong path. Even if consent could lift the private rights barrier to nonjudicial Government action, it would not necessarily follow that consent removes the *Stern* adjudication from the core of the judicial power. There may be other aspects of the adjudication that demand the exercise of the judicial power, such as entry of a final judgment enforceable without any further action by an Article III court. We have recognized that judgments entered by Article III courts bear unique qualities that spring from the exercise of the judicial power, *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 218–219 (1995), and it may be that the entry of a final judgment bearing these qualities—irrespective of the subject matter of the dispute—is a quintessential judicial function, see *ante*, at 702–703 (ROBERTS, C. J., dissenting). See generally *Northern Pipeline*, *supra*, at 85–86, and n. 38 (plurality opinion) (distinguishing the agency orders at issue in *Crowell* from bankruptcy court orders on this ground). As Thomas Cooley explained in his influential treatise, "If the judges should sit to hear . . . controversies [beyond their cognizance], they would not sit as a court; at the most they would be arbitrators only, and their . . . decision could not be binding as a judgment, but only as an award." Cooley, *supra*, at 399.[6]

[6] Numerous 19th-century State Supreme Courts held unconstitutional laws authorizing individuals to consent to have their cases heard by an individual not qualified as a judge under provisions of State Constitutions

Ultimately, this case implicates difficult questions about the nature of bankruptcy procedure, judicial power, and remedies. In particular, if we were to determine that current practice accords bankruptcy court judgments a feature that demands the exercise of the judicial power, would that mean that all bankruptcy judgments resolving *Stern* claims are void, or only that courts may not give effect to that single feature that triggers Article III? The parties have briefed none of these issues, so I do not resolve them. But the number and magnitude of these important questions—questions implicated by thousands of bankruptcy and magistrate judge decisions each year—merit closer attention than the majority has given them.

B

Even assuming we were to decide that adjudication of *Stern* claims with the consent of the parties does not require the exercise of the judicial power, that decision would not end the constitutional inquiry. As instrumentalities of the

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similar to Article III, § 1. See, *e. g.*, *Winchester* v. *Ayres*, 4 Iowa 104 (1853); *Haverly Invincible Mining Co.* v. *Howcutt*, 6 Colo. 574, 575–576 (1883); *Ex parte Alabama State Bar Assn.*, 92 Ala. 113, 8 So. 768 (1891); see also Cooley, Constitutional Limitations, at 399. Acknowledging the similarity between the practices under review and the legitimate practice of private arbitration, many of these decisions premised their finding of unconstitutionality on the issuance of a judgment or other writ that only judges may issue. See, *e. g.*, *Bishop* v. *Nelson*, 83 Ill. 601 (1876) (*per curiam*) ("This was not an arbitration . . . but it was an attempt to confer upon [Mr. Wood] the power of a judge, to decide the pending case, and he did decide it, the court carrying out his decision by entering the judgment he had reached, and not [its] own judgment"); *Van Slyke* v. *Trempealeau Cty. Farmers' Mut. Fire Ins. Co.*, 39 Wis. 390, 393 (1876) ("We cannot look into the bill of exceptions or consider the order denying a new trial, because both are unofficial and devoid of judicial authority"); see also *id.*, at 395–396 (tracing this rule back to English understandings of judicial power). These decisions treat the rule as a corollary to the rule that parties may not, by consent, confer jurisdiction. See, *e. g.*, *Higby* v. *Ayres*, 14 Kan. 331, 334 (1875); *Hoagland* v. *Creed*, 81 Ill. 506, 507–508 (1876); see also Cooley, *supra*, at 399.

Federal Government, the bankruptcy courts must act pursuant to some constitutional grant of authority. Even if the functions bankruptcy courts perform do not require an exercise of legislative, executive, or judicial power, we would need to identify the source of Congress' authority to establish them and to authorize them to act.

The historical carveouts for territorial courts and courts-martial might provide some guidance. The Court has anchored Congress' authority to create territorial courts in "the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States." *Canter*, 1 Pet., at 546. And it has anchored Congress' authority to create courts-martial in Congress' Article I powers concerning the Army and Navy, understood alongside the Fifth Amendment's exception of "'cases arising in the land or naval forces,'" from the grand jury requirement, and Article II's requirement that the President serve as Commander in Chief. *Dynes*, 20 How., at 78–79.

Although our cases examining the constitutionality of statutes allocating the power to the bankruptcy courts have not considered the source of Congress' authority to establish them, the obvious textual basis is the fourth clause of Article I, § 8, which empowers Congress to "establish . . . uniform Laws on the subject of Bankruptcies throughout the United States."[7] But as with the other two historical carveouts,

[7] In *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U. S. 50 (1982), the plurality rejected the argument that "Congress' constitutional authority to establish 'uniform Laws on the subject of Bankruptcies throughout the United States' carries with it an inherent power to establish legislative courts capable of adjudicating 'bankruptcy-related controversies.'" *Id.*, at 72 (citation omitted). In that context, however, it was considering whether Article III imposes limits on Congress' bankruptcy power, *id.*, at 73, which is a distinct question from whether Congress has the power to establish bankruptcy courts as an antecedent matter, leaving aside any Article III limitations.

Congress' power to establish tribunals within that grant is informed by historical understandings of the bankruptcy power.[8] We have suggested that, under this historical understanding, Congress has the power to establish bankruptcy courts that exercise jurisdiction akin to that of bankruptcy commissioners in England, subject to review traditionally had in England. *Ante*, at 690 (ROBERTS, C. J., dissenting). Although *Stern* claims, by definition, lie outside those historical boundaries, a historical practice of allowing broader adjudication by bankruptcy commissioners acting with the consent of the parties could alter the analysis. The parties once again do not brief these questions, but they merit closer attention by this Court.

* * *

Whether parties may consent to bankruptcy court adjudication of *Stern* claims is a difficult constitutional question. It turns on issues that are not adequately considered by the Court or briefed by the parties. And it cannot—and should not—be resolved through a cursory reading of *Schor*, which itself is hardly a model of careful constitutional interpretation. For these reasons, I would resolve the case on the narrow grounds set forth in Part I of THE CHIEF JUSTICE's opinion. I respectfully dissent.

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[8] I would be wary of concluding that every grant of lawmaking authority to Congress includes the power to establish "legislative courts" as part of its legislative scheme. Some have suggested that Congress' authority to establish tribunals pursuant to substantive grants of authority is informed and limited by its Article I power to "constitute Tribunals inferior to the supreme Court." U. S. Const., Art. I, § 8, cl. 9. See Pfander, 118 Harv. L. Rev., at 671–697.

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ELONIS *v.* UNITED STATES

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

No. 13–983. Argued December 1, 2014—Decided June 1, 2015

After his wife left him, petitioner Anthony Douglas Elonis, under the pseudonym "Tone Dougie," used the social networking Web site Facebook to post self-styled rap lyrics containing graphically violent language and imagery concerning his wife, co-workers, a kindergarten class, and state and federal law enforcement. These posts were often interspersed with disclaimers that the lyrics were "fictitious" and not intended to depict real persons, and with statements that Elonis was exercising his First Amendment rights. Many who knew him saw his posts as threatening, however, including his boss, who fired him for threatening co-workers, and his wife, who sought and was granted a state court protection-from-abuse order against him.

When Elonis's former employer informed the Federal Bureau of Investigation of the posts, the agency began monitoring Elonis's Facebook activity and eventually arrested him. He was charged with five counts of violating 18 U. S. C. § 875(c), which makes it a federal crime to transmit in interstate commerce "any communication containing any threat . . . to injure the person of another." At trial, Elonis requested a jury instruction that the Government was required to prove that he intended to communicate a "true threat." Instead, the District Court told the jury that Elonis could be found guilty if a reasonable person would foresee that his statements would be interpreted as a threat. Elonis was convicted on four of the five counts and renewed his jury instruction challenge on appeal. The Third Circuit affirmed, holding that Section 875(c) requires only the intent to communicate words that the defendant understands, and that a reasonable person would view as a threat.

Held: The Third Circuit's instruction, requiring only negligence with respect to the communication of a threat, is not sufficient to support a conviction under Section 875(c). Pp. 732–742.

(a) Section 875(c) does not indicate whether the defendant must intend that the communication contain a threat, and the parties can show no indication of a particular mental state requirement in the statute's text. Elonis claims that the word "threat," by definition, conveys the intent to inflict harm. But common definitions of "threat" speak to what the statement conveys—not to the author's mental state. The Government argues that the express "intent to extort" requirements in

neighboring Sections 875(b) and (d) should preclude courts from implying an unexpressed "intent to threaten" requirement in Section 875(c). The most that can be concluded from such a comparison, however, is that Congress did not mean to confine Section 875(c) to crimes of extortion, not that it meant to exclude a mental state requirement. Pp. 732–734.

(b) The Court does not regard "mere omission from a criminal enactment of any mention of criminal intent" as dispensing with such a requirement. *Morissette* v. *United States*, 342 U. S. 246, 250. This rule of construction reflects the basic principle that "wrongdoing must be conscious to be criminal," and that a defendant must be "blameworthy in mind" before he can be found guilty. *Id.*, at 252. The "general rule" is that a guilty mind is "a necessary element in the indictment and proof of every crime." *United States* v. *Balint*, 258 U. S. 250, 251. Thus, criminal statutes are generally interpreted "to include broadly applicable scienter requirements, even where the statute . . . does not contain them." *United States* v. *X-Citement Video, Inc.*, 513 U. S. 64, 70. This does not mean that a defendant must know that his conduct is illegal, but a defendant must have knowledge of "the facts that make his conduct fit the definition of the offense." *Staples* v. *United States*, 511 U. S. 600,608, n. 3. Federal criminal statutes that are silent on the required mental state should be read to include "only that *mens rea* which is necessary to separate" wrongful from innocent conduct. *Carter* v. *United States*, 530 U. S. 255, 269. In some cases, a general requirement that a defendant act knowingly is sufficient, but where such a requirement "would fail to protect the innocent actor," the statute "would need to be read to require . . . specific intent." *Ibid.* Pp. 734–737.

(c) The "presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct." *X-Citement Video*, 513 U. S., at 72. In the context of Section 875(c), that requires proof that a communication was transmitted and that it contained a threat. And because "the crucial element separating legal innocence from wrongful conduct," *id.*, at 73, is the threatening nature of the communication, the mental state requirement must apply to the fact that the communication contains a threat. Elonis's conviction was premised solely on how his posts would be viewed by a reasonable person, a standard feature of civil liability in tort law inconsistent with the conventional criminal conduct requirement of "awareness of some wrongdoing," *Staples*, 511 U. S., at 606–607. This Court "ha[s] long been reluctant to infer that a negligence standard was intended in criminal statutes." *Rogers* v. *United States*, 422 U. S. 35, 47 (Marshall, J., concurring). And the Government fails to show that the instructions in this case required more than a mental state of negligence. *Hamling* v. *United States*, 418 U. S. 87, distinguished. Section

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875(c)'s mental state requirement is satisfied if the defendant transmits a communication for the purpose of issuing a threat or with knowledge that the communication will be viewed as a threat. The Court declines to address whether a mental state of recklessness would also suffice. Given the disposition here, it is unnecessary to consider any First Amendment issues. Pp. 737–742.

730 F. 3d 321, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in part and dissenting in part, *post*, p. 742. THOMAS, J., filed a dissenting opinion, *post*, p. 750.

John P. Elwood argued the cause for petitioner. With him on the briefs were *Ronald H. Levine*, *Abraham J. Rein*, and *Daniel R. Ortiz*.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Caldwell*, *Eric J. Feigin*, and *Sangita K. Rao*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *Steven R. Shapiro*, *David A. Schulz*, and *Joan E. Bertin*; for the Center for Individual Rights by *Michael E. Rosman*; for the Marion B. Brechner First Amendment Project et al. by *Clay Calvert*; for the People for Ethical Treatment of Animals, Inc. (PETA), et al. by *Brian J. Murray* and *Thomas Brejcha*; for the Reporters Committee for Freedom of Press et al. by *Bruce D. Brown*, *Gregg P. Leslie*, *Richard A. Bernstein*, *Kevin M. Goldberg*, *Marcia Hofmann*, *Mickey H. Osterreicher*, *Kurt Wimmer*, and *Barbara L. Camens*; for the Rutherford Institute by *John W. Whitehead*; for the Student Press Law Center et al. by *Sean D. Jordan*; and for the Thomas Jefferson Center for the Protection of Free Expression et al. by *J. Joshua Wheeler* and *Robert D. Richards*.

Briefs of *amici curiae* urging affirmance were filed for the State of Wisconsin et al. by *J. B. Van Hollen*, Attorney General of Wisconsin, and *Thomas C. Bellavia*, Assistant Attorney General, by *Kay Chopard Cohen*, and by the Attorneys General for their respective jurisdictions as follows: *Michael C. Geraghty* of Alaska, *Thomas C. Horne* of Arizona, *John W. Suthers* of Colorado, *Irvin B. Nathan* of the District of Columbia, *Leonardo M. Rapadas* of Guam, *David M. Louie* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Thomas J. Miller* of Iowa, *Jack Conway* of Kentucky, *Janet T. Mills* of Maine, *Bill Schuette* of Michigan,

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Federal law makes it a crime to transmit in interstate commerce "any communication containing any threat . . . to injure the person of another." 18 U. S. C. § 875(c). Petitioner was convicted of violating this provision under instructions that required the jury to find that he communicated what a reasonable person would regard as a threat. The question is whether the statute also requires that the defendant be aware of the threatening nature of the communication, and—if not—whether the First Amendment requires such a showing.

I

A

Anthony Douglas Elonis was an active user of the social networking Web site Facebook. Users of that Web site may post items on their Facebook page that are accessible to other users, including Facebook "friends" who are notified when new content is posted. In May 2010, Elonis's wife of nearly seven years left him, taking with her their two young children. Elonis began "listening to more violent music" and posting self-styled "rap" lyrics inspired by the music. App. 204, 226. Eventually, Elonis changed the user name on his Facebook page from his actual name to a rap-style nom de plume, "Tone Dougie," to distinguish himself from his "online persona." *Id.*, at 249, 265. The lyrics Elonis posted as

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Jim Hood of Mississippi, *Gary K. King* of New Mexico, *Kathleen G. Kane* of Pennsylvania, *Peter F. Kilmartin* of Rhode Island, *Alan Wilson* of South Carolina, *Sean D. Reyes* of Utah, and *Robert F. Ferguson* of Washington; for the Anti-Defamation League by *Christopher Wolf*, *Steve M. Freeman*, and *Frederick M. Lawrence*; for the Criminal Justice Legal Foundation by *Kent S. Scheidegger*; for the Domestic Violence Legal Empowerment and Appeals Project et al. by *David B. Salmons*, *Jonathan M. Albano*, and *Joan S. Meier*; for the National Center for Victims of Crime by *Rebecca Roe*; and for the National Network to End Domestic Violence et al. by *Helen Gerostathos Guyton* and *Timothy J. Slattery*.

"Tone Dougie" included graphically violent language and imagery. This material was often interspersed with disclaimers that the lyrics were "fictitious," with no intentional "resemblance to real persons." *Id.*, at 331, 329. Elonis posted an explanation to another Facebook user that "I'm doing this for me. My writing is therapeutic." *Id.*, at 329; see also *id.*, at 205 (testifying that it "helps me to deal with the pain").

Elonis's co-workers and friends viewed the posts in a different light. Around Halloween of 2010, Elonis posted a photograph of himself and a co-worker at a "Halloween Haunt" event at the amusement park where they worked. In the photograph, Elonis was holding a toy knife against his co-worker's neck, and in the caption Elonis wrote, "I wish." *Id.*, at 340. Elonis was not Facebook friends with the co-worker and did not "tag" her, a Facebook feature that would have alerted her to the posting. *Id.*, at 175; Brief for Petitioner 6, 9. But the chief of park security was a Facebook "friend" of Elonis, saw the photograph, and fired him. App. 114–116; Brief for Petitioner 9.

In response, Elonis posted a new entry on his Facebook page:

> "Moles! Didn't I tell y'all I had several? Y'all sayin' I had access to keys for all the f***in' gates. That I have sinister plans for all my friends and must have taken home a couple. Y'all think it's too dark and foggy to secure your facility from a man as mad as me? You see, even without a paycheck, I'm still the main attraction. Whoever thought the Halloween Haunt could be so f***in' scary?" App. 332.

This post became the basis for Count One of Elonis's subsequent indictment, threatening park patrons and employees.

Elonis's posts frequently included crude, degrading, and violent material about his soon-to-be ex-wife. Shortly after he was fired, Elonis posted an adaptation of a satirical sketch that he and his wife had watched together. *Id.*, at 164–165,

207. In the actual sketch, called "It's Illegal to Say . . . ," a comedian explains that it is illegal for a person to say he wishes to kill the President, but not illegal to explain that it is illegal for him to say that. When Elonis posted the script of the sketch, however, he substituted his wife for the President. The posting was part of the basis for Count Two of the indictment, threatening his wife:

> "Hi, I'm Tone Elonis.
> Did you know that it's illegal for me to say I want to kill my wife? . . .
> It's one of the only sentences that I'm not allowed to say. . . .
> Now it was okay for me to say it right then because I was just telling you that it's illegal for me to say I want to kill my wife. . . .
> Um, but what's interesting is that it's very illegal to say I really, really think someone out there should kill my wife. . . .
> But not illegal to say with a mortar launcher.
> Because that's its own sentence. . . .
> I also found out that it's incredibly illegal, extremely illegal to go on Facebook and say something like the best place to fire a mortar launcher at her house would be from the cornfield behind it because of easy access to a getaway road and you'd have a clear line of sight through the sun room. . . .
> Yet even more illegal to show an illustrated diagram. [diagram of the house]. . . . " *Id.*, at 333.

The details about the home were accurate. *Id.*, at 154. At the bottom of the post, Elonis included a link to the video of the original skit, and wrote, "Art is about pushing limits. I'm willing to go to jail for my Constitutional rights. Are you?" *Id.*, at 333.

After viewing some of Elonis's posts, his wife felt "extremely afraid for [her] life." *Id.*, at 156. A state court

granted her a three-year protection-from-abuse order against Elonis (essentially, a restraining order). *Id.*, at 148–150. Elonis referred to the order in another post on his "Tone Dougie" page, also included in Count Two of the indictment:

> "Fold up your [protection-from-abuse order] and put it in your pocket
> Is it thick enough to stop a bullet?
> Try to enforce an Order
> that was improperly granted in the first place
> Me thinks the Judge needs an education
> on true threat jurisprudence
> And prison time'll add zeros to my settlement . . .
> And if worse comes to worse
> I've got enough explosives
> to take care of the State Police and the Sheriff's Department." *Id.*, at 334.

At the bottom of this post was a link to the Wikipedia article on "Freedom of speech." *Ibid.* Elonis's reference to the police was the basis for Count Three of his indictment, threatening law enforcement officers.

That same month, interspersed with posts about a movie Elonis liked and observations on a comedian's social commentary, *id.*, at 356–358, Elonis posted an entry that gave rise to Count Four of his indictment:

> "That's it, I've had about enough
> I'm checking out and making a name for myself
> Enough elementary schools in a ten mile radius
> to initiate the most heinous school shooting ever imagined
> And hell hath no fury like a crazy man in a Kindergarten class
> The only question is . . . which one?" *Id.*, at 335.

Meanwhile, park security had informed both local police and the Federal Bureau of Investigation about Elonis's posts,

and FBI Agent Denise Stevens had created a Facebook account to monitor his online activity. *Id.*, at 49–51, 125. After the post about a school shooting, Agent Stevens and her partner visited Elonis at his house. *Id.*, at 65–66. Following their visit, during which Elonis was polite but uncooperative, Elonis posted another entry on his Facebook page, called "Little Agent Lady," which led to Count Five:

> "You know your s***'s ridiculous
> when you have the FBI knockin' at yo' door
> Little Agent lady stood so close
> Took all the strength I had not to turn the b**** ghost
> Pull my knife, flick my wrist, and slit her throat
> Leave her bleedin' from her jugular in the arms of her partner
> [laughter]
> So the next time you knock, you best be serving a warrant
> And bring yo' SWAT and an explosives expert while you're at it
> Cause little did y'all know, I was strapped wit' a bomb
> Why do you think it took me so long to get dressed with no shoes on?
> I was jus' waitin' for y'all to handcuff me and pat me down
> Touch the detonator in my pocket and we're all goin'
> [BOOM!]
> Are all the pieces comin' together?
> S***, I'm just a crazy sociopath
> that gets off playin' you stupid f***s like a fiddle
> And if y'all didn't hear, I'm gonna be famous
> Cause I'm just an aspiring rapper who likes the attention
> who happens to be under investigation for terrorism
> cause y'all think I'm ready to turn the Valley into Fallujah
> But I ain't gonna tell you which bridge is gonna fall

into which river or road
And if you really believe this s***
I'll have some bridge rubble to sell you tomorrow
[BOOM!][BOOM!][BOOM!]" *Id.*, at 336.

B

A grand jury indicted Elonis for making threats to injure patrons and employees of the park, his estranged wife, police officers, a kindergarten class, and an FBI agent, all in violation of 18 U. S. C. § 875(c). App. 14–17. In the District Court, Elonis moved to dismiss the indictment for failing to allege that he had intended to threaten anyone. The District Court denied the motion, holding that Third Circuit precedent required only that Elonis "intentionally made the communication, not that he intended to make a threat." App. to Pet. for Cert. 51a. At trial, Elonis testified that his posts emulated the rap lyrics of the well-known performer Eminem, some of which involve fantasies about killing his ex-wife. App. 225. In Elonis's view, he had posted "nothing . . . that hasn't been said already." *Id.*, at 205. The Government presented as witnesses Elonis's wife and coworkers, all of whom said they felt afraid and viewed Elonis's posts as serious threats. See, *e. g.*, *id.*, at 153, 158.

Elonis requested a jury instruction that "the government must prove that he intended to communicate a true threat." *Id.*, at 21. See also *id.*, at 267–269, 303. The District Court denied that request. The jury instructions instead informed the jury that

> "A statement is a true threat when a defendant intentionally makes a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily injury or take the life of an individual." *Id.*, at 301.

The Government's closing argument emphasized that it was irrelevant whether Elonis intended the postings to be threats—"it doesn't matter what he thinks." *Id.*, at 286. A jury convicted Elonis on four of the five counts against him, acquitting only on the charge of threatening park patrons and employees. *Id.*, at 309. Elonis was sentenced to three years, eight months' imprisonment and three years' supervised release.

Elonis renewed his challenge to the jury instructions in the Court of Appeals, contending that the jury should have been required to find that he intended his posts to be threats. The Court of Appeals disagreed, holding that the intent required by Section 875(c) is only the intent to communicate words that the defendant understands, and that a reasonable person would view as a threat. 730 F. 3d 321, 332 (CA3 2013).

We granted certiorari. 573 U. S. 916 (2014).

II

A

An individual who "transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another" is guilty of a felony and faces up to five years' imprisonment. 18 U. S. C. § 875(c). This statute requires that a communication be transmitted and that the communication contain a threat. It does not specify that the defendant must have any mental state with respect to these elements. In particular, it does not indicate whether the defendant must intend that his communication contain a threat.

Elonis argues that the word "threat" itself in Section 875(c) imposes such a requirement. According to Elonis, every definition of "threat" or "threaten" conveys the notion of an intent to inflict harm. Brief for Petitioner 23. See *United States* v. *Jeffries*, 692 F. 3d 473, 483 (CA6 2012) (Sutton, J., *dubitante*). *E. g.*, 11 Oxford English Dictionary 353

(1933) ("to declare (usually conditionally) one's intention of inflicting injury upon"); Webster's New International Dictionary 2633 (2d ed. 1954) ("*Law*, specif., an expression of an intention to inflict loss or harm on another by illegal means"); Black's Law Dictionary 1519 (8th ed. 2004) ("A communicated intent to inflict harm or loss on another").

These definitions, however, speak to what the statement conveys—not to the mental state of the author. For example, an anonymous letter that says "I'm going to kill you" is "an expression of an intention to inflict loss or harm" regardless of the author's intent. A victim who receives that letter in the mail has received a threat, even if the author believes (wrongly) that his message will be taken as a joke.

For its part, the Government argues that Section 875(c) should be read in light of its neighboring provisions, Sections 875(b) and (d). Those provisions also prohibit certain types of threats, but expressly include a mental state requirement of an "intent to extort." See 18 U. S. C. § 875(b) (proscribing threats to injure or kidnap made "with intent to extort"); § 875(d) (proscribing threats to property or reputation made "with intent to extort"). According to the Government, the express "intent to extort" requirements in Sections 875(b) and (d) should preclude courts from implying an unexpressed "intent to threaten" requirement in Section 875(c). See *Russello* v. *United States*, 464 U. S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

The Government takes this *expressio unius est exclusio alterius* canon too far. The fact that Congress excluded the requirement of an "intent to extort" from Section 875(c) is strong evidence that Congress did not mean to confine Section 875(c) to crimes of extortion. But that does not suggest that Congress, at the same time, also meant to exclude a requirement that a defendant act with a certain mental state

in communicating a threat. The most we can conclude from the language of Section 875(c) and its neighboring provisions is that Congress meant to proscribe a broad class of threats in Section 875(c), but did not identify what mental state, if any, a defendant must have to be convicted.

In sum, neither Elonis nor the Government has identified any indication of a particular mental state requirement in the text of Section 875(c).

B

The fact that the statute does not specify any required mental state, however, does not mean that none exists. We have repeatedly held that "mere omission from a criminal enactment of any mention of criminal intent" should not be read "as dispensing with it." *Morissette* v. *United States*, 342 U. S. 246, 250 (1952). This rule of construction reflects the basic principle that "wrongdoing must be conscious to be criminal." *Id.*, at 252. As Justice Jackson explained, this principle is "as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Id.*, at 250. The "central thought" is that a defendant must be "blameworthy in mind" before he can be found guilty, a concept courts have expressed over time through various terms such as *mens rea*, scienter, malice aforethought, guilty knowledge, and the like. *Id.*, at 252; 1 W. LaFave, Substantive Criminal Law § 5.1, pp. 332–333 (2d ed. 2003). Although there are exceptions, the "general rule" is that a guilty mind is "a necessary element in the indictment and proof of every crime." *United States* v. *Balint*, 258 U. S. 250, 251 (1922). We therefore generally "interpret[ ] criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them." *United States* v. *X-Citement Video, Inc.*, 513 U. S. 64, 70 (1994).

This is not to say that a defendant must know that his conduct is illegal before he may be found guilty. The famil-

iar maxim "ignorance of the law is no excuse" typically holds true. Instead, our cases have explained that a defendant generally must "know the facts that make his conduct fit the definition of the offense," *Staples* v. *United States*, 511 U. S. 600, 608, n. 3 (1994), even if he does not know that those facts give rise to a crime.

Morissette, for example, involved an individual who had taken spent shell casings from a Government bombing range, believing them to have been abandoned. During his trial for "knowingly convert[ing]" property of the United States, the judge instructed the jury that the only question was whether the defendant had knowingly taken the property without authorization. 342 U. S., at 248–249. This Court reversed the defendant's conviction, ruling that he had to know not only that he was taking the casings, but also that someone else still had property rights in them. He could not be found liable "if he truly believed [the casings] to be abandoned." *Id.*, at 271; see *id.*, at 276.

By the same token, in *Liparota* v. *United States*, we considered a statute making it a crime to knowingly possess or use food stamps in an unauthorized manner. 471 U. S. 419, 420 (1985). The Government's argument, similar to its position in this case, was that a defendant's conviction could be upheld if he knowingly possessed or used the food stamps, and in fact his possession or use was unauthorized. *Id.*, at 423. But this Court rejected that interpretation of the statute, because it would have criminalized "a broad range of apparently innocent conduct" and swept in individuals who had no knowledge of the facts that made their conduct blameworthy. *Id.*, at 426. For example, the statute made it illegal to use food stamps at a store that charged higher prices to food stamp customers. Without a mental state requirement in the statute, an individual who unwittingly paid higher prices would be guilty under the Government's interpretation. *Ibid.* The Court noted that Congress *could* have intended to cover such a "broad range of conduct," but

declined "to adopt such a sweeping interpretation" in the absence of a clear indication that Congress intended that result. *Id.*, at 427. The Court instead construed the statute to require knowledge of the facts that made the use of the food stamps unauthorized. *Id.*, at 425.

To take another example, in *Posters 'N' Things, Ltd.* v. *United States*, this Court interpreted a federal statute prohibiting the sale of drug paraphernalia. 511 U. S. 513 (1994). Whether the items in question qualified as drug paraphernalia was an objective question that did not depend on the defendant's state of mind. *Id.*, at 517–522. But, we held, an individual could not be convicted of selling such paraphernalia unless he "knew that the items at issue [were] likely to be used with illegal drugs." *Id.*, at 524. Such a showing was necessary to establish the defendant's culpable state of mind.

And again, in *X-Citement Video*, we considered a statute criminalizing the distribution of visual depictions of minors engaged in sexually explicit conduct. 513 U. S., at 68. We rejected a reading of the statute which would have required only that a defendant knowingly send the prohibited materials, regardless of whether he knew the age of the performers. *Id.*, at 68–69. We held instead that a defendant must also know that those depicted were minors, because that was "the crucial element separating legal innocence from wrongful conduct." *Id.*, at 73. See also *Staples*, 511 U. S., at 619 (defendant must know that his weapon had automatic firing capability to be convicted of possession of such a weapon).

When interpreting federal criminal statutes that are silent on the required mental state, we read into the statute "only that *mens rea* which is necessary to separate wrongful conduct from 'otherwise innocent conduct.'" *Carter* v. *United States*, 530 U. S. 255, 269 (2000) (quoting *X-Citement Video*, 513 U. S., at 72). In some cases, a general requirement that a defendant *act* knowingly is itself an adequate safeguard. For example, in *Carter*, we considered whether a conviction

under 18 U. S. C. § 2113(a), for taking "by force and violence" items of value belonging to or in the care of a bank, requires that a defendant have the intent to steal. 530 U. S., at 261. We held that once the Government proves the defendant forcibly took the money, "the concerns underlying the presumption in favor of scienter are fully satisfied, for a forceful taking—even by a defendant who takes under a good-faith claim of right—falls outside the realm of . . . 'otherwise innocent'" conduct. *Id.*, at 269–270. In other instances, however, requiring only that the defendant act knowingly "would fail to protect the innocent actor." *Id.*, at 269. A statute similar to Section 2113(a) that did not require a forcible taking or the intent to steal "would run the risk of punishing seemingly innocent conduct in the case of a defendant who peaceably takes money believing it to be his." *Ibid.* In such a case, the Court explained, the statute "would need to be read to require . . . that the defendant take the money with 'intent to steal or purloin.'" *Ibid.*

C

Section 875(c), as noted, requires proof that a communication was transmitted and that it contained a threat. The "presumption in favor of a scienter requirement should apply to *each* of the statutory elements that criminalize otherwise innocent conduct." *X-Citement Video*, 513 U. S., at 72 (emphasis added). The parties agree that a defendant under Section 875(c) must know that he is transmitting a communication. But communicating *something* is not what makes the conduct "wrongful." Here "the crucial element separating legal innocence from wrongful conduct" is the threatening nature of the communication. *Id.*, at 73. The mental state requirement must therefore apply to the fact that the communication contains a threat.

Elonis's conviction, however, was premised solely on how his posts would be understood by a reasonable person. Such a "reasonable person" standard is a familiar feature of civil

liability in tort law, but is inconsistent with "the conventional requirement for criminal conduct—*awareness* of some wrongdoing." *Staples*, 511 U. S., at 606–607 (quoting *United States* v. *Dotterweich*, 320 U. S. 277, 281 (1943); emphasis added). Having liability turn on whether a "reasonable person" regards the communication as a threat—regardless of what the defendant thinks—"reduces culpability on the all-important element of the crime to negligence," *Jeffries*, 692 F. 3d, at 484 (Sutton, J., *dubitante*), and we "have long been reluctant to infer that a negligence standard was intended in criminal statutes," *Rogers* v. *United States*, 422 U. S. 35, 47 (1975) (Marshall, J., concurring) (citing *Morissette*, 342 U. S. 246). See 1 C. Torcia, Wharton's Criminal Law § 27, pp. 171–172 (15th ed. 1993); *Cochran* v. *United States*, 157 U. S. 286, 294 (1895) (defendant could face "liability in a civil action for negligence, but he could only be held criminally for an evil intent actually existing in his mind"). Under these principles, "what [Elonis] thinks" does matter. App. 286.

The Government is at pains to characterize its position as something other than a negligence standard, emphasizing that its approach would require proof that a defendant "comprehended [the] contents and context" of the communication. Brief for United States 29. The Government gives two examples of individuals who, in its view, would lack this necessary mental state—a "foreigner, ignorant of the English language," who would not know the meaning of the words at issue, or an individual mailing a sealed envelope without knowing its contents. *Ibid.* But the fact that the Government would require a defendant to actually know the words of and circumstances surrounding a communication does not amount to a rejection of negligence. Criminal negligence standards often incorporate "the circumstances known" to a defendant. ALI, Model Penal Code § 2.02(2)(d) (1985). See *id.*, Comment 4, at 241; 1 LaFave, Substantive Criminal Law § 5.4, at 372–373. Courts then ask, however, whether a reasonable person equipped with that knowledge, not the actual

defendant, would have recognized the harmfulness of his conduct. That is precisely the Government's position here: Elonis can be convicted, the Government contends, if he himself knew the contents and context of his posts, and a reasonable person would have recognized that the posts would be read as genuine threats. That is a negligence standard.

In support of its position the Government relies most heavily on *Hamling* v. *United States*, 418 U. S. 87 (1974). In that case, the Court rejected the argument that individuals could be convicted of mailing obscene material only if they knew the "legal status of the materials" distributed. *Id.*, at 121. Absolving a defendant of liability because he lacked the knowledge that the materials were legally obscene "would permit the defendant to avoid prosecution by simply claiming that he had not brushed up on the law." *Id.*, at 123. It was instead enough for liability that "a defendant had knowledge of the contents of the materials he distributed, and that he knew the character and nature of the materials." *Ibid.*

This holding does not help the Government. In fact, the Court in *Hamling* approved a state court's conclusion that requiring a defendant to know the character of the material incorporated a "vital element of scienter" so that "not innocent but *calculated purveyance* of filth . . . is exorcised." *Id.*, at 122 (quoting *Mishkin* v. *New York*, 383 U. S. 502, 510 (1966); internal quotation marks omitted). In this case, "calculated purveyance" of a threat would require that Elonis know the threatening nature of his communication. Put simply, the mental state requirement the Court approved in *Hamling* turns on whether a defendant knew the *character* of what was sent, not simply its contents and context.

Contrary to the dissent's suggestion, see *post*, at 753, 758 (opinion of THOMAS, J.), nothing in *Rosen* v. *United States*, 161 U. S. 29 (1896), undermines this reading. The defendant's contention in *Rosen* was that his indictment for mailing obscene material was invalid because it did not allege that

he was aware of the contents of the mailing. *Id.*, at 31–33. That is not at issue here; there is no dispute that Elonis knew the words he communicated. The defendant also argued that he could not be convicted of mailing obscene material if he did not know that the material "could be properly or justly characterized as obscene." *Id.*, at 41. The Court correctly rejected this "ignorance of the law" defense; no such contention is at issue here. See *supra*, at 735.

* * *

In light of the foregoing, Elonis's conviction cannot stand. The jury was instructed that the Government need prove only that a reasonable person would regard Elonis's communications as threats, and that was error. Federal criminal liability generally does not turn solely on the results of an act without considering the defendant's mental state. That understanding "took deep and early root in American soil" and Congress left it intact here: Under Section 875(c), "wrongdoing must be conscious to be criminal." *Morissette*, 342 U. S., at 252.

There is no dispute that the mental state requirement in Section 875(c) is satisfied if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat. See Tr. of Oral Arg. 25, 56. In response to a question at oral argument, Elonis stated that a finding of recklessness would not be sufficient. See *id.*, at 8–9. Neither Elonis nor the Government has briefed or argued that point, and we accordingly decline to address it. See *Department of Treasury, IRS* v. *FLRA*, 494 U. S. 922, 933 (1990) (this Court is "poorly situated" to address an argument the Court of Appeals did not consider, the parties did not brief, and counsel addressed in "only the most cursory fashion at oral argument"). Given our disposition, it is not necessary to consider any First Amendment issues.

Both JUSTICE ALITO and JUSTICE THOMAS complain about our not deciding whether recklessness suffices for liability under Section 875(c). *Post*, at 742–743 (ALITO, J., concurring in part and dissenting in part); *post*, at 750–751 (opinion of THOMAS, J.). JUSTICE ALITO contends that each party "argued" this issue, *post*, at 743, but they did not address it at all until oral argument, and even then only briefly. See Tr. of Oral Arg. 8, 38–39.

JUSTICE ALITO also suggests that we have not clarified confusion in the lower courts. That is wrong. Our holding makes clear that negligence is not sufficient to support a conviction under Section 875(c), contrary to the view of nine Courts of Appeals. Pet. for Cert. 17. There was and is no circuit conflict over the question JUSTICE ALITO and JUSTICE THOMAS would have us decide—whether recklessness suffices for liability under Section 875(c). No Court of Appeals has even addressed that question. We think that is more than sufficient "justification," *post*, at 743 (opinion of ALITO, J.), for us to decline to be the first appellate tribunal to do so.

Such prudence is nothing new. See *United States* v. *Bailey*, 444 U. S. 394, 407 (1980) (declining to decide whether mental state of recklessness or negligence could suffice for criminal liability under 18 U. S. C. § 751, even though a "court may someday confront a case" presenting issue); *Ginsberg* v. *New York*, 390 U. S. 629, 644–645 (1968) (rejecting defendant's challenge to obscenity law "makes it unnecessary for us to define further today 'what sort of mental element is requisite to a constitutionally permissible prosecution' "); *Smith* v. *California*, 361 U. S. 147, 154 (1959) (overturning conviction because lower court did not require any mental element under statute, but noting that "[w]e need not and most definitely do not pass today on what sort of mental element is requisite to a constitutionally permissible prosecution"); cf. *Gulf Oil Co.* v. *Bernard*, 452 U. S. 89, 103–104 (1981) (finding a lower court's order impermissible under the First Amend-

ment but not deciding "what standards are mandated by the First Amendment in this kind of case").

We may be "capable of deciding the recklessness issue," *post*, at 743 (opinion of ALITO, J.), but following our usual practice of awaiting a decision below and hearing from the parties would help ensure that we decide it correctly.

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

It is so ordered.

JUSTICE ALITO, concurring in part and dissenting in part.

In *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803), the Court famously proclaimed: "It is emphatically the province and duty of the judicial department to say what the law is." Today, the Court announces: It is emphatically the prerogative of this Court to say only what the law is not.

The Court's disposition of this case is certain to cause confusion and serious problems. Attorneys and judges need to know which mental state is required for conviction under 18 U. S. C. § 875(c), an important criminal statute. This case squarely presents that issue, but the Court provides only a partial answer. The Court holds that the jury instructions in this case were defective because they required only negligence in conveying a threat. But the Court refuses to explain what type of intent was necessary. Did the jury need to find that Elonis had the *purpose* of conveying a true threat? Was it enough if he *knew* that his words conveyed such a threat? Would *recklessness* suffice? The Court declines to say. Attorneys and judges are left to guess.

This will have regrettable consequences. While this Court has the luxury of choosing its docket, lower courts and juries are not so fortunate. They must actually decide cases, and this means applying a standard. If purpose or knowledge is needed and a district court instructs the jury that recklessness suffices, a defendant may be wrongly con-

victed. On the other hand, if recklessness is enough, and the jury is told that conviction requires proof of more, a guilty defendant may go free. We granted review in this case to resolve a disagreement among the Circuits. But the Court has compounded—not clarified—the confusion.

There is no justification for the Court's refusal to provide an answer. The Court says that "[n]either Elonis nor the Government has briefed or argued" the question whether recklessness is sufficient. *Ante*, at 740. But in fact both parties addressed that issue. Elonis argued that recklessness is not enough, and the Government argued that it more than suffices. If the Court thinks that we cannot decide the recklessness question without additional help from the parties, we can order further briefing and argument. In my view, however, we are capable of deciding the recklessness issue, and we should resolve that question now.

I

Section 875(c) provides in relevant part:

> "Whoever transmits in interstate or foreign commerce any communication containing . . . any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both."

Thus, conviction under this provision requires proof that: (1) the defendant transmitted something, (2) the thing transmitted was a threat to injure the person of another, and (3) the transmission was in interstate or foreign commerce.

At issue in this case is the *mens rea* required with respect to the second element—that the thing transmitted was a threat to injure the person of another. This Court has not defined the meaning of the term "threat" in § 875(c), but in construing the same term in a related statute, the Court distinguished a "true 'threat' " from facetious or hyperbolic remarks. *Watts* v. *United States*, 394 U. S. 705, 708 (1969) (*per curiam*). In my view, the term "threat" in § 875(c) can fairly

be defined as a statement that is reasonably interpreted as "an expression of an intention to inflict evil, injury, or damage on another." Webster's Third New International Dictionary 2382 (1976). Conviction under § 875(c) demands proof that the defendant's transmission was in fact a threat, *i. e.*, that it is reasonable to interpret the transmission as an expression of an intent to harm another. In addition, it must be shown that the defendant was at least reckless as to whether the transmission met that requirement.

Why is recklessness enough? My analysis of the *mens rea* issue follows the same track as the Court's, as far as it goes. I agree with the Court that we should presume that criminal statutes require some sort of *mens rea* for conviction. See *ante*, at 734–737. To be sure, this presumption marks a departure from the way in which we generally interpret statutes. We "ordinarily resist reading words or elements into a statute that do not appear on its face." *Bates* v. *United States*, 522 U. S. 23, 29 (1997). But this step is justified by a well-established pattern in our criminal laws. "For several centuries (at least since 1600) the different common law crimes have been so defined as to require, for guilt, that the defendant's acts or omissions be accompanied by one or more of the various types of fault (intention, knowledge, recklessness or—more rarely—negligence)." 1 W. LaFave, Substantive Criminal Law § 5.5, p. 381 (2003). Based on these "background rules of the common law, in which the requirement of some *mens rea* for a crime is firmly embedded," we require "some indication of congressional intent, express or implied, . . . to dispense with *mens rea* as an element of a crime." *Staples* v. *United States*, 511 U. S. 600, 605–606 (1994).

For a similar reason, I agree with the Court that we should presume that an offense like that created by § 875(c) requires more than negligence with respect to a critical element like the one at issue here. See *ante*, at 737–740. As the Court states, "[w]hen interpreting federal criminal statutes that

are silent on the required mental state, we read into the statute 'only that *mens rea* which is necessary to separate wrongful conduct from "otherwise innocent conduct."'" *Ante*, at 736 (quoting *Carter* v. *United States*, 530 U. S. 255, 269 (2000)). Whether negligence is morally culpable is an interesting philosophical question, but the answer is at least sufficiently debatable to justify the presumption that a serious offense against the person that lacks any clear common-law counterpart should be presumed to require more.

Once we have passed negligence, however, no further presumptions are defensible. In the hierarchy of mental states that may be required as a condition for criminal liability, the *mens rea* just above negligence is recklessness. Negligence requires only that the defendant "should [have] be[en] aware of a substantial and unjustifiable risk," ALI, Model Penal Code §2.02(2)(d), p. 226 (1985), while recklessness exists "when a person disregards a risk of harm of which he is aware," *Farmer* v. *Brennan*, 511 U. S. 825, 837 (1994); Model Penal Code §2.02(2)(c). And when Congress does not specify a *mens rea* in a criminal statute, we have no justification for inferring that anything more than recklessness is needed. It is quite unusual for us to interpret a statute to contain a requirement that is nowhere set out in the text. Once we have reached recklessness, we have gone as far as we can without stepping over the line that separates interpretation from amendment.

There can be no real dispute that recklessness regarding a risk of serious harm is wrongful conduct. In a wide variety of contexts, we have described reckless conduct as morally culpable. See, *e. g.*, *Farmer*, *supra*, at 835–836 (deliberate indifference to an inmate's harm); *Garrison* v. *Louisiana*, 379 U. S. 64, 75 (1964) (criminal libel); *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 279–280 (1964) (civil libel). Indeed, this Court has held that "reckless disregard for human life" may justify the death penalty. *Tison* v. *Arizona*, 481 U. S. 137, 157 (1987). Someone who acts recklessly with re-

spect to conveying a threat necessarily grasps that he is not engaged in innocent conduct. He is not merely careless. He is aware that others could regard his statements as a threat, but he delivers them anyway.

Accordingly, I would hold that a defendant may be convicted under § 875(c) if he or she consciously disregards the risk that the communication transmitted will be interpreted as a true threat. Nothing in the Court's noncommittal opinion prevents lower courts from adopting that standard.

II

There remains the question whether interpreting § 875(c) to require no more than recklessness with respect to the element at issue here would violate the First Amendment. Elonis contends that it would. I would reject that argument.

It is settled that the Constitution does not protect true threats. See *Virginia* v. *Black*, 538 U. S. 343, 359–360 (2003); *R. A. V.* v. *St. Paul*, 505 U. S. 377, 388 (1992); *Watts*, 394 U. S., at 707–708. And there are good reasons for that rule: True threats inflict great harm and have little if any social value. A threat may cause serious emotional stress for the person threatened and those who care about that person, and a threat may lead to a violent confrontation. It is true that a communication containing a threat may include other statements that have value and are entitled to protection. But that does not justify constitutional protection for the threat itself.

Elonis argues that the First Amendment protects a threat if the person making the statement does not actually intend to cause harm. In his view, if a threat is made for a "'therapeutic'" purpose, "to 'deal with the pain' . . . of a wrenching event," or for "cathartic" reasons, the threat is protected. Brief for Petitioner 52–53. But whether or not the person making a threat intends to cause harm, the damage is the same. And the fact that making a threat may have a thera-

peutic or cathartic effect for the speaker is not sufficient to justify constitutional protection. Some people may experience a therapeutic or cathartic benefit only if they know that their words will cause harm or only if they actually plan to carry out the threat, but surely the First Amendment does not protect them.

Elonis also claims his threats were constitutionally protected works of art. Words like his, he contends, are shielded by the First Amendment because they are similar to words uttered by rappers and singers in public performances and recordings. To make this point, his brief includes a lengthy excerpt from the lyrics of a rap song in which a very well-compensated rapper imagines killing his ex-wife and dumping her body in a lake. If this celebrity can utter such words, Elonis pleads, amateurs like him should be able to post similar things on social media. But context matters. "Taken in context," lyrics in songs that are performed for an audience or sold in recorded form are unlikely to be interpreted as a real threat to a real person. *Watts*, *supra*, at 708. Statements on social media that are pointedly directed at their victims, by contrast, are much more likely to be taken seriously. To hold otherwise would grant a license to anyone who is clever enough to dress up a real threat in the guise of rap lyrics, a parody, or something similar.

The facts of this case illustrate the point. Imagine the effect on Elonis's estranged wife when she read this: "'If I only knew then what I know now . . . I would have smothered your ass with a pillow, dumped your body in the back seat, dropped you off in Toad Creek and made it look like a rape and murder.'" 730 F. 3d 321, 324 (CA3 2013). Or this: "There's one way to love you but a thousand ways to kill you. I'm not going to rest until your body is a mess, soaked in blood and dying from all the little cuts." *Ibid.* Or this: "Fold up your [protection from abuse order] and put it in your pocket[.] Is it thick enough to stop a bullet?" *Id.*, at 325.

There was evidence that Elonis made sure his wife saw his posts. And she testified that they made her feel "'extremely afraid'" and "'like [she] was being stalked.'" *Ibid.* Considering the context, who could blame her? Threats of violence and intimidation are among the most favored weapons of domestic abusers, and the rise of social media has only made those tactics more commonplace. See Brief for National Network to End Domestic Violence et al. as *Amici Curiae* 4–16. A fig leaf of artistic expression cannot convert such hurtful, valueless threats into protected speech.

It can be argued that § 875(c), if not limited to threats made with the intent to harm, will chill statements that do not qualify as true threats, *e. g.*, statements that may be literally threatening but are plainly not meant to be taken seriously. We have sometimes cautioned that it is necessary to "exten[d] a measure of strategic protection" to otherwise unprotected false statements of fact in order to ensure enough "'breathing space'" for protected speech. *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 342 (1974) (quoting *NAACP* v. *Button*, 371 U. S. 415, 433 (1963)). A similar argument might be made with respect to threats. But we have also held that the law provides adequate breathing space when it requires proof that false statements were made with reckless disregard of their falsity. See *New York Times*, 376 U. S., at 279–280 (civil liability); *Garrison*, 379 U. S., at 74–75 (criminal liability). Requiring proof of recklessness is similarly sufficient here.

III

Finally, because the jury instructions in this case did not require proof of recklessness, I would vacate the judgment below and remand for the Court of Appeals to decide in the first instance whether Elonis's conviction could be upheld under a recklessness standard.

We do not lightly overturn criminal convictions, even where it appears that the district court might have erred. To benefit from a favorable ruling on appeal, a defendant

must have actually asked for the legal rule the appellate court adopts. Rule 30(d) of the Federal Rules of Criminal Procedure requires a defendant to "inform the court of the specific objection and the grounds for the objection." An objection cannot be vague or open-ended. It must *specifically* identify the alleged error. And failure to lodge a sufficient objection "precludes appellate review," except for plain error. Rule 30(d); see also 2A C. Wright & P. Henning, Federal Practice and Procedure § 484, pp. 433–435 (4th ed. 2009).

At trial, Elonis objected to the District Court's instruction, but he did not argue for recklessness. Instead, he proposed instructions that would have required proof that he acted purposefully or with knowledge that his statements would be received as threats. See App. 19–21. He advanced the same position on appeal and in this Court. See Brief for Petitioner 29 ("Section 875(c) requires proof that the defendant *intended* the charged statement to be a 'threat' " (emphasis in original)); Corrected Brief of Appellant in No. 12–3798 (CA3), p. 14 ("[A] 'true threat' has been uttered only if the speaker acted with *subjective intent to threaten*" (same)). And at oral argument before this Court, he expressly disclaimed any agreement with a recklessness standard—which the Third Circuit remains free to adopt. Tr. of Oral Arg. 8:22–23 ("[W]e would say that recklessness is not enough"). I would therefore remand for the Third Circuit to determine if Elonis's failure (indeed, *refusal*) to argue for recklessness prevents reversal of his conviction.

The Third Circuit should also have the opportunity to consider whether the conviction can be upheld on harmless-error grounds. "We have often applied harmless-error analysis to cases involving improper instructions." *Neder* v. *United States*, 527 U. S. 1, 9 (1999); see also, *e. g.*, *Pope* v. *Illinois*, 481 U. S. 497, 503–504 (1987) (remanding for harmless-error analysis after holding that jury instruction misstated obscenity standard). And the Third Circuit has previously upheld

convictions where erroneous jury instructions proved harmless. See, *e. g.*, *United States* v. *Saybolt*, 577 F. 3d 195, 206–207 (2009). It should be given the chance to address that possibility here.

JUSTICE THOMAS, dissenting.

We granted certiorari to resolve a conflict in the lower courts over the appropriate mental state for threat prosecutions under 18 U. S. C. § 875(c). Save two, every Circuit to have considered the issue—11 in total—has held that this provision demands proof only of general intent, which here requires no more than that a defendant knew he transmitted a communication, knew the words used in that communication, and understood the ordinary meaning of those words in the relevant context. The outliers are the Ninth and Tenth Circuits, which have concluded that proof of an intent to threaten was necessary for conviction. Adopting the minority position, Elonis urges us to hold that § 875(c) and the First Amendment require proof of an intent to threaten. The Government in turn advocates a general-intent approach.

Rather than resolve the conflict, the Court casts aside the approach used in nine Circuits and leaves nothing in its place. Lower courts are thus left to guess at the appropriate mental state for § 875(c). All they know after today's decision is that a requirement of general intent will not do. But they can safely infer that a majority of this Court would not adopt an intent-to-threaten requirement, as the opinion carefully leaves open the possibility that recklessness may be enough. See *ante,* at 740–742.

This failure to decide throws everyone from appellate judges to everyday Facebook users into a state of uncertainty. This uncertainty could have been avoided had we simply adhered to the background rule of the common law favoring general intent. Although I am sympathetic to my colleagues' policy concerns about the risks associated with threat prosecutions, the answer to such fears is not to discard

our traditional approach to state-of-mind requirements in criminal law. Because the Court of Appeals properly applied the general-intent standard, and because the communications transmitted by Elonis were "true threats" unprotected by the First Amendment, I would affirm the judgment below.

I

A

Enacted in 1939, § 875(c) provides, "Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both." Because § 875(c) criminalizes speech, the First Amendment requires that the term "threat" be limited to a narrow class of historically unprotected communications called "true threats." To qualify as a true threat, a communication must be a serious expression of an intention to commit unlawful physical violence, not merely "political hyperbole"; "vehement, caustic, and sometimes unpleasantly sharp attacks"; or "vituperative, abusive, and inexact" statements. *Watts* v. *United States*, 394 U. S. 705, 708 (1969) (*per curiam*) (internal quotation marks omitted). It also cannot be determined solely by the reaction of the recipient, but must instead be "determined by the interpretation of a *reasonable* recipient familiar with the context of the communication," *United States* v. *Darby*, 37 F. 3d 1059, 1066 (CA4 1994) (emphasis added), lest historically protected speech be suppressed at the will of an eggshell observer, cf. *Cox* v. *Louisiana*, 379 U. S. 536, 551 ("[C]onstitutional rights may not be denied simply because of hostility to their assertion or exercise" (internal quotation marks omitted)). There is thus no dispute that, at a minimum, § 875(c) requires an objective showing: The communication must be one that "a reasonable observer would construe as a true threat to another." *United States* v. *Jeffries*, 692

F. 3d 473, 478 (CA6 2012). And there is no dispute that the posts at issue here meet that objective standard.

The only dispute in this case is about the state of mind necessary to convict Elonis for making those posts. On its face, § 875(c) does not demand any particular mental state. As the Court correctly explains, the word "threat" does not itself contain a *mens rea* requirement. See *ante*, at 732–734. But because we read criminal statutes "in light of the background rules of the common law, in which the requirement of some *mens rea* for a crime is firmly embedded," we require "some indication of congressional intent, express or implied, . . . to dispense with *mens rea* as an element of a crime." *Staples* v. *United States*, 511 U. S. 600, 605–606 (1994) (citation omitted). Absent such indicia, we ordinarily apply the "presumption in favor of scienter" to require only "proof of *general intent*—that is, that the defendant [must] posses[s] knowledge with respect to the *actus reus* of the crime." *Carter* v. *United States*, 530 U. S. 255, 268 (2000).

Under this "conventional *mens rea* element," "the defendant [must] know the facts that make his conduct illegal," *Staples*, *supra*, at 605, but he need not know *that* those facts make his conduct illegal. It has long been settled that "the knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law." *Bryan* v. *United States*, 524 U. S. 184, 192 (1998) (internal quotation marks omitted). For instance, in *Posters 'N' Things, Ltd.* v. *United States*, 511 U. S. 513 (1994), the Court addressed a conviction for selling drug paraphernalia under a statute forbidding anyone to "'make use of the services of the Postal Service or other interstate conveyance as part of a scheme to sell drug paraphernalia,'" *id.*, at 516 (quoting 21 U. S. C. § 857(a)(1) (1988 ed.)). In applying the presumption in favor of scienter, the Court concluded that "although the Government must establish that the defendant knew that the items at issue are likely to be used with illegal drugs, it need not prove specific knowledge that the items are 'drug para-

phernalia' within the meaning of the statute." 511 U. S., at 524.

Our default rule in favor of general intent applies with full force to criminal statutes addressing speech. Well over 100 years ago, this Court considered a conviction under a federal obscenity statute that punished anyone "'who shall knowingly deposit, or cause to be deposited, for mailing or delivery,'" any "'obscene, lewd, or lascivious book, pamphlet, picture, paper, writing, print, or other publication of an indecent character.'" *Rosen* v. *United States*, 161 U. S. 29, 30 (1896) (quoting Rev. Stat. § 3893). In that case, as here, the defendant argued that, even if "he may have had . . . actual knowledge or notice of [the paper's] contents" when he put it in the mail, he could not "be convicted of the offence . . . unless he knew or believed that such paper could be properly or justly characterized as obscene, lewd, and lascivious." 161 U. S., at 41. The Court rejected that theory, concluding that if the material was actually obscene and "deposited in the mail by one who knew or had notice at the time of its contents, the offence is complete, although the defendant himself did not regard the paper as one that the statute forbade to be carried in the mails." *Ibid.* As the Court explained, "Congress did not intend that the question as to the character of the paper should depend upon the opinion or belief of the person who, with knowledge or notice of [the paper's] contents, assumed the responsibility of putting it in the mails of the United States," because "[e]very one who uses the mails of the United States for carrying papers or publications must take notice of . . . what must be deemed obscene, lewd, and lascivious." *Id.*, at 41–42.

This Court reaffirmed *Rosen*'s holding in *Hamling* v. *United States*, 418 U. S. 87 (1974), when it considered a challenge to convictions under the successor federal statute, see *id.*, at 98, n. 8 (citing 18 U. S. C. § 1461 (1970 ed.)). Relying on *Rosen*, the Court rejected the argument that the statute required "proof both of knowledge of the contents of the ma-

terial and awareness of the obscene character of the material." 418 U. S., at 120 (internal quotation marks omitted). In approving the jury instruction that the defendants' "belief as to the obscenity or non-obscenity of the material is irrelevant," the Court declined to hold "that the prosecution must prove a defendant's knowledge of the legal status of the materials he distributes." *Id.*, at 120–121 (internal quotation marks omitted). To rule otherwise, the Court observed, "would permit the defendant to avoid prosecution by simply claiming that he had not brushed up on the law." *Id.*, at 123.

Decades before § 875(c)'s enactment, courts took the same approach to the first federal threat statute, which prohibited threats against the President. In 1917, Congress enacted a law punishing anyone

> "who knowingly and willfully deposits or causes to be deposited for conveyance in the mail . . . any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, or who knowingly and willfully otherwise makes any such threat against the President." Act of Feb. 14, 1917, ch. 64, 39 Stat. 919.

Courts applying this statute shortly after its enactment appeared to require proof of only general intent. In *Ragansky* v. *United States*, 253 F. 643 (CA7 1918), for instance, a Court of Appeals held that "[a] threat is knowingly made, if the maker of it comprehends the meaning of the words uttered by him," and "is willfully made, if in addition to comprehending the meaning of his words, the maker voluntarily and intentionally utters them as the declaration of an apparent determination to carry them into execution," *id.*, at 645. The court consequently rejected the defendant's argument that he could not be convicted when his language "[c]oncededly . . . constituted such a threat" but was meant only "as a joke." *Id.*, at 644. Likewise, in *United States* v. *Stobo*, 251 F. 689

(Del. 1918), a District Court rejected the defendant's objection that there was no allegation "of any facts . . . indicating any intention . . . on the part of the defendant . . . to menace the President of the United States," *id.*, at 693 (internal quotation marks omitted). As it explained, the defendant "is punishable under the act whether he uses the words lightly or with a set purpose to kill," as "[t]he effect upon the minds of the hearers, who cannot read his inward thoughts, is precisely the same." *Ibid.* At a minimum, there is no historical practice requiring more than general intent when a statute regulates speech.

B

Applying ordinary rules of statutory construction, I would read § 875(c) to require proof of general intent. To "know the facts that make his conduct illegal" under § 875(c), see *Staples*, 511 U. S., at 605, a defendant must know that he transmitted a communication in interstate or foreign commerce that contained a threat. Knowing that the communication contains a "threat"—a serious expression of an intention to engage in unlawful physical violence—does not, however, require knowing that a jury will conclude that the communication contains a threat as a matter of law. Instead, like one who mails an "obscene" publication and is prosecuted under the federal obscenity statute, a defendant prosecuted under § 875(c) must know only the words used in that communication, along with their ordinary meaning in context.

General intent divides those who know the facts constituting the *actus reus* of this crime from those who do not. For example, someone who transmits a threat who does not know English—or who knows English, but perhaps does not know a threatening idiom—lacks the general intent required under § 875(c). See *Ragansky*, *supra*, at 645 ("[A] foreigner, ignorant of the English language, repeating [threatening] words without knowledge of their meaning, may not knowingly have made a threat"). Likewise, the hapless mailman who

delivers a threatening letter, ignorant of its contents, should not fear prosecution. A defendant like Elonis, however, who admits that he "knew that what [he] was saying was violent" but supposedly "just wanted to express [him]self," App. 205, acted with the general intent required under § 875(c), even if he did not know that a jury would conclude that his communication constituted a "threat" as a matter of law.

Demanding evidence only of general intent also corresponds to § 875(c)'s statutory backdrop. As previously discussed, before the enactment of § 875(c), courts had read the Presidential threats statute to require proof only of general intent. Given Congress' presumptive awareness of this application of the Presidential threats statute—not to mention this Court's similar approach in the obscenity context, see *Rosen*, 161 U. S., at 41–42—it is difficult to conclude that the Congress that enacted § 875(c) in 1939 understood it to contain an implicit mental-state requirement apart from general intent. There is certainly no textual evidence to support this conclusion. If anything, the text supports the opposite inference, as § 875(c), unlike the Presidential threats statute, contains no reference to knowledge or willfulness. Nothing in the statute suggests that Congress departed from the "conventional *mens rea* element" of general intent, *Staples*, *supra*, at 605; I would not impose a higher mental-state requirement here.

C

The majority refuses to apply these ordinary background principles. Instead, it casts my application of general intent as a negligence standard disfavored in the criminal law. *Ante*, at 737–740. But that characterization misses the mark. Requiring general intent in this context is not the same as requiring mere negligence. Like the mental-state requirements adopted in many of the cases cited by the Court, general intent under § 875(c) prevents a defendant from being convicted on the basis of any *fact* beyond his awareness. See, *e. g.*, *United States* v. *X-Citement Video, Inc.*, 513 U. S.

64, 73 (1994) (knowledge of age of persons depicted in explicit materials); *Staples*, *supra*, at 614–615 (knowledge of firing capability of weapon); *Morissette* v. *United States*, 342 U. S. 246, 270–271 (1952) (knowledge that property belonged to another). In other words, the defendant must *know*—not merely be reckless or negligent with respect to the fact—that he is committing the acts that constitute the *actus reus* of the offense.

But general intent requires *no* mental state (not even a negligent one) concerning the "fact" that certain words meet the *legal* definition of a threat. That approach is particularly appropriate where, as here, that legal status is determined by a jury's application of the legal standard of a "threat" to the contents of a communication. And convicting a defendant despite his ignorance of the legal—or objective—status of his conduct does not mean that he is being punished for negligent conduct. By way of example, a defendant who is convicted of murder despite claiming that he acted in self-defense has not been penalized under a negligence standard merely because he does not know that the jury will reject his argument that his "belief in the necessity of using force to prevent harm to himself [was] a reasonable one." See 2 W. LaFave, Substantive Criminal Law § 10.4(c), p. 147 (2d ed. 2003).

The Court apparently does not believe that our traditional approach to the federal obscenity statute involved a negligence standard. It asserts that *Hamling* "approved a state court's conclusion that requiring a defendant to know the character of the material incorporated a 'vital element of scienter' so that 'not innocent but *calculated purveyance* of filth . . . is exorcised.' " *Ante,* at 739 (quoting *Hamling*, 418 U. S., at 122, in turn quoting *Mishkin* v. *New York*, 383 U. S. 502, 510 (1966)). According to the Court, the mental state approved in *Hamling* thus "turns on whether a defendant knew the *character* of what was sent, not simply its contents and context." *Ante,* at 739. It is unclear what the Court

means by its distinction between "character" and "contents and context." "Character" cannot mean *legal* obscenity, as *Hamling* rejected the argument that a defendant must have "awareness of the obscene character of the material." 418 U. S., at 120 (internal quotation marks omitted). Moreover, this discussion was not part of *Hamling*'s holding, which was primarily a reaffirmation of *Rosen*. See 418 U. S., at 120–121; see also *Posters 'N' Things*, 511 U. S., at 524–525 (characterizing *Hamling* as holding that a "statute prohibiting mailing of obscene materials does not require proof that [the] defendant knew the materials at issue met the legal definition of 'obscenity' ").

The majority's treatment of *Rosen* is even less persuasive. To shore up its position, it asserts that the critical portion of *Rosen* rejected an " 'ignorance of the law' defense," and claims that "no such contention is at issue here." *Ante,* at 740. But the thrust of Elonis' challenge is that a § 875(c) conviction cannot stand if the defendant's subjective belief of what constitutes a "threat" differs from that of a reasonable jury. That is akin to the argument the defendant made—and lost—in *Rosen*. That defendant insisted that he could not be convicted for mailing the paper "unless he knew or believed that such paper could be properly or justly characterized as obscene." 161 U. S., at 41. The Court, however, held that the Government did not need to show that the defendant "regard[ed] the paper as one that the statute forbade to be carried in the mails," because the obscene character of the material did not "depend upon the opinion or belief of the person who . . . assumed the responsibility of putting it in the mails." *Ibid.* The majority's muddying of the waters cannot obscure the fact that today's decision is irreconcilable with *Rosen* and *Hamling*.

D

The majority today at least refrains from requiring an intent to threaten for § 875(c) convictions, as Elonis asks us to do. Elonis contends that proof of a defendant's intent to put

the recipient of a threat in fear is necessary for conviction, but that element cannot be found within the statutory text. "[W]e ordinarily resist reading words or elements into a statute that do not appear on its face," including elements similar to the one Elonis proposes. *Bates* v. *United States*, 522 U. S. 23, 29 (1997) (declining to read an "intent to defraud" element into a criminal statute). As the majority correctly explains, nothing in the text of § 875(c) itself requires proof of an intent to threaten. See *ante*, at 732–734. The absence of such a requirement is significant, as Congress knows how to require a heightened *mens rea* in the context of threat offenses. See § 875(b) (providing for the punishment of "[w]hoever, with intent to extort . . . , transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another"); see also § 119 (providing for the punishment of "[w]hoever knowingly makes restricted personal information about [certain officials] . . . publicly available . . . with the intent to threaten").

Elonis nonetheless suggests that an intent-to-threaten element is necessary in order to avoid the risk of punishing innocent conduct. But there is nothing absurd about punishing an individual who, with knowledge of the words he uses and their ordinary meaning in context, makes a threat. For instance, a high school student who sends a letter to his principal stating that he will massacre his classmates with a machinegun, even if he intended the letter as a joke, cannot fairly be described as engaging in innocent conduct. But see *ante*, at 729, 740 (concluding that Elonis' conviction under § 875(c) for discussing a plan to "'initiate the most heinous school shooting ever imagined'" against "'a Kindergarten class'" cannot stand without proof of some unspecified heightened mental state).

Elonis also insists that we read an intent-to-threaten element into § 875(c) in light of the First Amendment. But our practice of construing statutes "to avoid constitutional ques-

tions . . . is not a license for the judiciary to rewrite language enacted by the legislature," *Salinas* v. *United States*, 522 U. S. 52, 59–60 (1997) (internal quotation marks omitted), and ordinary background principles of criminal law do not support rewriting § 875(c) to include an intent-to-threaten requirement. We have not altered our traditional approach to *mens rea* for other constitutional provisions. See, *e. g.*, *Dean* v. *United States*, 556 U. S. 568, 572–574 (2009) (refusing to read an intent-to-discharge-the-firearm element into a mandatory minimum provision concerning the discharge of a firearm during a particular crime). The First Amendment should be treated no differently.

II

In light of my conclusion that Elonis was properly convicted under the requirements of § 875(c), I must address his argument that his threatening posts were nevertheless protected by the First Amendment.

A

Elonis does not contend that threats are constitutionally protected speech, nor could he: "From 1791 to the present, . . . our society . . . has permitted restrictions upon the content of speech in a few limited areas," true threats being one of them. *R. A. V.* v. *St. Paul*, 505 U. S. 377, 382–383 (1992); see *id.*, at 388. Instead, Elonis claims that only *intentional* threats fall within this particular historical exception.

If it were clear that intentional threats alone have been punished in our Nation since 1791, I would be inclined to agree. But that is not the case. Although the Federal Government apparently did not get into the business of regulating threats until 1917, the States have been doing so since the late 18th and early 19th centuries. See, *e. g.*, 1795 N. J. Laws p. 108; Ill. Rev. Code of Laws, Crim. Code § 108 (1827) (1827 Ill. Crim. Code); 1832 Fla. Laws pp. 68–69. And that practice continued even after the States amended their con-

stitutions to include speech protections similar to those in the First Amendment. See, *e. g.*, Fla. Const., Art. I, § 5 (1838); Ill. Const., Art. VIII, § 22 (1818); Mich. Const., Art. I, § 7 (1835); N. J. Const., Art. I, § 5 (1844); J. Hood, Index of Colonial and State Laws of New Jersey 1203, 1235, 1257, 1265 (1905); 1 Ill. Stat., ch. 30, div. 9, § 31 (3d ed. 1873). State practice thus provides at least some evidence of the original meaning of the phrase "freedom of speech" in the First Amendment. See *Roth* v. *United States*, 354 U. S. 476, 481–483 (1957) (engaging in a similar inquiry with respect to obscenity).

Shortly after the founding, several States and Territories enacted laws making it a crime to "knowingly send or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, . . . threatening to maim, wound, kill or murder any person, or to burn his or her [property], though no money, goods or chattels, or other valuable thing shall be demanded," *e. g.*, 1795 N. J. Laws § 57, at 108; see also, *e. g.*, 1816 Ga. Laws p. 178; 1816 Mich. Territory Laws p. 128; 1827 Ill. Crim. Code § 108; 1832 Fla. Laws, at 68–69. These laws appear to be the closest early analogue to § 875(c), as they penalize transmitting a communication containing a threat without proof of a demand to extort something from the victim. Threat provisions explicitly requiring proof of a specific "intent to extort" appeared alongside these laws, see, *e. g.*, 1795 N. J. Laws § 57, at 108, but those provisions are simply the predecessors to § 875(b) and § 875(d), which likewise expressly contain an intent-to-extort requirement.

The laws without that extortion requirement were copies of a 1754 English threat statute subject to only a general-intent requirement. The statute made it a capital offense to "knowingly send any Letter without any Name subscribed thereto, or signed with a fictitious Name . . . threatening to kill or murder any of his Majesty's Subject or Subjects, or to burn their [property], though no Money or Venison or other

valuable Thing shall be demanded." 27 Geo. II, ch. 15, in 7 Eng. Stat. at Large 61 (1754); see also 4 W. Blackstone, Commentaries on the Laws of England 144 (1768) (describing this statute). Early English decisions applying this threat statute indicated that the appropriate mental state was general intent. In *King* v. *Girdwood*, 1 Leach 142, 168 Eng. Rep. 173 (K. B. 1776), for example, the trial court instructed the jurors that, "if they were of opinion that" the "terms of the letter conveyed an actual threat to kill or murder," "and that the prisoner knew the contents of it, they ought to find him guilty; but that if they thought he did not know the contents, or that the words might import any thing less than to kill or murder, they ought to acquit," *id.*, at 143, 168 Eng. Rep., at 173. On appeal following conviction, the judges "thought that the case had been properly left to the Jury." *Ibid.*, 168 Eng. Rep., at 174. Other cases likewise appeared to consider only the import of the letter's language, not the intent of its sender. See, *e. g.*, *Rex* v. *Boucher*, 4 Car. & P. 562, 563, 172 Eng. Rep. 826, 827 (K. B. 1831) (concluding that an indictment was sufficient because "th[e] letter very plainly conveys a threat to kill and murder" and "[n]o one who received it could have any doubt as to what the writer meant to threaten"); see also 2 E. East, A Treatise of the Pleas of the Crown 1116 (1806) (discussing *Jepson and Springett's Case*, in which the judges disagreed over whether "the letter must be understood as . . . importing a threat" and whether that was "a necessary construction").

Unsurprisingly, these early English cases were well known in the legal world of the 19th-century United States. For instance, Nathan Dane's A General Abridgement of American Law—"a necessary adjunct to the library of every American lawyer of distinction," 1 C. Warren, History of the Harvard Law School and of Early Legal Conditions in America 414 (1908)—discussed the English threat statute and summarized decisions such as *Girdwood*. 7 N. Dane, A General Abridgement of American Law 31–32 (1824). And

as this Court long ago recognized, "It is doubtless true . . . that where English statutes . . . have been adopted into our own legislation, the known and settled construction of those statutes by courts of law, has been considered as silently incorporated into the acts, or has been received with all the weight of authority." *Pennock* v. *Dialogue*, 2 Pet. 1, 18 (1829); see also, *e. g.*, *Commonwealth* v. *Burdick*, 2 Pa. 163, 164 (1846) (considering English cases persuasive authority in interpreting similar state statute creating the offense of obtaining property through false pretenses). In short, there is good reason to believe that States bound by their own Constitutions to protect freedom of speech long ago enacted general-intent threat statutes.

Elonis disputes this historical analysis on two grounds, but neither is persuasive. He first points to a treatise stating that the 1754 English statute was "levelled against such whose intention it was, (by writing such letters, either without names or in fictitious names,) to conceal themselves from the knowledge of the party threatened, that they might obtain their object by creating terror in [the victim's] mind." 2 W. Russell & D. Davis, A Treatise on Crimes & Misdemeanors 1845 (1st Am. ed. 1824). But the fact that the ordinary prosecution under this provision involved a defendant who intended to cause fear does not mean that such a mental state was *required* as a matter of law. After all, § 875(c) is frequently deployed against people who wanted to cause their victims fear, but that fact does not answer the legal question presented in this case. See, *e. g.*, *United States* v. *Sutcliffe*, 505 F. 3d 944, 952 (CA9 2007); see also Tr. of Oral Arg. 53 (counsel for the Government noting that "I think Congress would well have understood that the majority of these cases probably [involved] people who intended to threaten").

Elonis also cobbles together an assortment of older American authorities to prove his point, but they fail to stand up to close scrutiny. Two of his cases address the offense of

breaching the peace, *Ware* v. *Loveridge*, 75 Mich. 488, 490–493, 42 N. W. 997, 998 (1889); *State* v. *Benedict*, 11 Vt. 236, 239 (1839), which is insufficiently similar to the offense criminalized in § 875(c) to be of much use. Another involves a prosecution under a blackmailing statute similar to § 875(b) and § 875(c) in that it expressly required an "intent to extort." *Norris* v. *State*, 95 Ind. 73, 74 (1884). And his treatises do not clearly distinguish between the offense of making threats with the intent to extort and the offense of sending threatening letters without such a requirement in their discussions of threat statutes, making it difficult to draw strong inferences about the latter category. See 2 J. Bishop, Commentaries on the Criminal Law § 1201, p. 664, and nn. 5–6 (1877); 2 J. Bishop, Commentaries on the Law of Criminal Procedure § 975, p. 546 (1866); 25 The American and English Encyclopædia of Law 1073 (C. Williams ed. 1894).

Two of Elonis' cases appear to discuss an offense of sending a threatening letter without an intent to extort, but even these fail to make his point. One notes in passing that character evidence is admissible "to prove *guilty knowledge* of the defendant, when that is an essential element of the crime; that is, the *quo animo*, the *intent* or design," and offers as an example that in the context of "sending a threatening letter, . . . prior and subsequent letters to the same person are competent in order to show the intent and meaning of the particular letter in question." *State* v. *Graham*, 121 N. C. 623, 627, 28 S. E. 409, 409 (1897). But it is unclear from that statement whether that court thought an *intent to threaten* was required, especially as the case it cited for this proposition—*Rex* v. *Boucher*, *supra*, at 563, 172 Eng. Rep., at 827—supports a general-intent approach. The other case Elonis cites involves a statutory provision that had been judicially limited to "'pertain to one or the other acts which are denounced by the statute,'" namely, terroristic activities carried out by the Ku Klux Klan. *Commonwealth* v. *Morton*, 140 Ky. 628, 630, 131 S. W. 506, 507 (1910) (quoting *Common-*

wealth v. *Patrick*, 127 Ky. 473, 478, 105 S. W. 981, 982 (1907)). That case thus provides scant historical support for Elonis' position.

B

Elonis also insists that our precedents require a mental state of intent when it comes to threat prosecutions under § 875(c), primarily relying on *Watts*, 394 U. S. 705, and *Virginia* v. *Black*, 538 U. S. 343 (2003). Neither of those decisions, however, addresses whether the First Amendment requires a particular mental state for threat prosecutions.

As Elonis admits, *Watts* expressly declined to address the mental state required under the First Amendment for a "true threat." See 394 U. S., at 707–708. True, the Court in *Watts* noted "grave doubts" about *Raganksy*'s construction of "willfully" in the Presidential threats statute. 394 U. S., at 707–708. But "grave doubts" do not make a holding, and that stray statement in *Watts* is entitled to no precedential force. If anything, *Watts* continued the long tradition of focusing on objective criteria in evaluating the mental requirement. See *ibid.*

The Court's fractured opinion in *Black* likewise says little about whether an intent-to-threaten requirement is constitutionally mandated here. *Black* concerned a Virginia cross-burning law that expressly required " 'an intent to intimidate a person or group of persons,' " 538 U. S., at 347 (quoting Va. Code Ann. § 18.2–423 (1996)), and the Court thus had no occasion to decide whether such an element was necessary in threat provisions silent on the matter. Moreover, the focus of the *Black* decision was on the statutory presumption that "any cross burning [w]as prima facie evidence of intent to intimidate." 538 U. S., at 347–348. A majority of the Court concluded that this presumption failed to distinguish unprotected threats from protected speech because it might allow convictions "based solely on the fact of cross burning itself," including cross burnings in a play or at a political rally. *Id.*, at 365–366 (plurality opinion); *id.*, at 386 (Souter,

J., concurring in judgment in part and dissenting in part) ("The provision will thus tend to draw nonthreatening ideological expression within the ambit of the prohibition of intimidating expression"). The objective standard for threats under § 875(c), however, helps to avoid this problem by "forc-[ing] jurors to examine the circumstances in which a statement is made." *Jeffries*, 692 F. 3d, at 480.

In addition to requiring a departure from our precedents, adopting Elonis' view would make threats one of the most protected categories of unprotected speech, thereby sowing tension throughout our First Amendment doctrine. We generally have not required a heightened mental state under the First Amendment for historically unprotected categories of speech. For instance, the Court has indicated that a legislature may constitutionally prohibit "'fighting words,' those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction," *Cohen* v. *California*, 403 U. S. 15, 20 (1971)—without proof of an intent to provoke a violent reaction. Because the definition of "fighting words" turns on how the "ordinary citizen" would react to the language, *ibid.*, this Court has observed that a defendant may be guilty of a breach of the peace if he "makes statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended," and that the punishment of such statements "as a criminal act would raise no question under [the Constitution]," *Cantwell* v. *Connecticut*, 310 U. S. 296, 309–310 (1940); see also *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 572–573 (1942) (rejecting a First Amendment challenge to a general-intent construction of a state statute punishing "'fighting' words"); *State* v. *Chaplinsky*, 91 N. H. 310, 318, 18 A. 2d 754, 758 (1941) ("[T]he only intent required for conviction . . . was an intent to speak the words"). The Court has similarly held that a defendant may be convicted of mailing obscenity under the First Amendment without proof that he knew the mate-

rials were legally obscene. *Hamling,* 418 U. S., at 120–124. And our precedents allow liability in tort for false statements about private persons on matters of private concern even if the speaker acted negligently with respect to the falsity of those statements. See *Philadelphia Newspapers, Inc.* v. *Hepps*, 475 U. S. 767, 770, 773–775 (1986). I see no reason why we should give threats pride of place among unprotected speech.

* * *

There is always a risk that a criminal threat statute may be deployed by the Government to suppress legitimate speech. But the proper response to that risk is to adhere to our traditional rule that only a narrow class of true threats, historically unprotected, may be constitutionally proscribed.

The solution is not to abandon a mental-state requirement compelled by text, history, and precedent. Not only does such a decision warp our traditional approach to *mens rea*, it results in an arbitrary distinction between threats and other forms of unprotected speech. Had Elonis mailed obscene materials to his wife and a kindergarten class, he could have been prosecuted irrespective of whether he intended to offend those recipients or recklessly disregarded that possibility. Yet when he threatened to kill his wife and a kindergarten class, his intent to terrify those recipients (or reckless disregard of that risk) suddenly becomes highly relevant. That need not—and should not—be the case.

Nor should it be the case that we cast aside the mental-state requirement compelled by our precedents yet offer nothing in its place. Our job is to decide questions, not create them. Given the majority's ostensible concern for protecting innocent actors, one would have expected it to announce a clear rule—any clear rule. Its failure to do so reveals the fractured foundation upon which today's decision rests.

I respectfully dissent.

Syllabus

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION *v.* ABERCROMBIE & FITCH STORES, INC.

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

No. 14–86. Argued February 25, 2015—Decided June 1, 2015

Respondent (Abercrombie) refused to hire Samantha Elauf, a practicing Muslim, because the headscarf that she wore pursuant to her religious obligations conflicted with Abercrombie's employee dress policy. The Equal Employment Opportunity Commission (EEOC) filed suit on Elauf's behalf, alleging a violation of Title VII of the Civil Rights Act of 1964, which, *inter alia*, prohibits a prospective employer from refusing to hire an applicant because of the applicant's religious practice when the practice could be accommodated without undue hardship. The EEOC prevailed in the District Court, but the Tenth Circuit reversed, awarding Abercrombie summary judgment on the ground that failure-to-accommodate liability attaches only when the applicant provides the employer with actual knowledge of his need for an accommodation.

Held: To prevail in a disparate-treatment claim, an applicant need show only that his need for an accommodation was a motivating factor in the employer's decision, not that the employer had knowledge of his need. Title VII's disparate-treatment provision requires Elauf to show that Abercrombie (1) "fail[ed] . . . to hire" her (2) "because of" (3) "[her] religion" (including a religious practice). 42 U. S. C. § 2000e–2(a)(1). And its "because of" standard is understood to mean that the protected characteristic cannot be a "motivating factor" in an employment decision. § 2000e–2(m). Thus, rather than imposing a knowledge standard, § 2000e–2(a)(1) prohibits certain *motives*, regardless of the state of the actor's knowledge: An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions. Title VII contains no knowledge requirement. Furthermore, Title VII's definition of religion clearly indicates that failure-to-accommodate challenges can be brought as disparate-treatment claims. And Title VII gives favored treatment to religious practices, rather than demanding that religious practices be treated no worse than other practices. Pp. 771–775.

731 F. 3d 1106, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined.

Syllabus

ALITO, J., filed an opinion concurring in the judgment, *post*, p. 775. THOMAS, J., filed an opinion concurring in part and dissenting in part, *post*, p. 780.

Deputy Solicitor General Gershengorn argued the cause for petitioner. With him on the briefs were *Solicitor General Verrilli*, *Rachel P. Kovner*, *P. David Lopez*, *Carolyn L. Wheeler*, *Jennifer S. Goldstein*, and *James M. Tucker*.

Shay Dvoretzky argued the cause for respondent. With him on the brief were *Eric S. Dreiband*, *Jeffrey R. Johnson*, *Mark A. Knueve*, and *Daniel J. Clark*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Arizona et al. by *Thomas C. Horne*, Attorney General of Arizona, *Robert L. Ellman*, Solicitor General, and *Rose Daly-Rooney* and *Chris Carlsen*, Assistant Attorneys General, *Russell A. Suzuki*, Attorney General of Hawaii, *Lisa Madigan*, Attorney General of Illinois, *Douglas F. Gansler*, Attorney General of Maryland, *Timothy C. Fox*, Attorney General of Montana, and *Dale Schowengerdt*, Solicitor General, *Joseph A. Foster*, Attorney General of New Hampshire, *Eric T. Schneiderman*, Attorney General of New York, *Ellen F. Rosenblum*, Attorney General of Oregon, and *Robert W. Ferguson*, Attorney General of Washington; for the American-Arab Anti-Discrimination Committee et al. by *Abed A. Ayoub*; for the American Jewish Committee et al. by *David T. Goldberg*, *Toby J. Heytens*, *Daniel R. Ortiz*, *Marc D. Stern*, and *Douglas Laycock*; for the Becket Fund for Religious Liberty by *Eric S. Baxter*, *Eric C. Rassbach*, *Asma T. Uddin*, and *Diana M. Verm*; for the Council on American-Islamic Relations by *Jenifer Wicks*; for Fifteen Religious and Civil Rights Organizations by *Gene C. Schaerr*, *Todd R. McFarland*, *Dwayne Leslie*, *Kimberlee Wood Colby*, *Stephen F. Rohde*, and *Carl H. Esbeck*; for the Lambda Legal Defense and Education Fund, Inc., by *Gregory R. Nevins* and *Jennifer C. Pizer*; for the National Jewish Commission on Law and Public Affairs et al. by *Nathan Lewin*, *Alyza D. Lewin*, and *Dennis Rapps*; and for Umme-Hani Khan by *Christopher Ho*.

Briefs of *amici curiae* urging affirmance were filed for the Cato Institute by *Brendan J. Morrissey* and *Ilya Shapiro*; for the Chamber of Commerce of the United States of America et al. by *Melissa Arbus Sherry*, *Kate Comerford Todd*, *Warren Postman*, *Karen R. Harned*, and *Elizabeth Milito*; for the Equal Employment Advisory Council by *Rae T. Vann*; and for the National Conference of State Legislatures et al. by *Charles W. Thompson, Jr.*, and *Lisa Soronen*.

JUSTICE SCALIA delivered the opinion of the Court.

Title VII of the Civil Rights Act of 1964 prohibits a prospective employer from refusing to hire an applicant in order to avoid accommodating a religious practice that it could accommodate without undue hardship. The question presented is whether this prohibition applies only where an applicant has informed the employer of his need for an accommodation.

I

We summarize the facts in the light most favorable to the Equal Employment Opportunity Commission (EEOC), against whom the Tenth Circuit granted summary judgment. Respondent Abercrombie & Fitch Stores, Inc., operates several lines of clothing stores, each with its own "style." Consistent with the image Abercrombie seeks to project for each store, the company imposes a Look Policy that governs its employees' dress. The Look Policy prohibits "caps"—a term the Policy does not define—as too informal for Abercrombie's desired image.

Samantha Elauf is a practicing Muslim who, consistent with her understanding of her religion's requirements, wears a headscarf. She applied for a position in an Abercrombie store, and was interviewed by Heather Cooke, the store's assistant manager. Using Abercrombie's ordinary system for evaluating applicants, Cooke gave Elauf a rating that qualified her to be hired; Cooke was concerned, however, that Elauf's headscarf would conflict with the store's Look Policy.

Cooke sought the store manager's guidance to clarify whether the headscarf was a forbidden "cap." When this yielded no answer, Cooke turned to Randall Johnson, the district manager. Cooke informed Johnson that she believed Elauf wore her headscarf because of her faith. Johnson told Cooke that Elauf's headscarf would violate the Look Policy, as would all other headwear, religious or otherwise, and directed Cooke not to hire Elauf.

The EEOC sued Abercrombie on Elauf's behalf, claiming that its refusal to hire Elauf violated Title VII. The District Court granted the EEOC summary judgment on the issue of liability, 798 F. Supp. 2d 1272 (ND Okla. 2011), held a trial on damages, and awarded $20,000. The Tenth Circuit reversed and awarded Abercrombie summary judgment. 731 F. 3d 1106 (2013). It concluded that ordinarily an employer cannot be liable under Title VII for failing to accommodate a religious practice until the applicant (or employee) provides the employer with actual knowledge of his need for an accommodation. *Id.*, at 1131. We granted certiorari. 573 U. S. 991 (2014).

II

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, prohibits two categories of employment practices. It is unlawful for an employer:

> "(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U. S. C. § 2000e–2(a).

These two proscriptions, often referred to as the "disparate treatment" (or "intentional discrimination") provision and the "disparate impact" provision, are the only causes of action under Title VII. The word "religion" is defined to "includ[e] all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to" a "religious observ-

ance or practice without undue hardship on the conduct of the employer's business." § 2000e(j).[1]

Abercrombie's primary argument is that an applicant cannot show disparate treatment without first showing that an employer has "actual knowledge" of the applicant's need for an accommodation. We disagree. Instead, an applicant need only show that his need for an accommodation was a motivating factor in the employer's decision.[2]

The disparate-treatment provision forbids employers to: (1) "fail . . . to hire" an applicant (2) "because of" (3) "such individual's . . . religion" (which includes his religious practice). Here, of course, Abercrombie (1) failed to hire Elauf. The parties concede that (if Elauf sincerely believes that her religion so requires) Elauf's wearing of a headscarf is (3) a "religious practice." All that remains is whether she was not hired (2) "because of" her religious practice.

The term "because of" appears frequently in antidiscrimination laws. It typically imports, at a minimum, the traditional standard of but-for causation. *University of Tex.*

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[1] For brevity's sake, we will in the balance of this opinion usually omit reference to the § 2000e(j) "undue hardship" defense to the accommodation requirement, discussing the requirement as though it is absolute.

[2] The concurrence mysteriously concludes that it is not the plaintiff's burden to prove failure to accommodate. *Post*, at 779. But of course that *is* the plaintiff's burden, if failure to hire "because of" the plaintiff's "religious practice" is the gravamen of the complaint. Failing to hire for that reason is *synonymous* with refusing to accommodate the religious practice. To accuse the employer of the one is to accuse him of the other. If he is willing to "accommodate"—which means nothing more than allowing the plaintiff to engage in her religious practice despite the employer's normal rules to the contrary—adverse action "because of" the religious practice is not shown. "The clause that begins with the term 'unless,'" as the concurrence describes it, *post*, at 780, has no function except to place upon the employer the burden of establishing an "undue hardship" defense. The concurrence provides no example, not even an unrealistic hypothetical one, of a claim of failure to hire because of religious practice that does not say the employer refused to permit ("failed to accommodate") the religious practice. In the nature of things, there cannot be one.

Southwestern Medical Center v. *Nassar*, 570 U. S. 338 (2013). Title VII relaxes this standard, however, to prohibit even making a protected characteristic a "motivating factor" in an employment decision. 42 U. S. C. § 2000e–2(m). "Because of" in § 2000e–2(a)(1) links the forbidden consideration to each of the verbs preceding it; an individual's actual religious practice may not be a motivating factor in failing to hire, in refusing to hire, and so on.

It is significant that § 2000e–2(a)(1) does not impose a knowledge requirement. As Abercrombie acknowledges, some antidiscrimination statutes do. For example, the Americans with Disabilities Act of 1990 defines discrimination to include an employer's failure to make "reasonable accommodations to the *known* physical or mental limitations" of an applicant. § 12112(b)(5)(A) (emphasis added). Title VII contains no such limitation.

Instead, the intentional discrimination provision prohibits certain *motives*, regardless of the state of the actor's knowledge. Motive and knowledge are separate concepts. An employer who has actual knowledge of the need for an accommodation does not violate Title VII by refusing to hire an applicant if avoiding that accommodation is not his *motive*. Conversely, an employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed.

Thus, the rule for disparate-treatment claims based on a failure to accommodate a religious practice is straightforward: An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions. For example, suppose that an employer thinks (though he does not know for certain) that a job applicant may be an orthodox Jew who will observe the Sabbath, and thus be unable to work on Saturdays. If the applicant actually requires an accommodation of that religious practice, and the employer's desire to avoid the prospective accommo-

dation is a motivating factor in his decision, the employer violates Title VII.

Abercrombie urges this Court to adopt the Tenth Circuit's rule "allocat[ing] the burden of raising a religious conflict." Brief for Respondent 46. This would require the employer to have actual knowledge of a conflict between an applicant's religious practice and a work rule. The problem with this approach is the one that inheres in most incorrect interpretations of statutes: It asks us to add words to the law to produce what is thought to be a desirable result. That is Congress's province. We construe Title VII's silence as exactly that: silence. Its disparate-treatment provision prohibits actions taken with the *motive* of avoiding the need for accommodating a religious practice. A request for accommodation, or the employer's certainty that the practice exists, may make it easier to infer motive, but is not a necessary condition of liability.[3]

Abercrombie argues in the alternative that a claim based on a failure to accommodate an applicant's religious practice must be raised as a disparate-impact claim, not a disparate-treatment claim. We think not. That might have been true if Congress had limited the meaning of "religion" in Title VII to religious *belief*—so that discriminating against a particular religious *practice* would not be disparate treatment though it might have disparate impact. In fact, however, Congress defined "religion," for Title VII's purposes, as "includ[ing] all aspects of religious observance and practice, as

[3] While a knowledge requirement cannot be added to the motive requirement, it is arguable that the motive requirement itself is not met unless the employer at least suspects that the practice in question is a religious practice—*i. e.*, that he cannot discriminate "because of" a "religious practice" unless he knows or suspects it to be a religious practice. That issue is not presented in this case, since Abercrombie knew—or at least suspected—that the scarf was worn for religious reasons. The question has therefore not been discussed by either side, in brief or oral argument. It seems to us inappropriate to resolve this unargued point by way of dictum, as the concurrence would do.

well as belief." 42 U. S. C. § 2000e(j). Thus, religious practice is one of the protected characteristics that cannot be accorded disparate treatment and must be accommodated.

Nor does the statute limit disparate-treatment claims to only those employer policies that treat religious practices less favorably than similar secular practices. Abercrombie's argument that a neutral policy cannot constitute "intentional discrimination" may make sense in other contexts. But Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them favored treatment, affirmatively obligating employers not "to fail or refuse to hire or discharge any individual . . . because of such individual's" "religious observance and practice." An employer is surely entitled to have, for example, a no-headwear policy as an ordinary matter. But when an applicant requires an accommodation as an "aspec[t] of religious . . . practice," it is no response that the subsequent "fail[ure] . . . to hire" was due to an otherwise-neutral policy. Title VII requires otherwise-neutral policies to give way to the need for an accommodation.

* * *

The Tenth Circuit misinterpreted Title VII's requirements in granting summary judgment. We reverse its judgment and remand the case for further consideration consistent with this opinion.

It is so ordered.

JUSTICE ALITO, concurring in the judgment.

This case requires us to interpret a provision of Title VII of the Civil Rights Act of 1964 that prohibits an employer from taking an adverse employment action (refusal to hire, discharge, etc.) "against any individual . . . because of [[1]] such

[1] Under 42 U. S. C. § 2000e–2(m), an employer takes an action "because of" religion if religion is a "motivating factor" in the decision.

individual's . . . religion." 42 U. S. C. § 2000e–2(a). Another provision states that the term "religion" "includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." § 2000e(j). When these two provisions are put together, the following rule (expressed in somewhat simplified terms) results: An employer may not take an adverse employment action against an applicant or employee because of any aspect of that individual's religious observance or practice unless the employer demonstrates that it is unable to reasonably accommodate that observance or practice without undue hardship.

In this case, Samantha Elauf, a practicing Muslim, wore a headscarf for a religious reason when she was interviewed for a job in a store operated by Abercrombie & Fitch. She was rejected because her scarf violated Abercrombie's dress code for employees. There is sufficient evidence in the summary judgment record to support a finding that Abercrombie's decisionmakers knew that Elauf was a Muslim and that she wore the headscarf for a religious reason. But she was never asked why she wore the headscarf and did not volunteer that information. Nor was she told that she would be prohibited from wearing the headscarf on the job. The Tenth Circuit held that Abercrombie was entitled to summary judgment because, except perhaps in unusual circumstances, "[a]pplicants or employees must initially inform employers of their religious practices that conflict with a work requirement and their need for a reasonable accommodation for them." 731 F. 3d 1106, 1142 (2013) (emphasis deleted).

The relevant provisions of Title VII, however, do not impose the notice requirement that formed the basis for the Tenth Circuit's decision. While I interpret those provisions to require proof that Abercrombie knew that Elauf wore the

headscarf for a religious reason, the evidence of Abercrombie's knowledge is sufficient to defeat summary judgment.

The opinion of the Court states that "§ 2000e–2(a)(1) does not impose a knowledge requirement," *ante*, at 773, but then reserves decision on the question whether it is a condition of liability that the employer know or suspect that the practice he refuses to accommodate is a religious practice, *ante*, at 774, n. 3, but in my view, the answer to this question, which may arise on remand,[2] is obvious. I would hold that an employer cannot be held liable for taking an adverse action because of an employee's religious practice unless the employer knows that the employee engages in the practice for a religious reason. If § 2000e–2(a)(1) really "does not impose a knowledge requirement," *ante*, at 773, it would be irrelevant in this case whether Abercrombie had any inkling that Elauf is a Muslim or that she wore the headscarf for a religious reason. That would be very strange.

The scarves that Elauf wore were not articles of clothing that were designed or marketed specifically for Muslim women. Instead, she generally purchased her scarves at ordinary clothing stores. In this case, the Abercrombie employee who interviewed Elauf had seen her wearing scarves on other occasions, and for reasons that the record does not make clear, came to the (correct) conclusion that she is a Muslim. But suppose that the interviewer in this case had never seen Elauf before. Suppose that the interviewer thought Elauf was wearing the scarf for a secular reason. Suppose that nothing else about Elauf made the interviewer

[2] Cooke testified that she told Johnson that she believed Elauf wore a head scarf for a religious reason, App. 87, but Johnson testified that Cooke did not share this belief with him, *id.*, at 146. If Abercrombie's knowledge is irrelevant, then the lower courts will not have to decide whether there is a genuine dispute on this question. But if Abercrombie's knowledge is relevant and if the lower courts hold that there is a genuine dispute of material fact about Abercrombie's knowledge, the question will have to be submitted to the trier of fact. For these reasons, we should decide this question now.

even suspect that she was a Muslim or that she was wearing the scarf for a religious reason. If "§ 2000e–2(a)(1) does not impose a knowledge requirement," Abercrombie would still be liable. The EEOC, which sued on Elauf's behalf, does not adopt that interpretation, see, *e. g.*, Brief for Petitioner 19, and it is surely wrong.

The statutory text does not compel such a strange result. It is entirely reasonable to understand the prohibition against an employer's taking an adverse action because of a religious practice to mean that an employer may not take an adverse action because of a practice that the employer knows to be religious. Consider the following sentences. The parole board granted the prisoner parole because of an *exemplary* record in prison. The court sanctioned the attorney because of a *flagrant* violation of Rule 11 of the Federal Rules of Civil Procedure. No one is likely to understand these sentences to mean that the parole board granted parole because of a record that, unbeknownst to the board, happened to be exemplary or that the court sanctioned the attorney because of a violation that, unbeknownst to the court, happened to be flagrant. Similarly, it is entirely reasonable to understand this statement—"The employer rejected the applicant because of a *religious* practice" —to mean that the employer rejected the applicant because of a practice that the employer knew to be religious.

This interpretation makes sense of the statutory provisions. Those provisions prohibit intentional discrimination, which is blameworthy conduct, but if there is no knowledge requirement, an employer could be held liable without fault. The prohibition of discrimination because of religious practices is meant to force employers to consider whether those practices can be accommodated without undue hardship. See § 2000e(j). But the "no-knowledge" interpretation would deprive employers of that opportunity. For these reasons, an employer cannot be liable for taking adverse ac-

tion because of a religious practice if the employer does not know that the practice is religious.

A plaintiff need not show, however, that the employer took the adverse action because of the religious nature of the practice. Cf. *post*, at 783 (THOMAS, J., concurring in part and dissenting in part). Suppose, for example, that an employer rejected all applicants who refuse to work on Saturday, whether for religious or nonreligious reasons. Applicants whose refusal to work on Saturday was known by the employer to be based on religion will have been rejected because of a religious practice.

This conclusion follows from the reasonable accommodation requirement imposed by § 2000e(j). If neutral work rules (*e. g.*, every employee must work on Saturday, no employee may wear any head covering) precluded liability, there would be no need to provide that defense, which allows an employer to escape liability for refusing to make an exception to a neutral work rule if doing so would impose an undue hardship.

This brings me to a final point. Under the relevant statutory provisions, an employer's failure to make a reasonable accommodation is not an element that the plaintiff must prove. I am therefore concerned about the Court's statement that it "*is* the plaintiff's burden [to prove failure to accommodate]." *Ante*, at 772, n. 2. This blatantly contradicts the language of the statutes. As I noted at the beginning, when § 2000e–2(a) and § 2000e(j) are combined, this is the result:

> "It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire . . . any individual . . . because of [any aspect of] such individual's . . . religious . . . practice . . . *unless an employer demonstrates that he is unable to reasonably accommodate to [the] employee's or prospective employee's religious . . . practice . . . without undue hardship on the conduct of the employer's business.*" (Emphasis added.)

The clause that begins with the term "unless" unmistakably sets out an employer defense. If an employer chooses to assert that defense, it bears both the burden of production and the burden of persuasion. A plaintiff, on the other hand, must prove the elements set out prior to the "unless" clause, but that portion of the rule makes no mention of accommodation. Thus, a plaintiff need not plead or prove that the employer wished to avoid making an accommodation or could have done so without undue hardship. If a plaintiff shows that the employer took an adverse employment action because of a religious observance or practice, it is then up to the employer to plead and prove the defense. The Court's statement subverts the statutory text, and in close cases, the Court's reallocation of the burden of persuasion may be decisive.

In sum, the EEOC was required in this case to prove that Abercrombie rejected Elauf because of a practice that Abercrombie knew was religious. It is undisputed that Abercrombie rejected Elauf because she wore a headscarf, and there is ample evidence in the summary judgment record to prove that Abercrombie knew that Elauf is a Muslim and that she wore the scarf for a religious reason. The Tenth Circuit therefore erred in ordering the entry of summary judgment for Abercrombie. On remand, the Tenth Circuit can consider whether there is sufficient evidence to support summary judgment in favor of the EEOC on the question of Abercrombie's knowledge. The Tenth Circuit will also be required to address Abercrombie's claim that it could not have accommodated Elauf's wearing the headscarf on the job without undue hardship.

JUSTICE THOMAS, concurring in part and dissenting in part.

I agree with the Court that there are two—and only two—causes of action under Title VII of the Civil Rights Act of 1964 as understood by our precedents: a disparate-treatment

(or intentional-discrimination) claim and a disparate-impact claim. *Ante*, at 771. Our agreement ends there. Unlike the majority, I adhere to what I had thought before today was an undisputed proposition: Mere application of a neutral policy cannot constitute "intentional discrimination." Because the Equal Employment Opportunity Commission (EEOC) can prevail here only if Abercrombie engaged in intentional discrimination, and because Abercrombie's application of its neutral Look Policy does not meet that description, I would affirm the judgment of the Tenth Circuit.

I

This case turns on whether Abercrombie's conduct constituted "intentional discrimination" within the meaning of 42 U. S. C. § 1981a(a)(1). That provision allows a Title VII plaintiff to "recover compensatory and punitive damages" only against an employer "who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact)." The damages award the EEOC obtained against Abercrombie is thus proper only if that company engaged in "intentional discrimination"—as opposed to "an employment practice that is unlawful because of its disparate impact"—within the meaning of § 1981a(a)(1).

The terms "intentional discrimination" and "disparate impact" have settled meanings in federal employment discrimination law. "[I]ntentional discrimination . . . occur[s] where an employer has treated a particular person less favorably than others because of a protected trait." *Ricci* v. *DeStefano*, 557 U. S. 557, 577 (2009) (internal quotation marks and alteration omitted). "[D]isparate-impact claims," by contrast, "involve employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity." *Raytheon Co.* v. *Hernandez*, 540 U. S. 44, 52 (2003) (internal quotation marks omitted). Con-

ceived by this Court in *Griggs* v. *Duke Power Co.*, 401 U. S. 424 (1971), this "theory of discrimination" provides that "a facially neutral employment practice may be deemed illegally discriminatory without evidence of the employer's subjective intent to discriminate that is required in a disparate-treatment case," *Raytheon*, *supra*, at 52–53 (internal quotation marks and alteration omitted).

I would hold that Abercrombie's conduct did not constitute "intentional discrimination." Abercrombie refused to create an exception to its neutral Look Policy for Samantha Elauf's religious practice of wearing a headscarf. *Ante*, at 770. In doing so, it did not treat religious practices less favorably than similar secular practices, but instead remained neutral with regard to religious practices. To be sure, the *effects* of Abercrombie's neutral Look Policy, absent an accommodation, fall more harshly on those who wear headscarves as an aspect of their faith. But that is a classic case of an alleged disparate impact. It is not what we have previously understood to be a case of disparate treatment because Elauf received the *same* treatment from Abercrombie as any other applicant who appeared unable to comply with the company's Look Policy. See *ibid.*; App. 134, 144. Because I cannot classify Abercrombie's conduct as "intentional discrimination," I would affirm.

II

A

Resisting this straightforward application of § 1981a, the majority expands the meaning of "intentional discrimination" to include a refusal to give a religious applicant "favored treatment." *Ante*, at 775. But contrary to the majority's assumption, this novel theory of discrimination is not commanded by the relevant statutory text.

Title VII makes it illegal for an employer "to fail or refuse to hire . . . any individual . . . because of such individual's . . . religion." § 2000e–2(a)(1). And as used in Title VII, "[t]he

term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." § 2000e(j). With this gloss on the definition of "religion" in § 2000e–2(a)(1), the majority concludes that an employer may violate Title VII if he "'refuse[s] to hire . . . any individual . . . because of such individual's . . . religious . . . practice'" (unless he has an "'undue hardship'" defense). *Ante*, at 771–772.

But inserting the statutory definition of religion into § 2000e–2(a) does not answer the question whether Abercrombie's refusal to hire Elauf was "because of her religious practice." At first glance, the phrase "because of such individual's religious practice" could mean one of two things. Under one reading, it could prohibit taking an action because of the religious nature of an employee's particular practice. Under the alternative reading, it could prohibit taking an action because of an employee's practice that *happens* to be religious.

The distinction is perhaps best understood by example. Suppose an employer with a neutral grooming policy forbidding facial hair refuses to hire a Muslim who wears a beard for religious reasons. Assuming the employer applied the neutral grooming policy to all applicants, the motivation behind the refusal to hire the Muslim applicant would not be the religious nature of his beard, but its existence. Under the first reading, then, the Muslim applicant would lack an intentional-discrimination claim, as he was not refused employment "because of" the religious nature of his practice. But under the second reading, he would have such a claim, as he was refused employment "because of" a practice that happens to be religious in nature.

One problem with the second, more expansive reading is that it would punish employers who have no discriminatory

motive. If the phrase "because of such individual's religious practice" sweeps in any case in which an employer takes an adverse action because of a practice that happens to be religious in nature, an employer who had no idea that a particular practice was religious would be penalized. That strict-liability view is plainly at odds with the concept of intentional discrimination. Cf. *Raytheon*, *supra*, at 54, n. 7 ("If [the employer] were truly unaware that such a disability existed, it would be impossible for her hiring decision to have been based, even in part, on [the applicant's] disability. And, if no part of the hiring decision turned on [the applicant's] status as disabled, he cannot, *ipso facto*, have been subject to disparate treatment"). Surprisingly, the majority leaves the door open to this strict-liability theory, reserving the question whether an employer who does not even "suspec[t] that the practice in question is a religious practice" can nonetheless be punished for *intentional* discrimination. *Ante*, at 774, n. 3.

For purposes of today's decision, however, the majority opts for a compromise, albeit one that lacks a foothold in the text and fares no better under our precedents. The majority construes § 2000e–2(a)(1) to punish employers who refuse to accommodate applicants under neutral policies when they act "with the motive of avoiding accommodation." *Ante*, at 773. But an employer who is aware that strictly applying a neutral policy will have an adverse effect on a religious group, and applies the policy anyway, is not engaged in intentional discrimination, at least as that term has traditionally been understood. As the Court explained many decades ago, "'Discriminatory purpose'"—*i. e.*, the purpose necessary for a claim of intentional discrimination—demands "more than . . . awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Personnel Administrator of Mass.* v.

Feeney, 442 U. S. 256, 279 (1979) (citation and footnote omitted).

I do not dispute that a refusal to accommodate can, in some circumstances, constitute intentional discrimination. If an employer declines to accommodate a particular religious practice, yet accommodates a similar secular (or other denominational) practice, then that may be proof that he has "treated a particular person less favorably than others because of [a religious practice]." *Ricci*, 557 U. S., at 577 (internal quotation marks and alteration omitted); see also, *e. g.*, *Dixon* v. *Hallmark Cos.*, 627 F. 3d 849, 853 (CA11 2010) (addressing a policy forbidding display of "religious items" in management offices). But merely refusing to create an exception to a neutral policy for a religious practice cannot be described as treating a particular applicant "less favorably than others." The majority itself appears to recognize that its construction requires something more than equal treatment. See *ante*, at 775 ("Title VII does not demand mere neutrality with regard to religious practices," but instead "gives them favored treatment"). But equal treatment is not disparate treatment, and that basic principle should have disposed of this case.

B

The majority's novel theory of intentional discrimination is also inconsistent with the history of this area of employment discrimination law. As that history shows, cases arising out of the application of a neutral policy absent religious accommodations have traditionally been understood to involve only disparate-impact liability.

When Title VII was enacted in 1964, it prohibited discrimination "because of . . . religion" and did not include the current definition of "religion" encompassing "religious observance and practice" that was added to the statute in 1972. Civil Rights Act of 1964, §§ 701, 703(a), 78 Stat. 253–255. Shortly thereafter, the EEOC issued guidelines purporting

to create "an obligation on the part of the employer to accommodate to the religious needs of employees." 31 Fed. Reg. 8370 (1966). From an early date, the EEOC defended this obligation under a disparate-impact theory. See Brief for United States as *Amicus Curiae* in *Dewey* v. *Reynolds Metals Co.*, O. T. 1970, No. 835, pp. 7, 13, 29–32. Courts and commentators at the time took the same view. See, *e. g.*, *Reid* v. *Memphis Publishing Co.*, 468 F. 2d 346, 350 (CA6 1972); *Dewey* v. *Reynolds Metals Co.*, 300 F. Supp. 709, 713 (WD Mich. 1969), rev'd, 429 F. 2d 324 (CA6 1970), aff'd by an equally divided Court, 402 U. S. 689 (1971) (*per curiam*); 1 B. Lindemann & P. Grossman, Employment Discrimination Law 187–188 (3d ed. 1976).

This Court's first decision to discuss a refusal to accommodate a religious practice, *Trans World Airlines, Inc.* v. *Hardison*, 432 U. S. 63 (1977), similarly did not treat such conduct as intentional discrimination. *Hardison* involved a conflict between an employer's neutral seniority system for assigning shifts and an employee's observance of a Saturday Sabbath. The employer denied the employee an accommodation, so he refused to show up for work on Saturdays and was fired. *Id.*, at 67–69. This Court held that the employer was not liable under Title VII because the proposed accommodations would have imposed an undue hardship on the employer. *Id.*, at 77. To bolster its conclusion that there was no statutory violation, the Court relied on a provision of Title VII shielding the application of a "'bona fide seniority or merit system'" from challenge unless that application is "'the result of an intention to discriminate because of . . . religion.'" *Id.*, at 81–82 (quoting §2000e–2(h)). In applying that provision, the Court observed that "[t]here ha[d] been no suggestion of discriminatory intent in th[e] case." *Id.*, at 82. But if the majority's view were correct—if a mere refusal to accommodate a religious practice under a neutral policy could constitute intentional discrimination—then the Court in *Hardison* should never have engaged in

such reasoning. After all, the employer in *Hardison* knew of the employee's religious practice and refused to make an exception to its neutral seniority system, just as Abercrombie arguably knew of Elauf's religious practice and refused to make an exception to its neutral Look Policy.*

Lower courts following *Hardison* likewise did not equate a failure to accommodate with intentional discrimination. To the contrary, many lower courts, including the Tenth Circuit below, wrongly assumed that Title VII creates a free-standing failure-to-accommodate claim distinct from either disparate treatment or disparate impact. See, *e. g.*, 731 F. 3d 1106, 1120 (2013) ("A claim for religious discrimination under

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*Contrary to the EEOC's suggestion, *Trans World Airlines, Inc.* v. *Hardison*, 432 U. S. 63 (1977), did not establish that a refusal to accommodate a religious practice automatically constitutes intentional discrimination. To be sure, *Hardison* remarked that the "effect of " the 1972 amendment expanding the definition of religion "was to make it an unlawful employment practice under [§ 2000e–2(a)(1)] for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of his employees and prospective employees." *Id.*, at 74. But that statement should not be understood as a holding that such conduct automatically gives rise to a disparate-treatment claim. Although this Court has more recently described § 2000e–2(a)(1) as originally creating only disparate-treatment liability, *e. g.*, *Ricci* v. *DeStefano*, 557 U. S. 557, 577 (2009), it was an open question at the time *Hardison* was decided whether § 2000e–2(a)(1) also created disparate-impact liability, see, *e. g.*, *Nashville Gas Co.* v. *Satty*, 434 U. S. 136, 144 (1977); *General Elec. Co.* v. *Gilbert*, 429 U. S. 125, 153–155 (1976) (Brennan, J., dissenting). In fact, both the employee and the EEOC in *Hardison* argued before this Court that the employer had violated § 2000e–2(a)(1) under a disparate-impact theory. See Brief for Respondent 15, 25–26, and Brief for United States et al. as *Amici Curiae* 33–36, 50, in *Trans World Airlines, Inc.* v. *Hardison*, O. T. 1976, No. 75–1126 etc. In any event, the relevant language in *Hardison* is dictum. Because the employee's termination had occurred before the 1972 amendment to Title VII's definition of religion, *Hardison* applied the then-existing EEOC guideline—which also contained an "undue hardship" defense—not the amended statutory definition. 432 U. S., at 76, and n. 11. *Hardison*'s comment about the effect of the 1972 amendment was thus entirely beside the point.

Title VII can be asserted under several different theories, including disparate treatment and failure to accommodate" (internal quotation marks omitted)); *Protos* v. *Volkswagen of Am., Inc.*, 797 F. 2d 129, 134, n. 2 (CA3 1986) ("In addition to her religious accommodation argument, [the plaintiff] maintains that she prevailed in the district court on a disparate treatment claim"). That assumption appears to have grown out of statements in our cases suggesting that Title VII's definitional provision concerning religion created an independent duty. See, *e. g., Ansonia Bd. of Ed.* v. *Philbrook*, 479 U. S. 60, 63, n. 1 (1986) ("The reasonable accommodation duty was incorporated into the statute, somewhat awkwardly, in the definition of religion"). But in doing so, the lower courts correctly recognized that a failure-to-accommodate claim based on the application of a neutral policy is not a disparate-treatment claim. See, *e. g., Reed* v. *International Union, United Auto, Aerospace and Agricultural Implement Workers of Am.*, 569 F. 3d 576, 579–580 (CA6 2009); *Chalmers* v. *Tulon Co. of Richmond*, 101 F. 3d 1012, 1018 (CA4 1996).

At least before we granted a writ of certiorari in this case, the EEOC too understood that merely applying a neutral policy did not automatically constitute intentional discrimination giving rise to a disparate-treatment claim. For example, the EEOC explained in a recent compliance manual, "A religious accommodation claim is distinct from a disparate treatment claim, in which the question is whether employees are treated equally." EEOC Compliance Manual § 12–IV, p. 46 (2008). Indeed, in asking us to take this case, the EEOC dismissed one of Abercrombie's supporting authorities as "a case addressing intentional discrimination, not religious accommodation." Reply to Brief in Opposition 7, n. Once we granted certiorari in this case, however, the EEOC altered-course and advanced the intentional-discrimination theory now adopted by the majority. The Court should have rejected this eleventh-hour request to expand our understand-

ing of "intentional discrimination" to include merely applying a religion-neutral policy.

* * *

The Court today rightly puts to rest the notion that Title VII creates a freestanding religious-accommodation claim, *ante*, at 771, but creates in its stead an entirely new form of liability: the disparate-treatment-based-on-equal-treatment claim. Because I do not think that Congress' 1972 redefinition of "religion" also redefined "intentional discrimination," I would affirm the judgment of the Tenth Circuit. I respectfully dissent from the portions of the majority's decision that take the contrary view.

Syllabus

BANK OF AMERICA, N. A. *v.* CAULKETT

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

No. 13–1421. Argued March 24, 2015—Decided June 1, 2015*

Respondent debtors each filed for Chapter 7 bankruptcy, and each owned a house encumbered with a senior mortgage lien and a junior mortgage lien, the latter held by petitioner bank. Because the amount owed on each senior mortgage is greater than each house's current market value, the bank would receive nothing if the properties were sold today. The junior mortgage liens were thus wholly underwater. The debtors sought to void their junior mortgage liens under § 506 of the Bankruptcy Code, which provides, "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void." 11 U. S. C. § 506(d). In each case, the Bankruptcy Court granted the motion, and both the District Court and the Eleventh Circuit affirmed.

Held: A debtor in a Chapter 7 bankruptcy proceeding may not void a junior mortgage lien under § 506(d) when the debt owed on a senior mortgage lien exceeds the current value of the collateral if the creditor's claim is both secured by a lien and allowed under § 502 of the Bankruptcy Code. Pp. 793–797.

(a) The debtors here prevail only if the bank's claims are "not . . . allowed secured claim[s]." The parties do not dispute that the bank's claims are "allowed" under the Code. Instead, the debtors argue that the bank's claims are not "secured" because § 506(a)(1) provides that "[a]n allowed claim . . . is a secured claim to the extent of the value of such creditor's interest in . . . such property" and "an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Because the value of the bank's interest here is zero, a straightforward reading of the statute would seem to favor the debtors. This Court's construction of § 506(d)'s term "secured claim" in *Dewsnup* v. *Timm*, 502 U. S. 410, however, forecloses that reading and resolves the question presented here. In declining to permit a Chapter 7 debtor to "strip down" a partially underwater lien under § 506(d) to the value of the collateral, the Court in *Dewsnup* concluded that an allowed claim "secured by a lien with recourse to the underlying collateral . . . does not come within the scope of § 506(d)."

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*Together with No. 14–163, *Bank of America, N. A.* v. *Toledo-Cardona*, also on certiorari to the same court.

Syllabus

Id., at 415. Thus, under *Dewsnup*, a "secured claim" is a claim supported by a security interest in property, regardless of whether the value of that property would be sufficient to cover the claim. Pp. 793–795.

(b) This Court declines to limit *Dewsnup* to partially underwater liens. *Dewsnup*'s definition did not depend on such a distinction. Nor is this distinction supported by *Nobelman* v. *American Savings Bank*, 508 U. S. 324, which addressed the interaction between the meaning of the term "secured claim" in § 506(a)—a definition that *Dewsnup* declined to use for purposes of § 506(d)—and an entirely separate provision, § 1322(b)(2). See 508 U. S., at 327–332. Finally, the debtors' suggestion that the historical and policy concerns that motivated the Court in *Dewsnup* do not apply in the context of wholly underwater liens is an insufficient justification for giving the term "secured claim" a different definition depending on the value of the collateral. Ultimately, the debtors' proposed distinction would do nothing to vindicate § 506(d)'s original meaning and would leave an odd statutory framework in its place. Pp. 795–797.

No. 13–1421, 566 Fed. Appx. 879, and No. 14–163, 556 Fed. Appx. 911, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, GINSBURG, ALITO, and KAGAN, JJ., joined, and in which KENNEDY, BREYER, and SOTOMAYOR, JJ., joined except as to the footnote.

Danielle Spinelli argued the cause for petitioner in both cases. With her on the briefs were *Seth P. Waxman*, *Craig Goldblatt*, *Sonya L. Lebsack*, and *Isley M. Gostin*.

Stephanos Bibas argued the cause for respondents in both cases. With him on the brief were *James A. Feldman* and *David J. Volk*.†

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†Briefs of *amici curiae* urging reversal in both cases were filed for the Community Bankers Association of Illinois by *John Collen*; and for the Loan Syndications and Trading Association et al. by *Ronald J. Mann*, *Kevin Carroll*, and *Elliott Ganz*.

Briefs of *amici curiae* urging affirmance in both cases were filed for the Jerome N. Frank Legal Services Organization et al. by *J. L. Pottenger Jr.*; for the National Association of Consumer Bankruptcy Attorneys et al. by *David R. Kuney*, *Tara Twomey*, and *Jean Constantine-Davis*; for NYU Law School Bankruptcy Appellate Clinic by *Arthur J. Gonzalez*; for Occupy the SEC by *Akshat Tewary*; for Jagdeep S. Bhandari et al. by *Richard Lieb*; for Margaret Howard by *Timothy C. MacDonnell*; for Robert

JUSTICE THOMAS delivered the opinion of the Court.*

Section 506(d) of the Bankruptcy Code allows a debtor to void a lien on his property "[t]o the extent that [the] lien secures a claim against the debtor that is not an allowed secured claim." 11 U. S. C. § 506(d). These consolidated cases present the question whether a debtor in a Chapter 7 bankruptcy proceeding may void a junior mortgage under § 506(d) when the debt owed on a senior mortgage exceeds the present value of the property. We hold that a debtor may not, and we therefore reverse the judgments of the Court of Appeals.

I

The facts in these consolidated cases are largely the same. The debtors, respondents David Caulkett and Edelmiro Toledo-Cardona, each have two mortgage liens on their respective houses. Petitioner Bank of America (Bank) holds the junior mortgage lien—*i. e.*, the mortgage lien subordinate to the other mortgage lien—on each home. The amount owed on each debtor's senior mortgage lien is greater than each home's current market value. The Bank's junior mortgage liens are thus wholly underwater: Because each home is worth less than the amount the debtor owes on the senior mortgage, the Bank would receive nothing if the properties were sold today.

In 2013, the debtors each filed for Chapter 7 bankruptcy. In their respective bankruptcy proceedings, they moved to "strip off"—or void—the junior mortgage liens under § 506(d) of the Bankruptcy Code. In each case, the Bankruptcy Court granted the motion, and both the District Court and the Court of Appeals for the Eleventh Circuit affirmed. *In re Caulkett*, 566 Fed. Appx. 879 (2014) (*per curiam*); *In re*

M. Lawless et al. by *Deepak Gupta*; and for Adam J. Levitin by *Michael T. Kirkpatrick*.

*JUSTICE KENNEDY, JUSTICE BREYER, and JUSTICE SOTOMAYOR join this opinion, except as to the footnote.

Toledo-Cardona, 556 Fed. Appx. 911 (2014) (*per curiam*). The Eleventh Circuit explained that it was bound by Circuit precedent holding that § 506(d) allows debtors to void a wholly underwater mortgage lien.

We granted certiorari, 574 U. S. 1011 (2014), and now reverse the judgments of the Eleventh Circuit.

II

Section 506(d) provides, "To the extent that a lien secures a claim against the debtor that is not an *allowed secured claim*, such lien is void." (Emphasis added.) Accordingly, § 506(d) permits the debtors here to strip off the Bank's junior mortgages only if the Bank's "claim"—generally, its right to repayment from the debtors, § 101(5)—is "not an allowed secured claim." Subject to some exceptions not relevant here, a claim filed by a creditor is deemed "allowed" under § 502 if no interested party objects or if, in the case of an objection, the Bankruptcy Court determines that the claim should be allowed under the Code. §§ 502(a)–(b). The parties agree that the Bank's claims meet this requirement. They disagree, however, over whether the Bank's claims are "secured" within the meaning of § 506(d).

The Code suggests that the Bank's claims are not secured. Section 506(a)(1) provides that "[a]n allowed claim of a creditor secured by a lien on property . . . is a *secured claim* to the extent of the value of such creditor's interest in . . . such property," and "an *unsecured claim* to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." (Emphasis added.) In other words, if the value of a creditor's interest in the property is zero—as is the case here—his claim cannot be a "secured claim" within the meaning of § 506(a). And given that these identical words are later used in the same section of the same Act—§ 506(d)—one would think this "presents a classic case for application of the normal rule of statutory construction that identical words used in different parts of the same act

are intended to have the same meaning." *Desert Palace, Inc.* v. *Costa*, 539 U. S. 90, 101 (2003) (internal quotation marks omitted). Under that straightforward reading of the statute, the debtors would be able to void the Bank's claims.

Unfortunately for the debtors, this Court has already adopted a construction of the term "secured claim" in § 506(d) that forecloses this textual analysis. See *Dewsnup* v. *Timm*, 502 U. S. 410 (1992). In *Dewsnup*, the Court confronted a situation in which a Chapter 7 debtor wanted to "'strip down'"—or reduce—a partially underwater lien under § 506(d) to the value of the collateral. *Id.*, at 412–413. Specifically, she sought, under § 506(d), to reduce her debt of approximately $120,000 to the value of the collateral securing her debt at that time ($39,000). *Id.*, at 413. Relying on the statutory definition of "'allowed secured claim'" in § 506(a), she contended that her creditors' claim was "secured only to the extent of the judicially determined value of the real property on which the lien [wa]s fixed." *Id.*, at 414.

The Court rejected her argument. Rather than apply the statutory definition of "secured claim" in § 506(a), the Court reasoned that the term "secured" in § 506(d) contained an ambiguity because the self-interested parties before it disagreed over the term's meaning. *Id.*, at 416, 420. Relying on policy considerations and its understanding of pre-Code practice, the Court concluded that if a claim "has been 'allowed' pursuant to § 502 of the Code and is secured by a lien with recourse to the underlying collateral, it does not come within the scope of § 506(d)." *Id.*, at 415; see *id.*, at 417–420. It therefore held that the debtor could not strip down the creditors' lien to the value of the property under § 506(d) "because [the creditors'] claim [wa]s secured by a lien and ha[d] been fully allowed pursuant to § 502." *Id.*, at 417. In other words, *Dewsnup* defined the term "secured claim" in § 506(d) to mean a claim supported by a security interest in property, regardless of whether the value of that property would be sufficient to cover the claim. Under this definition,

§ 506(d)'s function is reduced to "voiding a lien whenever a claim secured by the lien itself has not been allowed." *Id.*, at 416.

Dewsnup's construction of "secured claim" resolves the question presented here. *Dewsnup* construed the term "secured claim" in § 506(d) to include any claim "secured by a lien and . . . fully allowed pursuant to § 502." *Id.*, at 417. Because the Bank's claims here are both secured by liens and allowed under § 502, they cannot be voided under the definition given to the term "allowed secured claim" by *Dewsnup*.

III

The debtors do not ask us to overrule *Dewsnup*,* but instead request that we limit that decision to partially—as opposed to wholly—underwater liens. We decline to adopt this distinction. The debtors offer several reasons why we should cabin *Dewsnup* in this manner, but none of them is compelling.

To start, the debtors rely on language in *Dewsnup* stating that the Court was not addressing "all possible fact situations," but was instead "allow[ing] other facts to await their legal resolution on another day." *Id.*, at 416–417. But this disclaimer provides an insufficient foundation for the debtors'

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*From its inception, *Dewsnup* v. *Timm*, 502 U. S. 410 (1992), has been the target of criticism. See, *e. g.*, *id.*, at 420–436 (SCALIA, J., dissenting); *In re Woolsey*, 696 F. 3d 1266, 1273–1274, 1278 (CA10 2012); *In re Dever*, 164 B. R. 132, 138, 145 (Bkrtcy. Ct. CD Cal. 1994); Carlson, Bifurcation of Undersecured Claims in Bankruptcy, 70 Am. Bankr. L. J. 1, 12–20 (1996); Ponoroff & Knippenberg, The Immovable Object Versus the Irresistible Force: Rethinking the Relationship Between Secured Credit and Bankruptcy Policy, 95 Mich. L. Rev. 2234, 2305–2307 (1997); see also *Bank of America Nat. Trust and Sav. Assn.* v. *203 North LaSalle Street Partnership*, 526 U. S. 434, 463, and n. 3 (1999) (THOMAS, J., concurring in judgment) (collecting cases and observing that "[t]he methodological confusion created by *Dewsnup* has enshrouded both the Courts of Appeals and . . . Bankruptcy Courts"). Despite this criticism, the debtors have repeatedly insisted that they are not asking us to overrule *Dewsnup*.

proposed distinction. *Dewsnup* considered several possible definitions of the term "secured claim" in § 506(d). See *id.*, at 414–416. The definition it settled on—that a claim is "secured" if it is "secured by a lien" and "has been fully allowed pursuant to § 502," *id.*, at 417—does not depend on whether a lien is partially or wholly underwater. Whatever the Court's hedging language meant, it does not provide a reason to limit *Dewsnup* in the manner the debtors propose.

The debtors next contend that the term "secured claim" in § 506(d) could be redefined as any claim that is backed by collateral with *some* value. Embracing this reading of § 506(d), however, would give the term "allowed secured claim" in § 506(d) a different meaning than its statutory definition in § 506(a). We refuse to adopt this artificial definition.

Nor do we think *Nobelman* v. *American Savings Bank*, 508 U. S. 324 (1993), supports the debtors' proposed distinction. *Nobelman* said nothing about the meaning of the term "secured claim" in § 506(d). Instead, it addressed the interaction between the meaning of the term "secured claim" in § 506(a) and an entirely separate provision, § 1322(b)(2). See 508 U. S., at 327–332. *Nobelman* offers no guidance on the question presented in these cases because the Court in *Dewsnup* already declined to apply the definition in § 506(a) to the phrase "secured claim" in § 506(d).

The debtors alternatively urge us to limit *Dewsnup*'s definition to the facts of that case because the historical and policy concerns that motivated the Court do not apply in the context of wholly underwater liens. Whether or not that proposition is true, it is an insufficient justification for giving the term "secured claim" in § 506(d) a different definition depending on the value of the collateral. We are generally reluctant to give the "same words a different meaning" when construing statutes, *Pasquantino* v. *United States*, 544 U. S. 349, 358 (2005) (internal quotation marks omitted), and we decline to do so here based on policy arguments.

Ultimately, embracing the debtors' distinction would not vindicate § 506(d)'s original meaning, and it would leave an odd statutory framework in its place. Under the debtors' approach, if a court valued the collateral at one dollar more than the amount of a senior lien, the debtor could not strip down a junior lien under *Dewsnup*, but if it valued the property at one dollar less, the debtor could strip off the entire junior lien. Given the constantly shifting value of real property, this reading could lead to arbitrary results. To be sure, the Code engages in line-drawing elsewhere, and sometimes a dollar's difference will have a significant impact on bankruptcy proceedings. See, *e. g.*, § 707(b)(2)(A)(i) (presumption of abuse of provisions of Chapter 7 triggered if debtor's projected disposable income over the next five years is $12,475). But these lines were set by Congress, not this Court. There is scant support for the view that § 506(d) applies differently depending on whether a lien was partially or wholly underwater. Even if *Dewsnup* were deemed not to reflect the correct meaning of § 506(d), the debtors' solution would not either.

* * *

The reasoning of *Dewsnup* dictates that a debtor in a Chapter 7 bankruptcy proceeding may not void a junior mortgage lien under § 506(d) when the debt owed on a senior mortgage lien exceeds the current value of the collateral. The debtors here have not asked us to overrule *Dewsnup*, and we decline to adopt the artificial distinction they propose instead. We therefore reverse the judgments of the Court of Appeals and remand the cases for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

MELLOULI *v.* LYNCH, ATTORNEY GENERAL

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

No. 13–1034. Argued January 14, 2015—Decided June 1, 2015

Petitioner Moones Mellouli, a lawful permanent resident, pleaded guilty to a misdemeanor offense under Kansas law, the possession of drug paraphernalia "to . . . store [or] conceal . . . a controlled substance." Kan. Stat. Ann. §21–5709(b)(2). The sole "paraphernalia" Mellouli was charged with possessing was a sock in which he had placed four unidentified orange tablets. Citing Mellouli's misdemeanor conviction, an Immigration Judge ordered him deported under 8 U. S. C. §1227(a)(2)(B)(i), which authorizes the deportation (removal) of an alien "convicted of a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21)." Section 802, in turn, limits the term "controlled substance" to a "drug or other substance" included in one of five federal schedules. 21 U. S. C. §802(6). Kansas defines "controlled substance" as any drug included on its own schedules, without reference to §802. Kan. Stat. Ann. §21–5701(a). At the time of Mellouli's conviction, Kansas' schedules included at least nine substances not on the federal lists. The Board of Immigration Appeals (BIA) affirmed Mellouli's deportation order, and the Eighth Circuit denied his petition for review.

Held: Mellouli's Kansas conviction for concealing unnamed pills in his sock did not trigger removal under §1227(a)(2)(B)(i). Pp. 804–813.

(a) The categorical approach historically taken in determining whether a state conviction renders an alien removable looks to the statutory definition of the offense of conviction, not to the particulars of the alien's conduct. The state conviction triggers removal only if, by definition, the underlying crime falls within a category of removable offenses defined by federal law. The BIA has long applied the categorical approach to assess whether a state drug conviction triggers removal under successive versions of what is now §1227(a)(2)(B)(i). *Matter of Paulus*, 11 I. & N. Dec. 274, is illustrative. At the time the BIA decided *Paulus*, California controlled certain "narcotics" not listed as "narcotic drugs" under federal law. *Id.*, at 275. The BIA concluded that an alien's California conviction for offering to sell an unidentified "narcotic" was not a deportable offense, for it was possible that the conviction involved a substance controlled only under California, not federal, law. Under the *Paulus* analysis, Mellouli would not be deportable. The

state law involved in Mellouli's conviction, like the California statute in *Paulus*, was not confined to federally controlled substances; it also included substances controlled only under state, not federal, law.

The BIA, however, announced and applied a different approach to drug-paraphernalia offenses (as distinguished from drug possession and distribution offenses) in *Matter of Martinez Espinoza*, 25 I. & N. Dec. 118. There, the BIA ranked paraphernalia statutes as relating to "the drug trade in general," reasoning that a paraphernalia conviction "relates to" any and all controlled substances, whether or not federally listed, with which the paraphernalia can be used. *Id.*, at 120–121. Under this reasoning, there is no need to show that the type of controlled substance involved in a paraphernalia conviction is one defined in § 802.

The BIA's disparate approach to drug possession and distribution offenses and paraphernalia possession offenses finds no home in § 1227(a)(2)(B)(i)'s text and "leads to consequences Congress could not have intended." *Moncrieffe* v. *Holder*, 569 U. S. 184, 200. That approach has the anomalous result of treating less grave paraphernalia possession misdemeanors more harshly than drug possession and distribution offenses. The incongruous upshot is that an alien is *not* removable for *possessing* a substance controlled only under Kansas law, but he *is* removable for using a sock to contain that substance. Because it makes scant sense, the BIA's interpretation is owed no deference under the doctrine described in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843. Pp. 804–810.

(b) The Government's interpretation of the statute is similarly flawed. The Government argues that aliens who commit *any* drug crime, not just paraphernalia offenses, in States whose drug schedules substantially overlap the federal schedules are deportable, for "state statutes that criminalize hundreds of federally controlled drugs and a handful of similar substances, are laws 'relating to' federally controlled substances." Brief for Respondent 17. While the words "relating to" are broad, the Government's reading stretches the construction of § 1227(a)(2)(B)(i) to the breaking point, reaching state-court convictions, like Mellouli's, in which "[no] controlled substance (as defined in [§ 802])" figures as an element of the offense. Construction of § 1227(a)(2)(B)(i) must be faithful to the text, which limits the meaning of "controlled substance," for removal purposes, to the substances controlled under § 802. Accordingly, to trigger removal under § 1227(a)(2)(B)(i), the Government must connect an element of the alien's conviction to a drug "defined in [§ 802]." Pp. 810–813.

719 F. 3d 995, reversed.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined, *post*, p. 813.

Jon Laramore argued the cause for petitioner. With him on the briefs were *D. Lucetta Pope*, *Daniel E. Pulliam*, *Katherine Evans*, *Benjamin Casper*, *John Keller*, and *Sheila Stuhlman*.

Rachel P. Kovner argued the cause for respondent. With her on the brief were *Solicitor General Verrilli*, *Acting Assistant Attorney General Branda*, *Deputy Solicitor General Kneedler*, *Donald E. Kenner*, and *W. Manning Evans*.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case requires us to decide how immigration judges should apply a deportation (removal) provision, defined with reference to federal drug laws, to an alien convicted of a state drug-paraphernalia misdemeanor.

Lawful permanent resident Moones Mellouli, in 2010, pleaded guilty to a misdemeanor offense under Kansas law, the possession of drug paraphernalia to "store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body." Kan. Stat. Ann. §21–5709(b)(2) (2013 Cum. Supp.). The sole "paraphernalia" Mellouli was charged with possessing was a sock in which he had placed four orange tablets. The criminal charge and plea agreement did not identify the controlled substance involved, but Mellouli had acknowledged, prior to the charge and plea, that the tablets were Adderall. Mellouli was sentenced to a suspended term of 359 days and 12 months' probation.

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*Briefs of *amici curiae* urging reversal were filed for Immigration Law Professors by *Alina Das*, *pro se*; for the National Association of Criminal Defense Lawyers et al. by *Alan Schoenfeld* and *Mark C. Fleming*; and for the National Immigrant Justice Center et al. by *Julian L. André* and *Charles Roth*.

In February 2012, several months after Mellouli successfully completed probation, Immigration and Customs Enforcement officers arrested him as deportable under 8 U. S. C. § 1227(a)(2)(B)(i) based on his Kansas misdemeanor conviction. Section 1227(a)(2)(B)(i) authorizes the removal of an alien "convicted of a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21)." We hold that Mellouli's Kansas conviction for concealing unnamed pills in his sock did not trigger removal under § 1227(a)(2)(B)(i). The drug-paraphernalia possession law under which he was convicted, Kan. Stat. Ann. § 21–5709(b), by definition, related to a controlled substance: The Kansas statute made it unlawful "to use or possess with intent to use any drug paraphernalia to . . . store [or] conceal . . . a controlled substance." But it was immaterial under that law whether the substance was *defined in 21 U. S. C. § 802*. Nor did the State charge, or seek to prove, that Mellouli possessed a substance on the § 802 schedules. Federal law (§ 1227(a)(2)(B)(i)), therefore, did not authorize Mellouli's removal.

I

A

This case involves the interplay between several federal and state statutes. Section 1227(a)(2)(B)(i), a provision of the Immigration and Nationality Act, 66 Stat. 163, as amended, authorizes the removal of an alien "convicted of a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana." Section 1227(a)(2)(B)(i) incorporates 21 U. S. C. § 802, which limits the term "controlled substance" to a "drug or other substance" included in one of five federal schedules. § 802(6).

The statute defining the offense to which Mellouli pleaded guilty, Kan. Stat. Ann. § 21–5709(b), proscribes "possess[ion] with intent to use any drug paraphernalia to," among other things, "store" or "conceal" a "controlled substance." Kansas defines "controlled substance" as any drug included on its own schedules, and makes no reference to § 802 or any other federal law. § 21–5701(a).[1] At the time of Mellouli's conviction, Kansas' schedules included at least nine substances not included in the federal lists. See § 65–4105(d)(30), (31), (33), (34), (36) (2010 Cum. Supp.); § 65–4111(g) (2002); § 65–4113(d)(1), (e), (f) (2010 Cum. Supp.); see also Brief for Respondent 9, n. 2.

The question presented is whether a Kansas conviction for using drug paraphernalia to store or conceal a controlled substance, § 21–5709(b), subjects an alien to deportation under § 1227(a)(2)(B)(i), which applies to an alien "convicted of a violation of [a state law] relating to a controlled substance (as defined in [§ 802])."

B

Mellouli, a citizen of Tunisia, entered the United States on a student visa in 2004. He attended U. S. universities, earning a bachelor of arts degree, *magna cum laude*, as well as master's degrees in applied mathematics and economics. After completing his education, Mellouli worked as an actuary and taught mathematics at the University of Missouri-Columbia. In 2009, he became a conditional permanent resident and, in 2011, a lawful permanent resident. Since December 2011, Mellouli has been engaged to be married to a U. S. citizen.

In 2010, Mellouli was arrested for driving under the influence and driving with a suspended license. During a post-arrest search in a Kansas detention facility, deputies dis-

[1] At the time of Mellouli's conviction, Kan. Stat. Ann. §§ 21–5701(a) and 21–5709(b) (2013 Cum. Supp.) were codified at, respectively, §§ 21–36a01(a) and 21–36a09(b) (2010 Cum. Supp.).

covered four orange tablets hidden in Mellouli's sock. According to a probable-cause affidavit submitted in the state prosecution, Mellouli acknowledged that the tablets were Adderall and that he did not have a prescription for the drugs. Adderall, the brand name of an amphetamine-based drug typically prescribed to treat attention-deficit hyperactivity disorder,[2] is a controlled substance under both federal and Kansas law. See 21 CFR § 1308.12(d)(1) (2014) (listing "amphetamine" and its "salts" and "isomers"); Kan. Stat. Ann. § 65–4107(d)(1) (2013 Cum. Supp.) (same). Based on the probable-cause affidavit, a criminal complaint was filed charging Mellouli with trafficking contraband in jail.

Ultimately, Mellouli was charged with only the lesser offense of possessing drug paraphernalia, a misdemeanor. The amended complaint alleged that Mellouli had "use[d] or possess[ed] with intent to use drug paraphernalia, to-wit: a sock, to store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance." App. 23. The complaint did not identify the substance contained in the sock. Mellouli pleaded guilty to the paraphernalia possession charge; he also pleaded guilty to driving under the influence. For both offenses, Mellouli was sentenced to a suspended term of 359 days and 12 months' probation.

In February 2012, several months after Mellouli successfully completed probation, Immigration and Customs Enforcement officers arrested him as deportable under § 1227(a)(2)(B)(i) based on his paraphernalia possession conviction. An Immigration Judge ordered Mellouli deported, and the Board of Immigration Appeals (BIA) affirmed the order. Mellouli was deported in 2012.

Under federal law, Mellouli's concealment of controlled-substance tablets in his sock would not have qualified as a drug-paraphernalia offense. Federal law criminalizes the

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[2] See H. Silverman, The Pill Book 23 (13th ed. 2008).

sale of or commerce in drug paraphernalia, but possession alone is not criminalized at all. See 21 U. S. C. § 863(a)–(b). Nor does federal law define drug paraphernalia to include common household or ready-to-wear items like socks; rather, it defines paraphernalia as any "equipment, product, or material" which is "primarily *intended or designed for use*" in connection with various drug-related activities. § 863(d) (emphasis added). In 19 States as well, the conduct for which Mellouli was convicted—use of a sock to conceal a controlled substance—is not a criminal offense. Brief for National Immigrant Justice Center et al. as *Amici Curiae* 7. At most, it is a low-level infraction, often not attended by a right to counsel. *Id.*, at 9–11.

The Eighth Circuit denied Mellouli's petition for review. 719 F. 3d 995 (2013). We granted certiorari, 573 U. S. 944 (2014), and now reverse the judgment of the Eighth Circuit.

II

We address first the rationale offered by the BIA and affirmed by the Eighth Circuit, which differentiates paraphernalia offenses from possession and distribution offenses. Essential background, in evaluating the rationale shared by the BIA and the Eighth Circuit, is the categorical approach historically taken in determining whether a state conviction renders an alien removable under the immigration statute.[3]

[3] We departed from the categorical approach in *Nijhawan* v. *Holder*, 557 U. S. 29 (2009), based on the atypical cast of the prescription at issue, 8 U. S. C. § 1101(a)(43)(M)(i). That provision defines as an "aggravated felony" an offense "involv[ing] fraud or deceit in which the loss to the victim or victims exceeds $10,000." The following subparagraph, (M)(ii), refers to an offense "described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000." No offense "described in section 7201 of title 26," we pointed out, "has a specific loss amount as an element." 557 U. S., at 38. Similarly, "no widely applicable federal fraud statute . . . contains a relevant monetary loss threshold," *id.*, at 39, and "[most] States had no major fraud or deceit statute with any relevant monetary threshold," *id.*, at 40. As categorically inter-

Because Congress predicated deportation "on convictions, not conduct," the approach looks to the statutory definition of the offense of conviction, not to the particulars of an alien's behavior. Das, The Immigration Penalties of Criminal Convictions: Resurrecting Categorical Analysis in Immigration Law, 86 N. Y. U. L. Rev. 1669, 1701, 1746 (2011). The state conviction triggers removal only if, by definition, the underlying crime falls within a category of removable offenses defined by federal law. *Ibid.* An alien's actual conduct is irrelevant to the inquiry, as the adjudicator must "presume that the conviction rested upon nothing more than the least of the acts criminalized" under the state statute. *Moncrieffe* v. *Holder*, 569 U. S. 184, 190–191 (2013) (internal quotation marks and alterations omitted).[4]

The categorical approach "has a long pedigree in our Nation's immigration law." *Id.*, at 191. As early as 1913, courts examining the federal immigration statute concluded that Congress, by tying immigration penalties to *convic-*

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preted, (M)(ii), the tax evasion provision, would have no application, and (M)(i), the fraud or deceit provision, would apply only in an extraordinarily limited and haphazard manner. *Ibid.* We therefore concluded that Congress intended the monetary thresholds in subparagraphs (M)(i) and (M)(ii) to apply "to the specific circumstances surrounding an offender's commission of [the defined] crime on a specific occasion." *Ibid.* In the main, § 1227(a)(2)(B)(i), the provision at issue here, has no such circumstance-specific thrust; its language refers to crimes generically defined.

[4] A version of this approach, known as the "modified categorical approach," applies to "state statutes that contain several different crimes, each described separately." *Moncrieffe* v. *Holder*, 569 U. S. 184, 191 (2013). In such cases, "a court may determine which particular offense the noncitizen was convicted of by examining the charging document and jury instructions, or in the case of a guilty plea, the plea agreement, plea colloquy, or some comparable judicial record of the factual basis for the plea." *Ibid.* (internal quotation marks omitted). Off limits to the adjudicator, however, is any inquiry into the particular facts of the case. Because the Government has not argued that this case falls within the compass of the modified-categorical approach, we need not reach the issue.

tions, intended to "limi[t] the immigration adjudicator's assessment of a past criminal conviction to a legal analysis of the statutory offense," and to disallow "[examination] of the facts underlying the crime." Das, *supra*, at 1688, 1690.

Rooted in Congress' specification of conviction, not conduct, as the trigger for immigration consequences, the categorical approach is suited to the realities of the system. Asking immigration judges in each case to determine the circumstances underlying a state conviction would burden a system in which "large numbers of cases [are resolved by] immigration judges and front-line immigration officers, often years after the convictions." Koh, The Whole Better Than the Sum: A Case for the Categorical Approach To Determining the Immigration Consequences of Crime, 26 Geo. Immigration L. J. 257, 295 (2012). By focusing on the legal question of what a conviction *necessarily* established, the categorical approach ordinarily works to promote efficiency, fairness, and predictability in the administration of immigration law. See *id.*, at 295–310; Das, *supra*, at 1725–1742. In particular, the approach enables aliens "to anticipate the immigration consequences of guilty pleas in criminal court," and to enter "'safe harbor' guilty pleas [that] do not expose the [alien defendant] to the risk of immigration sanctions." Koh, *supra*, at 307. See Das, *supra*, at 1737–1738.[5]

The categorical approach has been applied routinely to assess whether a state drug conviction triggers removal under the immigration statute. As originally enacted, the removal statute specifically listed covered offenses and covered substances. It made deportable, for example, any alien convicted of "import[ing]," "buy[ing]," or "sell[ing]" any "narcotic drug," defined as "opium, coca leaves, cocaine, or any salt, derivative, or preparation of opium or coca leaves, or

[5] Mellouli's plea may be an example. In admitting only paraphernalia possession, Mellouli avoided any identification, in the record of conviction, of the federally controlled substance (Adderall) his sock contained. See *supra*, at 803.

cocaine." Ch. 202, 42 Stat. 596–597. Over time, Congress amended the statute to include additional offenses and additional narcotic drugs.[6] Ultimately, the Anti-Drug Abuse Act of 1986 replaced the increasingly long list of controlled substances with the now familiar reference to "a controlled substance (as defined in [§ 802])." See § 1751, 100 Stat. 3207–47. In interpreting successive versions of the removal statute, the BIA inquired whether the state statute under which the alien was convicted covered federally controlled substances and not others.[7]

Matter of Paulus, 11 I. & N. Dec. 274 (1965), is illustrative. At the time the BIA decided *Paulus*, the immigration statute made deportable any alien who had been "convicted of a violation of . . . any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana." *Id.*, at 275. California controlled certain "narcotics," such as peyote, not listed as "narcotic drugs" under federal law. *Ibid.* The BIA concluded that an alien's California conviction for offering to sell an unidentified "narcotic" was not a

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[6] The 1956 version of the statute, for example, permitted removal of any alien "who at any time has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate." Narcotic Control Act of 1956, § 301(b), 70 Stat. 575.

[7] See, *e. g.*, *Matter of Fong*, 10 I. & N. Dec. 616, 619 (BIA 1964) (a Pennsylvania conviction for unlawful use of a drug rendered alien removable because "every drug enumerated in the Pennsylvania law [was] found to be a narcotic drug or marijuana within the meaning of [the federal removal statute]"), overruled in part on other grounds, *Matter of Sum*, 13 I. & N. Dec. 569 (1970).

deportable offense, for it was possible that the conviction involved a substance, such as peyote, controlled only under California law. *Id.*, at 275–276. Because the alien's conviction was not necessarily predicated upon a federally controlled "narcotic drug," the BIA concluded that the conviction did not establish the alien's deportability. *Id.*, at 276.

Under the *Paulus* analysis, adhered to as recently as 2014 in *Matter of Ferreira*, 26 I. & N. Dec. 415 (BIA 2014),[8] Mellouli would not be deportable. Mellouli pleaded guilty to concealing unnamed pills in his sock. At the time of Mellouli's conviction, Kansas' schedules of controlled substances included at least nine substances—*e. g.*, salvia and jimson weed—not defined in § 802. See Kan. Stat. Ann. § 65–4105(d)(30), (31). The state law involved in Mellouli's conviction, therefore, like the California statute in *Paulus*, was not confined to federally controlled substances; it required no proof by the prosecutor that Mellouli used his sock to conceal a substance listed under § 802, as opposed to a substance controlled only under Kansas law. Under the categorical approach applied in *Paulus*, Mellouli's drug-paraphernalia conviction does not render him deportable. In short, the state law under which he was charged categorically "relat[ed] to a controlled substance," but was not limited to substances "defined in [§ 802]."[9]

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[8] The Government acknowledges that *Ferreira* "assumed the applicability of [the *Paulus*] framework." Brief for Respondent 49. Whether *Ferreira* applied that framework correctly is not a matter this case calls upon us to decide.

[9] The dissent maintains that it is simply following "the statutory text." *Post*, at 813. It is evident, however, that the dissent shrinks to the vanishing point the words "as defined in [§ 802]." If § 1227(a)(2)(B)(i) stopped with the words "relating to a controlled substance," the dissent would make sense. But Congress did not stop there. It qualified "relating to a controlled substance" by adding the limitation "as defined in [§ 802]." If those words do not confine § 1227(a)(2)(B)(i)'s application to drugs defined in § 802, one can only wonder why Congress put them there.

The BIA, however, announced and applied a different approach to drug-paraphernalia offenses (as distinguished from drug possession and distribution offenses) in *Matter of Martinez Espinoza*, 25 I. & N. Dec. 118 (2009). There, the BIA ranked paraphernalia statutes as relating to "the drug trade in general." *Id.*, at 121. The BIA rejected the argument that a paraphernalia conviction should not count at all because it targeted implements, not controlled substances. *Id.*, at 120. It then reasoned that a paraphernalia conviction "relates to" any and all controlled substances, whether or not federally listed, with which the paraphernalia can be used. *Id.*, at 121. Under this reasoning, there is no need to show that the type of controlled substance involved in a paraphernalia conviction is one defined in § 802.

The Immigration Judge in this case relied upon *Martinez Espinoza* in ordering Mellouli's removal, quoting that decision for the proposition that "'the requirement of a correspondence between the Federal and State controlled substance schedules, embraced by *Matter of Paulus* . . . has never been extended'" to paraphernalia offenses. App. to Pet. for Cert. 32 (quoting *Martinez Espinoza*, 25 I. & N. Dec., at 121). The BIA affirmed, reasoning that Mellouli's conviction for possession of drug paraphernalia "involves drug trade in general and, thus, is covered under [§ 1227(a)(2)(B)(i)]." App. to Pet. for Cert. 18. Denying Mellouli's petition for review, the Eighth Circuit deferred to the BIA's decision in *Martinez Espinoza*, and held that a Kansas paraphernalia conviction "'relates to' a federal controlled substance because it is a crime . . . 'associated with the drug trade in general.'" 719 F. 3d, at 1000.

The disparate approach to state drug convictions, devised by the BIA and applied by the Eighth Circuit, finds no home in the text of § 1227(a)(2)(B)(i). The approach, moreover, "leads to consequences Congress could not have intended." *Moncrieffe*, 569 U. S., at 200. Statutes should be interpreted "as a symmetrical and coherent regulatory scheme."

FDA v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 133 (2000) (internal quotation marks omitted). The BIA, however, has adopted conflicting positions on the meaning of § 1227(a)(2)(B)(i), distinguishing drug possession and distribution offenses from offenses involving the drug trade in general, with the anomalous result that minor paraphernalia possession offenses are treated more harshly than drug possession and distribution offenses. Drug possession and distribution convictions trigger removal only if they necessarily involve a federally controlled substance, see *Paulus*, 11 I. & N. Dec. 274, while convictions for paraphernalia possession, an offense less grave than drug possession and distribution, trigger removal whether or not they necessarily implicate a federally controlled substance, see *Martinez Espinoza*, 25 I. & N. Dec. 118. The incongruous upshot is that an alien is *not* removable for *possessing* a substance controlled only under Kansas law, but he *is* removable for using a sock to contain that substance. Because it makes scant sense, the BIA's interpretation, we hold, is owed no deference under the doctrine described in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843 (1984).

III

Offering an addition to the BIA's rationale, the Eighth Circuit reasoned that a state paraphernalia possession conviction categorically relates to a federally controlled substance so long as there is "nearly a complete overlap" between the drugs controlled under state and federal law. 719 F. 3d, at 1000.[10] The Eighth Circuit's analysis, however, scarcely explains or ameliorates the BIA's anomalous separation of paraphernalia possession offenses from drug possession and distribution offenses.

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[10] The BIA posited, but did not rely on, a similar rationale in *Matter of Martinez Espinoza*. See 25 I. & N. Dec. 118, 121 (2009) (basing decision on a "distinction between crimes involving the possession or distribution of a *particular* drug and those involving other conduct associated with the drug trade in general").

Apparently recognizing this problem, the Government urges, as does the dissent, that the overlap between state and federal drug schedules supports the removal of aliens convicted of *any* drug crime, not just paraphernalia offenses. As noted, § 1227(a)(2)(B)(i) authorizes the removal of any alien "convicted of a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in [§ 802])." According to the Government, the words "relating to" modify "law or regulation," rather than "violation." Brief for Respondent 25–26 (a limiting phrase ordinarily modifies the last antecedent). Therefore, the Government argues, aliens who commit "drug crimes" in States whose drug schedules substantially overlap the federal schedules are removable, for "state statutes that criminalize hundreds of federally controlled drugs and a handful of similar substances, are laws 'relating to' federally controlled substances." Brief for Respondent 17.

We do not gainsay that, as the Government urges, the last reasonable referent of "relating to," as those words appear in § 1227(a)(2)(B)(i), is "law or regulation." The removal provision is thus satisfied when the elements that make up the state crime of conviction relate to a federally controlled substance. As this case illustrates, however, the Government's construction of the federal removal statute stretches to the breaking point, reaching state-court convictions, like Mellouli's, in which "[no] controlled substance (as defined in [§ 802])" figures as an element of the offense. We recognize, too, that the § 1227(a)(2)(B)(i) words to which the dissent attaches great weight, *i. e.*, "relating to," *post*, at 814–815, are "broad" and "indeterminate." *Maracich* v. *Spears*, 570 U. S. 48, 59 (2013) (internal quotation marks and brackets omitted).[11] As we

[11] The dissent observes that certain provisions of the immigration statute involving firearms and domestic violence "specif[y] the conduct that subjects an alien to removal" without "the expansive phrase 'relating to.'" *Post*, at 815. From this statutory context, the dissent infers that Congress must have intended the words "relating to" to have expansive meaning. *Post*, at 815–816. But the dissent overlooks another contextual

cautioned in *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645 (1995), those words, "extend[ed] to the furthest stretch of [their] indeterminacy, . . . 'stop nowhere,'" *id.*, at 655 (internal quotation marks omitted). "[C]ontext," therefore, may "tu[g] . . . in favor of a narrower reading." *Yates* v. *United States*, 574 U. S. 528, 539 (2015). Context does so here.

The historical background of § 1227(a)(2)(B)(i) demonstrates that Congress and the BIA have long required a direct link between an alien's crime of conviction and a particular federally controlled drug. *Supra*, at 807–808. The Government's position here severs that link by authorizing deportation any time the state statute of conviction bears some general relation to federally controlled drugs. The Government offers no cogent reason why its position is limited to state drug schedules that have a "substantial overlap" with the federal schedules. Brief for Respondent 31. A statute with *any* overlap would seem to be *related to* federally controlled drugs. Indeed, the Government's position might well encompass convictions for offenses related to drug activity more generally, such as gun possession, even if those convictions do not actually involve drugs (let alone federally controlled drugs). The Solicitor General, while resisting this particular example, acknowledged that convictions under statutes "that have some connection to drugs indirectly" might fall within § 1227(a)(2)(B)(i). Tr. of Oral

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clue—*i. e.*, that other provisions of the immigration statute tying immigration consequences to controlled-substance offenses contain no reference to § 802. See 8 U. S. C. § 1357(d) (allowing detainer of any alien who has been "arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances"); § 1184(d)(3)(B)(iii) (allowing Secretary of Homeland Security to deny certain visa applications when applicant has at least three convictions of crimes "relating to a controlled substance or alcohol not arising from a single act"). These provisions demonstrate that when Congress seeks to capture conduct involving a "controlled substance," it says just that, not "a controlled substance (as defined in [§ 802])."

Arg. 36. This sweeping interpretation departs so sharply from the statute's text and history that it cannot be considered a permissible reading.

In sum, construction of § 1227(a)(2)(B)(i) must be faithful to the text, which limits the meaning of "controlled substance," for removal purposes, to the substances controlled under § 802. We therefore reject the argument that *any* drug offense renders an alien removable, without regard to the appearance of the drug on a § 802 schedule. Instead, to trigger removal under § 1227(a)(2)(B)(i), the Government must connect an element of the alien's conviction to a drug "defined in [§ 802]."

* * *

For the reasons stated, the judgment of the U. S. Court of Appeals for the Eighth Circuit is reversed.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting.

The Court reverses the decision of the United States Court of Appeals for the Eighth Circuit on the ground that it misapplied the federal removal statute. It rejects the Government's interpretation of that statute, which would supply an alternative ground for affirmance. Yet it offers no interpretation of its own. Lower courts are thus left to guess which convictions qualify an alien for removal under 8 U. S. C. § 1227(a)(2)(B)(i), and the majority has deprived them of their only guide: the statutory text itself. Because the statute renders an alien removable whenever he is convicted of violating a law "relating to" a federally controlled substance, I would affirm.

I

With one exception not applicable here, § 1227(a)(2)(B)(i) makes removable "[a]ny alien who at any time after admission has been convicted of a violation of (or a conspiracy or

attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)." I would hold, consistent with the text, that the provision requires that the conviction arise under a "law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)." Thus, Mellouli was properly subject to removal if the Kansas statute of conviction "relat[es] to a controlled substance (as defined in section 802 of title 21)," regardless of whether his particular conduct would also have subjected him to prosecution under federal controlled-substances laws. See *ante*, at 805 ("An alien's actual conduct is irrelevant to the inquiry"). The majority's 12 references to the sock that Mellouli used to conceal the pills are thus entirely beside the point.[1]

The critical question, which the majority does not directly answer, is what it means for a law or regulation to "relat[e] to a controlled substance (as defined in section 802 of title 21)." At a minimum, we know that this phrase does not require a complete overlap between the substances controlled under the state law and those controlled under 21 U. S. C. § 802. To "relate to" means "'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.'" *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 383 (1992) (quoting Black's Law Dictionary 1158 (5th ed. 1979)). In ordinary parlance, one thing can "relate to" another even if it also relates to other things. As ordinarily understood, therefore, a state law regulating various controlled substances may

[1] It is likewise beside the point that the pills were, in fact, federally controlled substances, that Mellouli concealed them in his sock while being booked into jail, that he was being booked into jail for his second arrest for driving under the influence in less than one year, that he pleaded to the paraphernalia offense after initially being charged with trafficking contraband in jail, or that he has since been charged with resisting arrest and failure to display a valid driver's license upon demand.

"relat[e] to a controlled substance (as defined in section 802 of title 21)" even if the statute also controls a few substances that do not fall within the federal definition.

The structure of the removal statute confirms this interpretation. Phrases like "relating to" and "in connection with" have broad but indeterminate meanings that must be understood in the context of "the structure of the statute and its other provisions." *Maracich* v. *Spears*, 570 U. S. 48, 60 (2013) ("in connection with"); see also *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 655 (1995) ("relate to"); see generally *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N. A., Inc.*, 519 U. S. 316, 324 (1997) (describing the Court's efforts to interpret the "'clearly expansive'" "relate to" language in the pre-emption provision of the Employee Retirement Income Security Act of 1974). In interpreting such phrases, we must be careful to honor Congress' choice to use expansive language. *Maracich*, *supra*, at 87 (GINSBURG, J., dissenting) (noting that a statute should be interpreted broadly in light of Congress' decision to use sweeping language like "in connection with"); see also, *e. g.*, *Alaska Dept. of Environmental Conservation* v. *EPA*, 540 U. S. 461, 484 (2004) (GINSBURG, J.) (interpreting Environmental Protection Agency's authority in light of the "notably capacious terms" contained in its authorizing statute).

Here, the "structure of the statute and its other provisions" indicate that Congress understood this phrase to sweep quite broadly. Several surrounding subsections of the removal statute reveal that when Congress wanted to define with greater specificity the conduct that subjects an alien to removal, it did so by omitting the expansive phrase "relating to." For example, a neighboring provision makes removable "[a]ny alien who . . . is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying . . . any weapon, part, or accessory *which is* a firearm or destructive device (as defined

in section 921(a) of title 18)." 8 U. S. C. § 1227(a)(2)(C) (emphasis added). This language explicitly requires that the object of the offense fit within a federal definition. Other provisions adopt similar requirements. See, *e. g.*, § 1227(a)(2)(E)(i) (making removable "[a]ny alien who . . . is convicted of a crime of domestic violence," where "the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of title 18) . . . committed by" a person with a specified family relationship with the victim); see generally § 1101(a)(43) (defining certain aggravated felonies using federal definitions as elements). That Congress, in this provision, required only that a law *relate to* a federally controlled substance, as opposed to *involve* such a substance, suggests that it understood "relating to" as having its ordinary and expansive meaning. See, *e. g.*, *Russello* v. *United States*, 464 U. S. 16, 23 (1983).

Applying this interpretation of "relating to," a conviction under Kansas' drug paraphernalia statute qualifies as a predicate offense under § 1227(a)(2)(B)(i). That state statute prohibits the possession or use of drug paraphernalia to "store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body." Kan. Stat. Ann. § 21–5709(b)(2) (2013 Cum. Supp.). And, as used in this statute, a "controlled substance" is a substance that appears on Kansas' schedules, § 21–5701(a), which in turn consist principally of federally controlled substances. *Ante*, at 802; see also Brief for Petitioner 3 (listing nine substances on Kansas' schedules that were not on the federal schedules at the time of Mellouli's arrest); Brief for Respondent 8 (noting that, at the time of Mellouli's arrest, more than 97 percent of the named substances on Kansas' schedules were federally controlled). The law certainly "relat[es] to a controlled substance (as defined in section 802 of title 21)" because it prohibits conduct involving controlled substances falling within the federal definition in § 802.

True, approximately three percent of the substances appearing on Kansas' lists of "controlled substances" at the time of Mellouli's conviction did not fall within the federal definition, *ante*, at 802, meaning that an individual convicted of possessing paraphernalia may never have used his paraphernalia with a federally controlled substance. But that fact does not destroy the relationship between the *law* and federally controlled substances. Mellouli was convicted for violating a state law "relating to a controlled substance (as defined in section 802 of title 21)," so he was properly removed under 8 U. S. C. § 1227(a)(2)(B)(i).

II

A

The majority rejects this straightforward interpretation because it "reach[es] state-court convictions . . . in which '[no] controlled substance (as defined in [§ 802])' figures as an element of the offense." *Ante*, at 811. This assumes the answer to the question at the heart of this case: whether the removal statute does in fact reach such convictions. To answer that question by assuming the answer is circular.

The majority hints that some more limited definition of "relating to" is suggested by context. See *ante*, at 812. I wholeheartedly agree that we must look to context to understand indeterminate terms like "relating to," which is why I look to surrounding provisions of the removal statute. These "reveal that when Congress wanted to define with greater specificity the conduct that subjects an alien to removal, it did so by omitting the expansive phrase 'relating to.'" *Supra*, at 815. For its part, the majority looks to the context of other provisions referring to "controlled substances" without a definitional parenthetical, *ante*, at 13, n. 11, and rejoins that the most natural reading of the statute "shrinks to the vanishing point the words 'as defined in [§ 802],'" *ante*, at 808, n. 9. But the definition of controlled substances *does*

play a role in my interpretation, by requiring that the law bear some relationship to *federally* controlled substances. Although we need not establish the precise boundaries of that relationship in this case given that Kansas' paraphernalia law clearly qualifies under any reasonable definition of "relating to," the definition of controlled substances imposes a meaningful limit on the statutes that qualify.

B

The majority *appears* to conclude that a statute "relates to" a federally controlled substance if its "definition of the offense of conviction" necessarily includes as an element of that offense a federally controlled substance. *Ante*, at 805. The text will not bear this meaning.

The first problem with the majority's interpretation is that it converts a removal provision expressly keyed to features of the statute itself into one keyed to features of the underlying generic offense. To understand the difference, one need look no further than this Court's decision in *Moncrieffe* v. *Holder*, 569 U. S. 184 (2013). In that case, removal was predicated on the generic offense of "'illicit trafficking in a controlled substance.'" *Id.*, at 188. Thus, in order to satisfy the federal criteria, it was necessary for the state offense at issue to have as elements the same elements that make up that generic offense. *Id.*, at 190. By contrast, § 1227(a)(2)(B)(i) does not refer to a generic offense for which we must discern the relevant criteria from its nature. Instead, it establishes the relevant criteria explicitly, and does so for the law of conviction itself rather than for some underlying generic offense—that is, the law of conviction must "relat[e] to" a federally controlled substance.

The only plausible way of reading the text here to refer to a generic offense that has as one element the involvement of a federally controlled substance would be to read "relating to" as modifying "violation" instead of "law." Under that reading, the statute would attach immigration consequences

to a "*violation* . . . relating to a controlled substance (as defined in section 802 of title 21)," rather than a violation of a "*law* . . . relating to a controlled substance (as defined in section 802 of title 21)." Yet the majority expressly—and correctly—rejects as grammatically incorrect Mellouli's argument that the "relating to" clause modifies "violation." *Ante,* at 811.

Having done so, the majority can reconcile its outcome with the text only by interpreting the words "relating to" to mean "regulating only." It should be obvious why the majority does not make this argument explicit. Even assuming "regulating only" were a *permissible* interpretation of "relating to"—for it certainly is not the most natural one—that interpretation would be foreclosed by Congress' pointed word choice in the surrounding provisions. And given the logical upshot of the majority's interpretation, it is even more understandable that it avoids offering an explicit exegesis. For unless the Court ultimately adopts the modified categorical approach for statutes, like the one at issue here, that define offenses with reference to "controlled substances" generally, and treats them as divisible by each separately listed substance, *ante,* at 805, n. 4, its interpretation would mean that *no* conviction under a controlled-substances regime more expansive than the Federal Government's would trigger removal.[2] Thus, whenever a State moves first in subjecting some newly discovered drug to regulation, every

[2] If the Court ultimately adopts the modified categorical approach, it runs into new textual problems. Under that approach, an alien would be subject to removal for violating Kansas' drug paraphernalia statute whenever a qualifying judicial record reveals that the conviction involved a federally controlled substance. If that result is permissible under the removal statute, however, then Kansas' paraphernalia law must qualify as a law "relating to" a federally controlled substance. Otherwise, the text of the statute would afford no basis for his removal. It would then follow that any alien convicted of "a violation of" that law is removable under § 1227(a)(2)(B)(i), *regardless* of whether a qualifying judicial record reveals the controlled substance at issue.

alien convicted during the lag between state and federal regulation would be immunized from the immigration consequences of his conduct. Cf. Brief for Respondent 10 (explaining that two of the nine nonfederally controlled substances on Kansas' schedules at the time Mellouli was arrested became federally controlled within a year of his arrest). And the Government could never, under § 1227(a)(2)(B)(i), remove an alien convicted of violating the controlled-substances law of a State that defines "controlled substances" with reference to a list containing even one substance that does not appear on the federal schedules.

Finding no support for its position in the text, the majority relies on the historical background, *ante*, at 812–813, and especially the Board of Immigration Appeals' (BIA) decision in *Matter of Paulus*, 11 I. & N. Dec. 274 (1965)—a surprising choice, given that the majority concludes its discussion of that history by acknowledging that the BIA's atextual approach to the statute makes "scant sense," *ante*, at 810. To the extent that the BIA's approach to § 1227(a)(2)(B)(i) and its predecessors is consistent with the majority's, it suffers from the same flaw: It fails to account for the text of the removal provision because it looks at whether the *conviction* itself necessarily involved a substance regulated under federal law, not at whether the statute related to one. See *Paulus*, *supra*, at 276 ("[O]nly a *conviction* for illicit possession of or traffic in a substance which is defined as a narcotic drug under federal laws can be the basis for deportation" (emphasis added)); *Matter of Ferreira*, 26 I. & N. Dec. 415, 418–419 (BIA 2014) (modeling its categorical approach to § 1227(a)(2)(B)(i) after the analysis in *Moncrieffe*, which, as explained above, keyed removal to the characteristics of the offense).

Section 1227(a)(2)(B)(i) requires only that the state law itself, not the "generic" offense defined by the law, "relat[e] to" a federally controlled substance. The majority has not

offered a textual argument capable of supporting a different conclusion.

* * *

The statutory text resolves this case. True, faithfully applying that text means that an alien may be deported for committing an offense that does not involve a federally controlled substance. Nothing about that consequence, however, is so outlandish as to call this application into doubt. An alien may be removed only if he is convicted of violating a law, and I see nothing absurd about removing individuals who are unwilling to respect the drug laws of the jurisdiction in which they find themselves.

The majority thinks differently, rejecting the only plausible reading of this provision and adopting an interpretation that finds no purchase in the text. I fail to understand why it chooses to do so, apart from a gut instinct that an educated professional engaged to an American citizen should not be removed for concealing unspecified orange tablets in his sock. Or perhaps the majority just disapproves of the fact that Kansas, exercising its police powers, has decided to criminalize conduct that Congress, exercising its limited powers, has decided not to criminalize, *ante*, at 803–804. Either way, that is not how we should go about interpreting statutes, and I respectfully dissent.

Per Curiam

TAYLOR ET AL. *v.* BARKES ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 14–939. Decided June 1, 2015

After Christopher Barkes entered a Delaware correctional facility, a nurse conducted a medical evaluation, which included a mental health screening designed in part to assess whether an inmate is suicidal. Barkes later committed suicide. His wife and children, respondents, filed suit under 42 U. S. C. § 1983 against petitioners Stanley Taylor, the Commissioner of the Delaware Department of Correction; Raphael Williams, the facility's warden; and others. Respondents alleged that petitioners had violated Barkes's constitutional right to be free from cruel and unusual punishment by failing to supervise and monitor the private contractor that provided the institution's medical treatment. The District Court denied petitioners' motion for summary judgment, concluding that they were not entitled to qualified immunity. The Court of Appeals for the Third Circuit affirmed, holding, as relevant here, that it was clearly established at the time of Barkes's death that an incarcerated individual had an Eighth Amendment right to the proper implementation of adequate suicide protocols.

Held: Petitioners are entitled to qualified immunity because they did not contravene clearly establish law. No decision of this Court establishes a right to the proper implementation of adequate suicide prevention protocols. The weight of authority among the courts of appeals—to the extent that consensus in those courts may clearly establish a right—suggests that the right at issue did *not* exist. And even assuming that a right can be "clearly established" by circuit precedent despite disagreement in the courts of appeals, no Third Circuit decision relied upon by that court clearly established the right at issue.

Certiorari granted; 766 F. 3d 307, reversed.

PER CURIAM.

Christopher Barkes, "a troubled man with a long history of mental health and substance abuse problems," was arrested on November 13, 2004, for violating his probation. *Barkes* v. *First Correctional Medical, Inc.*, 766 F. 3d 307, 310–311 (CA3 2014). Barkes was taken to the Howard R. Young Correctional Institution (Institution) in Wilmington,

Delaware. As part of Barkes's intake, a nurse who worked for the contractor providing healthcare at the Institution conducted a medical evaluation. *Id.*, at 311.

The evaluation included a mental health screening designed in part to assess whether an inmate was suicidal. The nurse employed a suicide screening form based on a model form developed by the National Commission on Correctional Health Care (NCCHC) in 1997. The form listed 17 suicide risk factors. If the inmate's responses and nurse's observations indicated that at least eight were present, or if certain serious risk factors were present, the nurse would notify a physician and initiate suicide prevention measures. *Id.*, at 311, 313.

Barkes disclosed that he had a history of psychiatric treatment and was on medication. He also disclosed that he had attempted suicide in 2003, though not—as far as the record indicates—that he had also done so on three other occasions. And he indicated that he was not currently thinking about killing himself. Because only two risk factors were apparent, the nurse gave Barkes a "routine" referral to mental health services and did not initiate any special suicide prevention measures. *Id.*, at 311.

Barkes was placed in a cell by himself. Despite what he had told the nurse, that evening he called his wife and told her that he "can't live this way anymore" and was going to kill himself. Barkes's wife did not inform anyone at the Institution of this call. The next morning, correctional officers observed Barkes awake and behaving normally at 10:45, 10:50, and 11:00 a.m. At 11:35 a.m., however, an officer arrived to deliver lunch and discovered that Barkes had hanged himself with a sheet. *Id.*, at 311–312.

Barkes's wife and children, respondents here, brought suit under Rev. Stat. § 1979, 42 U. S. C. § 1983, against various entities and individuals connected with the Institution, who they claimed had violated Barkes's civil rights in failing to prevent his suicide. At issue here is a claim against peti-

tioners Stanley Taylor, Commissioner of the Delaware Department of Correction, and Raphael Williams, the Institution's warden. Although it is undisputed that neither petitioner had personally interacted with Barkes or knew of his condition before his death, respondents alleged that Taylor and Williams had violated Barkes's constitutional right to be free from cruel and unusual punishment. *Barkes* v. *First Correctional Medical, Inc.*, 2008 WL 523216, *7 (D Del., Feb. 27, 2008). They did so, according to respondents, by failing to supervise and monitor the private contractor that provided the medical treatment—including the intake screening—at the Institution. Petitioners moved for summary judgment on the ground that they were entitled to qualified immunity, but the District Court denied the motion. *Barkes* v. *First Correctional Medical, Inc.*, 2012 WL 2914915, *8–*12 (D Del., July 17, 2012).

A divided panel of the Court of Appeals for the Third Circuit affirmed. The majority first determined that respondents had alleged a cognizable theory of supervisory liability (a decision upon which we express no view). 766 F. 3d, at 316–325. The majority then turned to the two-step qualified immunity inquiry, asking "first, whether the plaintiff suffered a deprivation of a constitutional or statutory right; and second, if so, whether that right was 'clearly established' at the time of the alleged misconduct." *Id.*, at 326.

Taking these questions in reverse order, the Third Circuit held that it was clearly established at the time of Barkes's death that an incarcerated individual had an Eighth Amendment "right to the proper implementation of adequate suicide prevention protocols." *Id.*, at 327. The panel majority then concluded there were material factual disputes about whether petitioners had violated this right by failing to adequately supervise the contractor providing medical services at the prison. There was evidence, the majority noted, that the medical contractor's suicide screening process did not comply with NCCHC's latest standards, as required by the

contract. Those standards allegedly called for a revised screening form and for screening by a qualified mental health professional, not a nurse. There was also evidence that the contractor did not have access to Barkes's probation records (which would have shed light on his mental health history), and that the contractor had been short-staffing to increase profits. *Id.*, at 330–331.

Judge Hardiman dissented. As relevant here, he concluded that petitioners were entitled to qualified immunity because the right on which the majority relied was "a departure from Eighth Amendment case law that had never been established before today." *Id.*, at 345.

Taylor and Williams petitioned for certiorari. We grant the petition and reverse on the ground that there was no violation of clearly established law.

"Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Reichle* v. *Howards*, 566 U. S. 658, 664 (2012). "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Ibid.* (brackets and internal quotation marks omitted). "When properly applied, [qualified immunity] protects all but the plainly incompetent or those who knowingly violate the law." *Ashcroft* v. *al-Kidd*, 563 U. S. 731, 743 (2011) (internal quotation marks omitted). "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Id.*, at 741.

The Third Circuit concluded that the right at issue was best defined as "an incarcerated person's right to the proper implementation of adequate suicide prevention protocols." 766 F. 3d, at 327. This purported right, however, was not clearly established in November 2004 in a way that placed beyond debate the unconstitutionality of the Institution's procedures, as implemented by the medical contractor.

No decision of this Court establishes a right to the proper implementation of adequate suicide prevention protocols. No decision of this Court even discusses suicide screening or prevention protocols. And "to the extent that a 'robust consensus of cases of persuasive authority'" in the Courts of Appeals "could itself clearly establish the federal right respondent alleges," *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, 617 (2015), the weight of that authority at the time of Barkes's death suggested that such a right did *not* exist. See, *e. g.*, *Comstock* v. *McCrary*, 273 F. 3d 693, 702 (CA6 2001) ("[T]he right to medical care for serious medical needs does not encompass the right to be screened correctly for suicidal tendencies" (internal quotation marks omitted)); *Tittle* v. *Jefferson Cty. Comm'n*, 10 F. 3d 1535, 1540 (CA11 1994) (alleged "weaknesses in the [suicide] screening process, the training of deputies[,] and the supervision of prisoners" did not "amount to a showing of deliberate indifference toward the rights of prisoners"); *Burns* v. *Galveston*, 905 F. 2d 100, 104 (CA5 1990) (rejecting the proposition that "the right of detainees to adequate medical care includes an absolute right to psychological screening"); *Belcher* v. *Oliver*, 898 F. 2d 32, 34–35 (CA4 1990) ("The general right of pretrial detainees to receive basic medical care does not place upon jail officials the responsibility to screen every detainee for suicidal tendencies").

The Third Circuit nonetheless found this right clearly established by two of its own decisions, both stemming from the same case. Assuming for the sake of argument that a right can be "clearly established" by circuit precedent despite disagreement in the courts of appeals, neither of the Third Circuit decisions relied upon clearly established the right at issue. The first, *Colburn I*, said that if officials "know or should know of the particular vulnerability to suicide of an inmate," they have an obligation "not to act with reckless indifference to that vulnerability." *Colburn* v. *Upper Darby Twp.*, 838 F. 2d 663, 669 (1988). The decision

did not say, however, that detention facilities must implement procedures to identify such vulnerable inmates, let alone specify what procedures would suffice. And the Third Circuit later acknowledged that *Colburn I*'s use of the phrase "or should know"—which might seem to nod toward a screening requirement of some kind—was erroneous in light of *Farmer* v. *Brennan*, 511 U. S. 825 (1994), which held that Eighth Amendment liability requires actual awareness of risk. See *Serafin* v. *Johnstown*, 53 Fed. Appx. 211, 213 (2002).

Nor would *Colburn II* have put petitioners on notice of any possible constitutional violation. *Colburn II* reiterated that officials who know of an inmate's particular vulnerability to suicide must not be recklessly indifferent to that vulnerability. *Colburn* v. *Upper Darby Twp.*, 946 F. 2d 1017, 1023 (1991). But it did not identify any minimum screening procedures or prevention protocols that facilities must use. In fact, *Colburn II* revealed that the booking process of the jail at issue "include[d] no formal physical or mental health screening," *ibid.*, and yet the Third Circuit ruled for the defendants on all claims, see *id.*, at 1025–1031.

In short, even if the Institution's suicide screening and prevention measures contained the shortcomings that respondents allege, no precedent on the books in November 2004 would have made clear to petitioners that they were overseeing a system that violated the Constitution. Because, at the very least, petitioners were not contravening clearly established law, they are entitled to qualified immunity. The judgment of the Third Circuit is reversed.

It is so ordered.

Reporter's Note

Orders commencing with May 4, 2015, begin with page 993. The preceding orders in 575 U. S., from March 9 through April 29, 2015, were reported in Part 1, at 901–993. These page numbers are the same as they will be in the bound volume, thus making the *permanent* citations available upon publication of the preliminary prints of the United States Reports.

April 28, 2015

Certiorari Denied

No. 14–8837 (14A1090). Pruett *v.* Texas. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, denied. Certiorari denied.

No. 14–9469 (14A1091). Pruett *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, denied. Certiorari denied. Reported below: 608 Fed. Appx. 182.

No. 14–9498 (14A1096). Pruett *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, denied. Certiorari denied. Reported below: 784 F. 3d 287.

April 29, 2015

Miscellaneous Orders. (For the Court's orders prescribing amendments to the Federal Rules of Bankruptcy Procedure, see *post,* p. 1051; and amendments to the Federal Rules of Civil Procedure, see *post,* p. 1057.)

May 4, 2015

Certiorari Dismissed

No. 14–8644. Derringer *v.* Derringer. Ct. App. N. M. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 14–8707. Norris *v.* Reinbold et al. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 14–8763. Thomas et al. *v.* Loveless et al. Ct. Civ. App. Ala. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 194 So. 3d 1001.

Miscellaneous Orders

No. 14M110. MARTIN *v.* CARAWAY, WARDEN. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 14M111. J. D. T., JUVENILE MALE *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 144, Orig. NEBRASKA ET AL. *v.* COLORADO. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 14–556. OBERGEFELL ET AL. *v.* HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH;

No. 14–562. TANCO ET AL. *v.* HASLAM, GOVERNOR OF TENNESSEE, ET AL.;

No. 14–571. DEBOER ET AL. *v.* SNYDER, GOVERNOR OF MICHIGAN, ET AL.; and

No. 14–574. BOURKE ET AL. *v.* BESHEAR, GOVERNOR OF KENTUCKY. C. A. 6th Cir. [Certiorari granted, 574 U. S. 1118.] Motion of Theodore Coates for leave to file brief as *amicus curiae* denied.

No. 14–8412. IN RE RHODES. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 902] denied.

No. 14–8809. OVERALL *v.* ALABAMA STATE BAR. Sup. Ct. Ala.;

No. 14–9012. DICKERSON *v.* UNITED WAY OF NEW YORK CITY ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept.; and

No. 14–9135. MILLAN *v.* UNITED STATES. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until May 26, 2015, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 14–9278. IN RE ETCHISON; and

No. 14–9297. IN RE MCKINNON. Petitions for writs of habeas corpus denied.

No. 14–9308. IN RE WEBB. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has

repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 14–8697. IN RE BURGO. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 14–840. FEDERAL ENERGY REGULATORY COMMISSION *v.* ELECTRIC POWER SUPPLY ASSN. ET AL.; and

No. 14–841. ENERNOC, INC., ET AL. *v.* ELECTRIC POWER SUPPLY ASSN. ET AL. C. A. D. C. Cir. Motion of NRG Energy, Inc., for leave to file brief as *amicus curiae* granted. Certiorari granted limited to the following questions: "(1) Whether the Federal Energy Regulatory Commission reasonably concluded that it has authority under the Federal Power Act, 16 U. S. C. § 791a *et seq.*, to regulate the rules used by operators of wholesale electricity markets to pay for reductions in electricity consumption and to recoup those payments through adjustments to wholesale rates. (2) Whether the Court of Appeals erred in holding that the rule issued by the Federal Energy Regulatory Commission is arbitrary and capricious." Cases consolidated, and a total of one hour is allotted for oral argument. JUSTICE ALITO took no part in the consideration or decision of this motion and these petitions. Reported below: 753 F. 3d 216.

Certiorari Denied

No. 13–10282. SANCHEZ *v.* UNITED STATES; and

No. 13–10307. TROYA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 733 F. 3d 1125.

No. 14–1. AEP ENERGY SERVICES ET AL. *v.* HEARTLAND REGIONAL MEDICAL CENTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 715 F. 3d 716.

No. 14–610. UNITED STATES CELLULAR CORP. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 14–898. CELLULAR SOUTH, INC., DBA C SPIRE WIRELESS, ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 14–900. ALLBAND COMMUNICATIONS COOPERATIVE *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 14–901. NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS *v.* FEDERAL COMMUNICATION COMMISSION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 753 F. 3d 1015.

No. 14–672. KING ET AL. *v.* CHRISTIE, GOVERNOR OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 767 F. 3d 216.

No. 14–677. SKYE *v.* MAERSK LINE, LTD. CORP., DBA MAERSK LINE LTD. C. A. 11th Cir. Certiorari denied. Reported below: 751 F. 3d 1262.

No. 14–710. GIDDENS, AS TRUSTEE FOR THE SIPA LIQUIDATION OF LEHMAN BROTHERS INC. *v.* BARCLAYS CAPITAL INC. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 761 F. 3d 303.

No. 14–745. VELASCO-GIRON *v.* LYNCH, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 773 F. 3d 774.

No. 14–757. LOUISIANA PUBLIC SERVICE COMMISSION *v.* FEDERAL ENERGY REGULATORY COMMISSION (two judgments). C. A. 5th Cir. Certiorari denied. Reported below: 761 F. 3d 540 (first judgment); 771 F. 3d 903 (second judgment).

No. 14–762. PROMEDICA HEALTH SYSTEM, INC. *v.* FEDERAL TRADE COMMISSION. C. A. 6th Cir. Certiorari denied. Reported below: 749 F. 3d 559.

No. 14–801. PENSKE LOGISTICS, LLC, ET AL. *v.* DILTS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 769 F. 3d 637.

No. 14–819. VITRAN EXPRESS, INC. *v.* CAMPBELL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 582 Fed. Appx. 756.

No. 14–886. BRISTOL-MYERS SQUIBB CO. *v.* TEVA PHARMACEUTICALS USA, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 752 F. 3d 967.

No. 14–894. CASHCALL, INC., ET AL. *v.* MORRISSEY, ATTORNEY GENERAL OF WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 14–908. STEEN ET UX. *v.* MURRAY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 770 F. 3d 698.

No. 14–913. BROWN ET AL. *v.* COLUMBIA GAS TRANSMISSION, LLC. C. A. 3d Cir. Certiorari denied. Reported below: 768 F. 3d 300.

No. 14–944. JUPITER MEDICAL CENTER, INC. *v.* VISITING NURSE ASSOCIATION OF FLORIDA, INC. Sup. Ct. Fla. Certiorari denied. Reported below: 154 So. 3d 1115.

No. 14–1047. ZANKE-JODWAY ET AL. *v.* CITY OF BOYNE CITY, MICHIGAN, ET AL. Ct. App. Mich. Certiorari denied.

No. 14–1049. PROFESSIONAL BUSINESS AUTOMATION TECHNOLOGY, LLC *v.* OLD PLANK TRAIL COMMUNITY BANK, N. A. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2014 IL App (3d) 130044–U.

No. 14–1056. GALLAGHER *v.* KATTAR, CLERK-MAGISTRATE, NEWBURYPORT DISTRICT COURT, MASSACHUSETTS, ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 470 Mass. 1012, 20 N. E. 3d 256.

No. 14–1057. FULLER ET AL. *v.* DAVIS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 594 Fed. Appx. 935.

No. 14–1063. BARNABY *v.* ANDREWS UNIVERSITY. Ct. App. Mich. Certiorari denied.

No. 14–1064. TERRY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2014 OK CR 14, 334 P. 3d 953.

No. 14–1087. HOLLANDER *v.* PEYTON ET AL. Ct. App. D. C. Certiorari denied.

No. 14–1092. BARNETT *v.* CONNECTICUT LIGHT & POWER CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 580 Fed. Appx. 30.

No. 14–1094. HARRY'S NURSES REGISTRY, INC., ET AL. *v.* GAYLE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 594 Fed. Appx. 714.

No. 14–1120. KOSILEK *v.* O'BRIEN, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied. Reported below: 774 F. 3d 63.

No. 14–1134. VASQUEZ *v.* CITIMORTGAGE, INC. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 163 So. 3d 1213.

No. 14–1157. MYERS *v.* KNIGHT PROTECTIVE SERVICE, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 774 F. 3d 1246.

No. 14–1171. HINOJOSA *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 593 Fed. Appx. 262.

No. 14–1183. HUBBARD *v.* WASHINGTON MUTUAL BANK, FA, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 581 Fed. Appx. 539.

No. 14–1202. C. W. SALMAN PARTNERS ET AL. *v.* STANSELL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 771 F. 3d 713.

No. 14–1203. BABARIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 775 F. 3d 593.

No. 14–8140. FEARANCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 582 Fed. Appx. 416.

No. 14–8144. LARMANGER *v.* KAISER FOUNDATION HEALTH PLAN OF THE NORTHWEST, DBA KAISER PERMANENTE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 578.

No. 14–8182. RODRIGUEZ-HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 587 Fed. Appx. 830.

No. 14–8213. STEPHENS-MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 582 Fed. Appx. 626.

No. 14–8223. MONJARAZ SALAS *v.* UNITED STATES (Reported below: 588 Fed. Appx. 343); ALCANTARA MEJIA, AKA ALCANTARA *v.* UNITED STATES (589 Fed. Appx. 267); TORRES-HERNANDEZ *v.* UNITED STATES (589 Fed. Appx. 266); CASTRO-NAJERA, AKA CASTRO NAJERA, AKA CASTRO *v.* UNITED STATES (590 Fed. Appx.

410); Banegas-Arias *v.* United States (589 Fed. Appx. 312); and Gaspar, aka Gaspar-Gutierrez, aka Gaspar-Gilberto, aka Gaspar-Guetierrez *v.* United States (591 Fed. Appx. 266). C. A. 5th Cir. Certiorari denied.

No. 14–8462. Poole *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 151 So. 3d 402.

No. 14–8645. Dickerson *v.* Murray et al. C. A. 5th Cir. Certiorari denied. Reported below: 582 Fed. Appx. 515.

No. 14–8646. Dawson *v.* California. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 14–8651. Wright *v.* Washington, Warden. Super. Ct. Muscogee County, Ga. Certiorari denied.

No. 14–8655. Moore *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 14–8656. Millsap *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 2014 Ark. 493, 449 S. W. 3d 701.

No. 14–8658. Shakouri *v.* Raines et al. C. A. 5th Cir. Certiorari denied. Reported below: 582 Fed. Appx. 505.

No. 14–8664. Sensale *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 14–8667. Khalifa *v.* Soto, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 594 Fed. Appx. 339.

No. 14–8669. Nelson *v.* Denmark, Superintendent, Central Mississippi Correctional Facility. C. A. 5th Cir. Certiorari denied.

No. 14–8670. Ernandez *v.* Merrill Lynch & Co., Inc., et al. C. A. 7th Cir. Certiorari denied.

No. 14–8673. Marshall *v.* Wyoming Department of Corrections et al. C. A. 10th Cir. Certiorari denied. Reported below: 592 Fed. Appx. 713.

No. 14–8675. Hairston *v.* D'Ilio, Administrator, New Jersey State Prison, et al. C. A. 3d Cir. Certiorari denied. Reported below: 578 Fed. Appx. 122.

No. 14–8676. REDDY *v.* NUANCE COMMUNICATIONS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 407.

No. 14–8677. KLAUDT *v.* DOOLEY, WARDEN. Sup. Ct. S. D. Certiorari denied.

No. 14–8679. REDDY *v.* MEDQUIST, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 411.

No. 14–8682. WINDHAM *v.* BEARD, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 594 Fed. Appx. 911.

No. 14–8693. TRAUTH *v.* FOREST LABORATORIES, INC., ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–8700. SWAIN *v.* HARRIS, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 14–8702. MEIER *v.* MEGGS ET AL. C. A. 6th Cir. Certiorari denied.

No. 14–8704. HOFFMANN ET AL. *v.* MARION COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 592 Fed. Appx. 256.

No. 14–8709. OJI *v.* CITY OF NEW YORK, NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 14–8710. VERA *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 14–8712. JONES *v.* NUECES COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 682.

No. 14–8715. KEMPO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 574 Fed. Appx. 1.

No. 14–8717. DEROCK *v.* SPRINT-NEXTEL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 737.

No. 14–8720. BUCKLEY *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 14–8727. L. B. *v.* San Diego County Health and Human Services Agency. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 14–8728. Bryant *v.* Soto, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 586 Fed. Appx. 290.

No. 14–8729. Stephens *v.* County of Hawaii Police Department. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 506.

No. 14–8731. Mendoza *v.* Madden, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 355.

No. 14–8732. Simmons *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 14–8733. Dopp *v.* Oklahoma Department of Corrections. Sup. Ct. Okla. Certiorari denied.

No. 14–8735. Cunningham *v.* Department of Justice. C. A. D. C. Cir. Certiorari denied.

No. 14–8868. Jackson *v.* Fleming, Warden. Sup. Ct. Va. Certiorari denied.

No. 14–8890. Garcia *v.* Allison, Warden (two judgments). C. A. 9th Cir. Certiorari denied.

No. 14–8909. Hamilton *v.* McDaniel, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 634.

No. 14–8912. Miner *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 3d 336.

No. 14–8915. Everist *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 569.

No. 14–8927. Casciola *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 14–8936. Harrison *v.* Biter, Warden. C. A. 9th Cir. Certiorari denied.

No. 14–8956. Hernandez *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 14–8983. ANTONIO HEREDIA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 566 Fed. Appx. 853.

No. 14–9007. BARBER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 809.

No. 14–9018. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 14–9023. YOUNG *v.* PASTRANA, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 587 Fed. Appx. 542.

No. 14–9027. WRIGHT *v.* WILLIAMSBURG AREA MEDICAL ASSISTANCE CORP., AKA OLDE TOWNE MEDICAL CENTER. C. A. 4th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 143.

No. 14–9035. BOWER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 520.

No. 14–9038. DUKES, AKA WHITE-GRIER *v.* NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM AND BOARD OF TRUSTEES. C. A. 2d Cir. Certiorari denied. Reported below: 581 Fed. Appx. 81.

No. 14–9086. SCAIFE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 582 Fed. Appx. 190.

No. 14–9095. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 583 Fed. Appx. 271.

No. 14–9104. REDDY *v.* WEBMEDX, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 403.

No. 14–9105. YONG LOR *v.* PERRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 14–9107. CZECK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 14–9109. PRICE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 350.

No. 14–9127. CONYERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 603 Fed. Appx. 462.

No. 14–9128. DENSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 775 F. 3d 1214.

No. 14–9133. REA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 14–9140. HOLMES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 600 Fed. Appx. 853.

No. 14–9142. DELORME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 14–9145. FITZGERALD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 736.

No. 14–9146. SPENGLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 14–9147. HERNANDEZ-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 562.

No. 14–9149. HENLEY ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 766 F. 3d 893.

No. 14–9153. AMAYA-TEJADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 595 Fed. Appx. 401.

No. 14–9155. GARCIA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 263.

No. 14–9157. PENA-LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 595 Fed. Appx. 398.

No. 14–9158. RIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 14–9162. SOTO-PEREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 14–9167. JACKSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 76 A. 3d 920.

No. 14–9171. BENITEZ *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 108 A. 3d 1253.

No. 14–9183. ROWLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 14–9184. DOUGLAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 605 Fed. Appx. 702.

No. 14–9185. DAKING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 501.

No. 14–9186. BOONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 85.

No. 14–9188. THOMPSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 652.

No. 14–9190. YOUNG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 763 F. 3d 777.

No. 14–9194. CARLOS CABO *v.* HASTINGS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 14–9198. PETTERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 14–9201. LONG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 774 F. 3d 653.

No. 14–9202. MARTIN *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 218 Md. App. 1, 96 A. 3d 765.

No. 14–9204. SUIBIN ZHANG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 663.

No. 14–9206. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 553 Fed. Appx. 941.

No. 14–9209. BRUMMETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 14–9213. BURT *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied.

No. 14–9216. ASKEW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 14–9221. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 777 F. 3d 909.

No. 14–9224. MORMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 214.

No. 14–912. NEW YORK *v.* LLOYD-DOUGLAS; and
No. 14–941. NEW YORK *v.* DUNBAR. Ct. App. N. Y. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 24 N. Y. 3d 304, 23 N. E. 3d 946.

No. 14–9024. TELLIER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

Rehearing Denied

No. 13–10012. CARPENTER *v.* UNITED STATES, 572 U. S. 1158;
No. 14–752. GUNKLE ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE, 574 U. S. 1157;
No. 14–800. MCGEE-HUDSON *v.* AT&T ET AL., *ante*, p. 913;
No. 14–7378. CALDERON *v.* EVERGREEN OWNERS, INC., ET AL., 574 U. S. 1163;
No. 14–7538. RANGEL *v.* RIOS ET AL., 574 U. S. 1168;
No. 14–7571. THOMAS *v.* DUNCAN, WARDEN, 574 U. S. 1168;
No. 14–7707. WARREN-BEY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, 574 U. S. 1193;
No. 14–7850. ALLISON *v.* CITY OF BRIDGEPORT, ILLINOIS, ET AL., *ante*, p. 905;
No. 14–7873. MATA *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL., *ante*, p. 916;
No. 14–8133. CARLUCCI, AKA ODICE *v.* UNITED STATES, *ante*, p. 920; and
No. 14–8175. THOMPSON *v.* UNITED STATES, 574 U. S. 1199. Petitions for rehearing denied.

No. 14–666. GRAY *v.* CITY OF NEW YORK, NEW YORK, ET AL., 574 U. S. 1155. Motion for leave to file petition for rehearing denied.

No. 14–8004. DYCHES *v.* MARTIN, *ante*, p. 907. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

MAY 12, 2015

Certiorari Denied

No. 14–9605 (14A1149). CHARLES *v.* TEXAS. 184th Jud. Dist. Ct. Tex., Harris County. Application for stay of execution of

sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

No. 14–9684 (14A1157). CHARLES *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 612 Fed. Appx. 214.

MAY 13, 2015

Dismissal Under Rule 46

No. 14–1044. MALU *v.* LYNCH, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 764 F. 3d 1282.

MAY 18, 2015

Certiorari Dismissed

No. 14–8757. CLAY *v.* ZAE YOUNG ZEON ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 14–8970. LACROIX *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari before judgment dismissed. See this Court's Rule 39.8.

No. 14–9019. LAVERGNE *v.* DATELINE NBC ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 597 Fed. Appx. 760.

No. 14–9032. BARTLETT *v.* PERRY, SECRETARY, NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* denied, and

certiorari dismissed. See this Court's Rule 39.8. Reported below: 367 N. C. 266, 749 S. E. 2d 458.

No. 14–9245. SIMMONS *v.* WILSON, WARDEN. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 589 Fed. Appx. 919.

Miscellaneous Orders

No. 14A1066. MEZA-NOYOLA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Application for stay, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. 14M112. PEREZ *v.* TEXAS A&M UNIVERSITY AT CORPUS CHRISTI ET AL.;

No. 14M113. SIMMS *v.* AARONS SALES & LEASE;

No. 14M114. WARREN *v.* PERRY, SECRETARY, NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY; and

No. 14M116. LAMARCA *v.* JANSEN, CHAPTER 7 TRUSTEE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 14M115. Y. W. *v.* NEW MILFORD PUBLIC SCHOOLS ET AL. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 142, Orig. FLORIDA *v.* GEORGIA. Motion of the Special Master for allowance of fees and disbursements granted, and the Special Master is awarded a total of $47,635.01 for the period November 19, 2014, through March 31, 2015, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 574 U. S. 1021.]

No. 14–493. KENT RECYCLING SERVICES, LLC *v.* UNITED STATES ARMY CORPS OF ENGINEERS, *ante*, p. 912. Respondent is requested to file a response to petition for rehearing within 30 days.

No. 14–8204. MANGUM ET AL., INDIVIDUALLY AND AS PARENTS OF I. M., A MINOR *v.* RENTON SCHOOL DISTRICT #403. C. A. 9th Cir. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 949] denied.

No. 14–8483. PINDER *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Motion of petitioner

for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 933] denied.

No. 14–8600. In re Adams. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 911] denied.

No. 14–8805. Graham *v.* Bluebonnet Trails Community Services. C. A. 5th Cir.;

No. 14–8867. Lea *v.* Lawrence, Trustee, et al. C. A. 6th Cir.; and

No. 14–8911. Pilger *v.* Department of Education et al. C. A. 9th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until June 8, 2015, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 14–9378. In re Miller;

No. 14–9451. In re Green Bey; and

No. 14–9481. In re Ornelas Castro. Petitions for writs of habeas corpus denied.

No. 14–8743. In re Sutton;

No. 14–8812. In re Halabi;

No. 14–8847. In re Cunningham;

No. 14–9057. In re Portnoy; and

No. 14–9058. In re Cunningham. Petitions for writs of mandamus denied.

No. 14–9294. In re Harris. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 14–857. Campbell-Ewald Co. *v.* Gomez. C. A. 9th Cir. Certiorari granted. Reported below: 768 F. 3d 871.

Certiorari Denied

No. 13–1547. Ridley School District *v.* M. R. et al., as Parents of E. R., a Minor. C. A. 3d Cir. Certiorari denied. Reported below: 744 F. 3d 112.

No. 14–564. Baker County Medical Services, Inc. *v.* Lynch, Attorney General, et al. C. A. 11th Cir. Certiorari denied. Reported below: 763 F. 3d 1274.

No. 14–622. KURETSKI ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Certiorari denied. Reported below: 755 F. 3d 929.

No. 14–654. SALAHUDDIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 765 F. 3d 329.

No. 14–655. PACKARD *v.* LEE, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 751 F. 3d 1307.

No. 14–705. TEVA PHARMACEUTICALS USA, INC., ET AL. *v.* HASSETT. Super. Ct. Pa. Certiorari denied. Reported below: 74 A. 3d 202.

No. 14–761. MCBRIDE, INDIVIDUALLY AND ON BEHALF OF I. M. S., ET AL. *v.* ESTIS WELL SERVICE, L. L. C. C. A. 5th Cir. Certiorari denied. Reported below: 768 F. 3d 382.

No. 14–774. MYER ET AL. *v.* AMERICO LIFE, INC., ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 440 S. W. 3d 18.

No. 14–835. MENDOZA MARTINEZ ET AL. *v.* AERO CARIBBEAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 764 F. 3d 1062.

No. 14–953. OHIO EX REL. WASSERMAN ET AL. *v.* CITY OF FREMONT, OHIO, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 140 Ohio St. 3d 471, 2014-Ohio-2962, 20 N. E. 3d 664.

No. 14–1020. MOODY ET AL. *v.* TATUM. C. A. 9th Cir. Certiorari denied. Reported below: 768 F. 3d 806.

No. 14–1079. BISCHOFF *v.* USA FUNDS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 578 Fed. Appx. 965.

No. 14–1084. SCERBA ET AL. *v.* ALLIED PILOTS ASSN. C. A. 2d Cir. Certiorari denied. Reported below: 589 Fed. Appx. 554.

No. 14–1090. OLIVER ET AL. *v.* ORLEANS PARISH SCHOOL BOARD ET AL. Sup. Ct. La. Certiorari denied. Reported below: 2014–0329, 2014–0330 (La. 10/31/14), 156 So. 3d 596.

No. 14–1093. JONES *v.* FROST ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 770 F. 3d 1183.

No. 14–1097. SEVOSTIYANOVA *v.* COBB COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 569 Fed. Appx. 666.

No. 14–1099. KAMMONA *v.* ONTECO CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 587 Fed. Appx. 575.

No. 14–1100. LOOK *v.* CITY OF MOUNTAIN VIEW, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 297.

No. 14–1101. MACKINNON *v.* CITY OF NEW YORK HUMAN RESOURCES ADMINISTRATION. C. A. 2d Cir. Certiorari denied. Reported below: 580 Fed. Appx. 44.

No. 14–1102. HURD *v.* SUPERIOR COURT OF CALIFORNIA, SAN MATEO COUNTY, ET AL. Ct. App. Cal., 1st App. Dist., Div. 3. Certiorari denied.

No. 14–1104. BAILEY *v.* TRITT, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 14–1110. LAUER *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–1112. GIBSON *v.* KILPATRICK. C. A. 5th Cir. Certiorari denied. Reported below: 773 F. 3d 661.

No. 14–1113. CAMPBELL *v.* HINES, ENVIRONMENTAL ADMINISTRATOR, OHIO ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 592 Fed. Appx. 357.

No. 14–1116. MOORE *v.* BLAIR ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 557 Fed. Appx. 577.

No. 14–1127. BATEY *v.* HAAS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 573 Fed. Appx. 590.

No. 14–1137. MASHUE *v.* RIVARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 14–1141. WADE ET AL. *v.* CHASE BANK USA, N. A., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 583 Fed. Appx. 291.

No. 14–1192. TULLBERG *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2014 WI 134, 359 Wis. 2d 421, 857 N. W. 2d 120.

No. 14–1207. BARKER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2014 Ark. 467, 448 S. W. 3d 197.

No. 14–1222. COOMBS *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 581 Fed. Appx. 129.

No. 14–1232. BUONORA *v.* COGGINS. C. A. 2d Cir. Certiorari denied. Reported below: 776 F. 3d 108.

No. 14–1234. GUNTER, AKA BAXTER *v.* UNITED STATES; and No. 14–9346. ODONI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 782 F. 3d 1226.

No. 14–1235. GERALD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 224.

No. 14–1237. QUIEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 595 Fed. Appx. 692.

No. 14–1245. PEN, DBA PEOPLE'S EMAIL NETWORK *v.* WMAL ET AL. C. A. D. C. Cir. Certiorari denied.

No. 14–7176. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 759 F. 3d 891.

No. 14–7884. LARKIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 147 So. 3d 452.

No. 14–8190. ADKINS *v.* BANK OF AMERICA, N. A. C. A. 4th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 61.

No. 14–8241. QUEZADA ROJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 770 F. 3d 366.

No. 14–8291. BEATTY *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 759 F. 3d 455.

No. 14–8380. OYENIRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 586 Fed. Appx. 338.

No. 14–8540. BRUMWELL *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. Ct. App. Ore. Certiorari denied. Reported below: 264 Ore. App. 784, 333 P. 3d 364.

No. 14–8601. BROWN *v.* MICHIGAN DEPARTMENT OF CORRECTIONS PAROLE BOARD. C. A. 6th Cir. Certiorari denied.

No. 14–8736. EILER *v.* AVERA MCKENNAN HOSPITAL ET AL. Sup. Ct. S. D. Certiorari denied. Reported below: 854 N. W. 2d 353.

No. 14–8747. ICENOGLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 14–8753. SMITH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 14–8754. STUCKEY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 14–8756. DICKSON *v.* SPEARMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 14–8759. WARZEK *v.* LACKNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 586 Fed. Appx. 453.

No. 14–8760. THOMAS *v.* ROCKBRIDGE REGIONAL JAIL. C. A. 4th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 224.

No. 14–8761. WIGGINTON ET AL. *v.* BANK OF AMERICA CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 770 F. 3d 521.

No. 14–8765. LEACHMAN *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 581 Fed. Appx. 390.

No. 14–8766. KIRK *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 1. Certiorari denied.

No. 14–8767. ROEDER *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 300 Kan. 901, 336 P. 3d 831.

No. 14–8777. BROWN *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 14–8778. CARE ET AL. *v.* MUNICIPAL HOUSING AUTHORITY OF THE CITY OF YONKERS, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 14–8779. DOOLEY *v.* MYLAN PHARMACEUTICALS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 587 Fed. Appx. 757.

No. 14–8783. MAY *v.* BARBER ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–8792. BORRELL *v.* WILLIAMS, COLORADO SECRETARY OF STATE. Sup. Ct. Colo. Certiorari denied.

No. 14–8796. SPIKER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 14–8799. COLEMAN *v.* SCHOLLMEYER, SPECIAL JUDGE, CIRCUIT COURT OF MISSOURI, COLE COUNTY, ET AL. Sup. Ct. Mo. Certiorari denied.

No. 14–8800. GALVAN *v.* ESCOBAR. C. A. 9th Cir. Certiorari denied.

No. 14–8804. FANA *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 593 Fed. Appx. 954.

No. 14–8807. PATCH *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 13 N. E. 3d 913.

No. 14–8808. MORROW *v.* ARTUS, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 14–8815. LEWIS *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 427 S. W. 3d 500.

No. 14–8819. MESSINA *v.* PENNSYLVANIA ET AL. Sup. Ct. Pa. Certiorari denied.

No. 14–8820. SEARS *v.* THOMAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–8823. CASHIOTTA *v.* DIVISION OF PARKS AND MAINTENANCE, CLEVELAND, OHIO. Sup. Ct. Ohio. Certiorari denied.

Reported below: 139 Ohio St. 3d 1402, 2014-Ohio-2245, 9 N. E. 3d 1060.

No. 14–8824. DAVIS *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 327 Ga. App. 729, 761 S. E. 2d 139.

No. 14–8826. TAYLOR *v.* VERIZON COMMUNICATIONS ET AL. Ct. App. D. C. Certiorari denied. Reported below: 107 A. 3d 1117.

No. 14–8827. WOODSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 14–8831. DAVIS ET AL. *v.* CITY OF NEW HAVEN, CONNECTICUT, ET AL. C. A. 2d Cir. Certiorari denied.

No. 14–8833. NOLAN *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 534.

No. 14–8834. SAYERS *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 138.

No. 14–8839. BROOKS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 157 So. 3d 1041.

No. 14–8842. MOORE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–8846. MILLER *v.* ABC HOLDING CO., INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 14–8850. JACKSON *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 2013–00808 (La. App. 3 Cir. 2/12/14), 131 So. 3d 1134.

No. 14–8851. YOUNG *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied.

No. 14–8853. DUNIGAN *v.* BEARD, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 14–8858. FARRAJ *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 14–8860. HAENDEL *v.* DIGIANTONIO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 577 Fed. Appx. 259.

No. 14–8861. CRANEY *v.* FUJISHIGE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 348.

No. 14–8869. MCNEILL *v.* WAYNE COUNTY, MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 14–8871. MCILWAINE *v.* MCILWAINE ET AL. C. A. 4th Cir. Certiorari denied.

No. 14–8872. PAGAN *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied.

No. 14–8873. TORRENCE *v.* ALASKA. Ct. App. Alaska. Certiorari denied.

No. 14–8874. TAYLOR *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 14–8875. TAYLOR *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 760 F. 3d 1284.

No. 14–8878. MCCOY *v.* HOLLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 14–8881. GOLDEN *v.* OHIO. Ct. App. Ohio, 10th App. Dist., Franklin County. Certiorari denied. Reported below: 2014-Ohio-2148.

No. 14–8889. FLORES *v.* JANDA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 14–8891. SACHS *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 14–8892. C. G. *v.* WHELAN. Sup. Ct. N. D. Certiorari denied. Reported below: 2013 ND 205, 839 N. W. 2d 841.

No. 14–8897. ABRAMS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–8899. BUNCH *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 14–8919. Del Rantz *v.* Hartley, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 577 Fed. Appx. 805.

No. 14–8954. Venkataram *v.* City of New York, New York. C. A. 2d Cir. Certiorari denied. Reported below: 568 Fed. Appx. 63.

No. 14–8961. Lisnichy *v.* Colvin, Acting Commissioner of Social Security. C. A. 3d Cir. Certiorari denied. Reported below: 599 Fed. Appx. 427.

No. 14–8987. Lopez *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 106 A. 3d 160.

No. 14–8997. Prather *v.* South Carolina. Ct. Common Pleas of Aiken County, S. C. Certiorari denied.

No. 14–9039. Huerata Orduna *v.* Steward, Warden. C. A. 6th Cir. Certiorari denied.

No. 14–9045. de Jesus Moran *v.* Lynch, Attorney General. C. A. 9th Cir. Certiorari denied.

No. 14–9060. Heather S. *v.* Connecticut Commissioner of Children and Families. App. Ct. Conn. Certiorari denied. Reported below: 151 Conn. App. 724, 95 A. 3d 1258.

No. 14–9063. Green *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 367 N. C. 803, 766 S. E. 2d 850.

No. 14–9065. Riley *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 166 So. 3d 705.

No. 14–9068. Rivas *v.* California. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 14–9079. Jones *v.* Kauffman, Superintendent, State Correctional Institution at Smithfield. C. A. 3d Cir. Certiorari denied.

No. 14–9081. Hayes *v.* Blades et al. Sup. Ct. Idaho. Certiorari denied.

No. 14–9096. Harvey *v.* Williams, Warden. C. A. 7th Cir. Certiorari denied.

No. 14–9111. KIEREN *v.* LAXALT, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 305.

No. 14–9116. TEMPLE *v.* MILLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 14–9121. BOYD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 773 F. 3d 637.

No. 14–9123. BRADLEY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 14–9152. MCKINNEY *v.* MCDONALD, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 587 Fed. Appx. 655.

No. 14–9168. TOLEN *v.* NORMAN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 14–9182. CUNNINGHAM *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 598 Fed. Appx. 790.

No. 14–9193. CHAPPELL *v.* OHIO. Ct. App. Ohio, 7th App. Dist., Mahoning County. Certiorari denied. Reported below: 2014-Ohio-3877.

No. 14–9203. ROSARIO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 87 A. 3d 888.

No. 14–9208. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 14–9210. BARKER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 14–9214. CRUMP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 579.

No. 14–9215. BUHL *v.* BERKEBILE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 597 Fed. Appx. 958.

No. 14–9222. VAUGHTER *v.* KAUFFMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 14–9226. Moore *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 14–9228. Martinez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 371.

No. 14–9231. Rizo-Reyes *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 442.

No. 14–9233. Espinal *v.* Lee, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 14–9235. Marchet *v.* Utah. Ct. App. Utah. Certiorari denied. Reported below: 2014 UT App 147, 330 P. 3d 138.

No. 14–9236. Bach Tuyet Tran *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 139.

No. 14–9238. Etienne *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 14–9242. Diaz-Rodriguez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 363.

No. 14–9244. Copeland *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 598 Fed. Appx. 255.

No. 14–9246. Dunbar *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 604 Fed. Appx. 437.

No. 14–9249. Keel *v.* McDonald, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 602 Fed. Appx. 522.

No. 14–9250. Pledger *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 595 Fed. Appx. 229.

No. 14–9251. Booker *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 596 Fed. Appx. 390.

No. 14–9252. Barrera Alas *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 290.

No. 14–9256. Pratcher *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 14–9258. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 14–9261. ORTIZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 775 F. 3d 964.

No. 14–9262. NORMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 776 F. 3d 67.

No. 14–9263. NAMER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 14–9266. COMBS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 14–9271. WHITWORTH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 14–9272. ZEPHIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 813.

No. 14–9273. LEDESMA-NOLASCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 596 Fed. Appx. 147.

No. 14–9274. GALVAN-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 270.

No. 14–9276. CHAVOUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 468.

No. 14–9277. EPPS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 14–9280. WILLIAMS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 217 Md. App. 758.

No. 14–9281. BECK ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 147.

No. 14–9282. BACA-ARIAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 221.

No. 14–9285. WILLIAMS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 773 F. 3d 98.

No. 14–9288. JEFFERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 14–9290. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 594 Fed. Appx. 218.

No. 14–9295. DE LA CRUZ *v.* QUINTANA, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 14–9296. DE LA CRUZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 14–9303. ALVAREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 601 Fed. Appx. 16.

No. 14–9310. GAMEZ REYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 3d 1152 and 585 Fed. Appx. 660.

No. 14–9314. VIERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 14–9318. LOCKHART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 605 Fed. Appx. 170.

No. 14–9321. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 582 Fed. Appx. 172.

No. 14–9329. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 14–9331. HUNTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 770 F. 3d 740.

No. 14–9332. AVILA-ACOSTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 594 Fed. Appx. 376.

No. 14–9333. BENNETT, AKA SHANNON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 604 Fed. Appx. 11.

No. 14–9341. LUIS MEDEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 601.

No. 14–9350. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 594 Fed. Appx. 784.

No. 14–9351. SCOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 14–9359. PARSHALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 600 Fed. Appx. 485.

No. 14–9363. GODETTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 596 Fed. Appx. 212.

No. 14–9366. DUTERVIL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 595 Fed. Appx. 204.

No. 14–9371. RASHID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 593 Fed. Appx. 132.

No. 14–9372. MANUEL JORGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 581 Fed. Appx. 766.

No. 14–9386. GREGG *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 13–1416. GORDON ET AL. *v.* BANK OF AMERICA, N. A., ET AL. C. A. 10th Cir. Motion of Public Citizen, Inc., et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 743 F. 3d 720.

No. 14–849. AMERICAN CYANAMID CO. ET AL. *v.* GIBSON. C. A. 7th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 760 F. 3d 600.

No. 14–872. O'KEEFE ET AL. *v.* CHISHOLM ET AL. C. A. 7th Cir. Motions of Wisconsin Institute for Law & Liberty, MacIver Institute for Public Policy, Cause of Action, Center for Competitive Politics et al., and Cato Institute for leave to file briefs as *amici curiae* granted. Motion of respondents John T. Chisholm, David Robles, and Bruce J. Landgraf for leave to file brief in opposition under seal with redacted copies for the public record granted. Certiorari denied. Reported below: 769 F. 3d 936.

No. 14–931. HOLBROOK, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY *v.* WOODS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 764 F. 3d 1109.

No. 14–958. CHAPMAN ET VIR *v.* PROCTER & GAMBLE DISTRIBUTING, LLC, ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 766 F. 3d 1296.

No. 14–1080. GONZALEZ *v.* PLANNED PARENTHOOD OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir. Motion of Professor Joel D. Hesch for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 759 F. 3d 1112.

No. 14–9324. WARE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 14–9337. WEST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 14–9348. WELLS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 590 Fed. Appx. 77.

Rehearing Denied

No. 14–888. SLATER *v.* HARDIN ET AL., *ante*, p. 936;
No. 14–917. DEMERS *v.* FLORIDA, *ante*, p. 914;
No. 14–948. CAUDILL *v.* UNITED STATES, *ante*, p. 914;
No. 14–1108. YUFA *v.* TSI, INC., *ante*, p. 964;
No. 14–5246. HODGES *v.* CARPENTER, WARDEN, *ante*, p. 915;
No. 14–5856. MATTHEWS *v.* MIKOLAITIES ET AL., 574 U. S. 915;
No. 14–7599. RODGERS *v.* PERKINS ET AL., 574 U. S. 1169;
No. 14–7692. TERRELL *v.* GOWER ET AL., 574 U. S. 1173;
No. 14–7749. COLEMAN *v.* JABE ET AL., 574 U. S. 1195;
No. 14–7782. DONG LANG *v.* CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, 574 U. S. 1196;
No. 14–7810. BELL *v.* BERGHUIS, WARDEN, 574 U. S. 1196;
No. 14–7819. IN RE WILSON, 574 U. S. 1190;
No. 14–7823. DAVILA *v.* UNITED STATES, 574 U. S. 1177;
No. 14–7956. HINCHLIFFE *v.* WELLS FARGO BANK, *ante*, p. 917;
No. 14–8098. MADISON *v.* THOMAS, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 919;
No. 14–8152. IN RE AJAMIAN, *ante*, p. 934;
No. 14–8161. YUNG LO *v.* GOLDEN GAMING, INC., ET AL., *ante*, p. 952;
No. 14–8164. COCHRUN *v.* DOOLEY, WARDEN, *ante*, p. 940;
No. 14–8184. BLAND *v.* OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSN., *ante*, p. 940;

No. 14–8211. Simms *v.* Bestemps Career Associates, *ante*, p. 941;

No. 14–8216. Darwich *v.* United States, 574 U. S. 1200;

No. 14–8317. Nie *v.* Clarke, Director, Virginia Department of Corrections, *ante*, p. 921;

No. 14–8348. Holmes *v.* Office of Personnel Management, *ante*, p. 921;

No. 14–8386. Blango *v.* United States, *ante*, p. 922;

No. 14–8417. Burt *v.* Commissioner of Internal Revenue, *ante*, p. 922;

No. 14–8444. In re Johnson, *ante*, p. 902;

No. 14–8593. Majors *v.* United States, *ante*, p. 944; and

No. 14–8610. Campbell *v.* United States, *ante*, p. 944. Petitions for rehearing denied.

May 26, 2015

Certiorari Dismissed

No. 14–9025. Shove *v.* California et al. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 14–9030. Lavergne *v.* Harson et al. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 583 Fed. Appx. 361.

No. 14–9043. Lavergne *v.* Public Defender 15th Judicial District Court et al. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 583 Fed. Appx. 362.

No. 14–9044. Lavergne *v.* Louisiana State Police. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 583 Fed. Appx. 363.

No. 14–9248. Lyles *v.* McCain, Warden. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 14–9485. Florence *v.* Bechtold, Warden. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 14–9486. RUIZ *v.* BUTLER, WARDEN. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 589 Fed. Appx. 48.

Miscellaneous Orders

No. 14A1070. LIBBERT *v.* UNITED STATES. Application for bail, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. 14M117. CHANEY *v.* RACES AND ACES ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 14M118. WILBORN *v.* JOHNSON, SECRETARY OF HOMELAND SECURITY. Motion for leave to proceed as a veteran granted.

No. 14–8337. CAMPBELL *v.* UNITED STATES ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 933] denied.

No. 14–8965. ROWELL *v.* METROPOLITAN LIFE INSURANCE CO. C. A 11th Cir.;

No. 14–9036. DORWARD *v.* MACY'S, INC. C. A. 11th Cir.;

No. 14–9239. COLES *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 6th Cir.; and

No. 14–9301. BLOUNT *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until June 16, 2015, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 14–9534. IN RE JONES;

No. 14–9535. IN RE RANKIN; and

No. 14–9609. IN RE NORMAN. Petitions for writs of habeas corpus denied.

No. 14–8923. IN RE PORTNOY; and

No. 14–8932. IN RE MITCHELL. Petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 14–940. EVENWEL ET AL. *v.* ABBOTT, GOVERNOR OF TEXAS, ET AL. Appeal from D. C. W. D. Tex. Probable jurisdiction noted.

Certiorari Granted

No. 14–8349. FOSTER *v.* CHATMAN, WARDEN. Sup. Ct. Ga. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted.

No. 14–8358. LOCKHART *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 749 F. 3d 148.

Certiorari Denied

No. 14–812. DE BOISE ET AL. *v.* ST. LOUIS COUNTY, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 760 F. 3d 892.

No. 14–845. FIRST AMERICAN TITLE INSURANCE CO. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 6th Cir. Certiorari denied. Reported below: 750 F. 3d 573.

No. 14–975. COHEN *v.* NVIDIA CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 768 F. 3d 1046.

No. 14–986. SHADADPURI *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 767 F. 3d 1288.

No. 14–989. MURPHY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 14–995. METROPOLITAN EDISON CO. ET AL. *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 767 F. 3d 335.

No. 14–1053. YAMAN *v.* YAMAN. Sup. Ct. N. H. Certiorari denied. Reported below: 167 N. H. 82, 105 A. 3d 600.

No. 14–1119. IBSON *v.* UNITED HEALTHCARE SERVICES, INC. C. A. 8th Cir. Certiorari denied. Reported below: 776 F. 3d 941.

No. 14–1130. NEVADA *v.* CONNER. Sup. Ct. Nev. Certiorari denied. Reported below: 130 Nev. 457, 327 P. 3d 503.

No. 14–1139. ESTATE OF BROWN *v.* THOMAS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 771 F. 3d 1001.

No. 14–1144. RYAN *v.* ZEMANIAN. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 406.

No. 14–1147. RYAN *v.* QUICK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 486.

No. 14–1148. RYAN ET AL. *v.* HYDEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 582 Fed. Appx. 699.

No. 14–1149. RYAN *v.* HYDEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 581 Fed. Appx. 653.

No. 14–1150. MEDFORD VILLAGE EAST ASSOCIATES ET AL. *v.* TOWNSHIP OF MEDFORD, NEW JERSEY, ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 14–1151. BOYD ET AL. *v.* NEW JERSEY DEPARTMENT OF CORRECTIONS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 583 Fed. Appx. 30.

No. 14–1152. RYAN *v.* RUBY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 583 Fed. Appx. 59.

No. 14–1155. BAUER *v.* MARMARA ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 774 F. 3d 1026.

No. 14–1156. BISHOP ET AL. *v.* CITY OF GALVESTON, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 595 Fed. Appx. 372.

No. 14–1158. CAIRNS ET AL. *v.* LSF6 MERCURY REO INVESTMENTS TRUST SERIES 2008–1 ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 348.

No. 14–1161. RYAN *v.* HYDEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 416.

No. 14–1163. SIMS ET AL. *v.* FITZPATRICK ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 14–1165. NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF MULTIJURISDICTION PRACTICE ET AL. *v.* BERCH, CHIEF JUSTICE, SUPREME COURT OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 773 F. 3d 1037.

No. 14–1169. GOLDBLATT *v.* CITY OF KANSAS CITY, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 14–1173. JOHNSON *v.* ILLINOIS ET AL. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 14–1174. WALLACE *v.* LAMSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 283.

No. 14–1180. HEINTZ ET UX. *v.* JPMORGAN CHASE BANK, N. A., ET AL. Ct. App. Wash. Certiorari denied. Reported below: 181 Wash. App. 1033.

No. 14–1182. BOYD *v.* GMAC MORTGAGE LLC ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 656.

No. 14–1210. CLARK *v.* FAIRFAX COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 586 Fed. Appx. 123.

No. 14–1219. ISAACS *v.* NEW HAMPSHIRE BOARD OF MEDICINE. Sup. Ct. N. H. Certiorari denied.

No. 14–1223. ATWOOD *v.* CERTAINTEED CORP. C. A. 4th Cir. Certiorari denied. Reported below: 586 Fed. Appx. 157.

No. 14–1224. E. A. F. F. ET AL. *v.* GONZALEZ ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 600 Fed. Appx. 205.

No. 14–1236. STOP THE CASINO 101 COALITION ET AL. *v.* BROWN, GOVERNOR OF CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 3. Certiorari denied. Reported below: 230 Cal. App. 4th 280, 178 Cal. Rptr. 3d 481.

No. 14–1242. LEWIS *v.* WASHINGTON STATE UNIVERSITY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 586 Fed. Appx. 271.

No. 14–1249. BASU *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 594 Fed. Appx. 981.

No. 14–1262. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 764 F. 3d 554.

No. 14–1269. MOORE *v.* LIGHTSTROM ENTERTAINMENT, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 586 Fed. Appx. 143.

No. 14–1275. VERDUGO ET AL. *v.* TARGET CORP. C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 3d 1203.

No. 14–1284. SMITH ET AL. *v.* GUARDIAN LIFE INSURANCE COMPANY OF AMERICA. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 116 App. Div. 3d 1031, 984 N. Y. S. 2d 597.

No. 14–1287. SUMNER *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 14–7448. ROACH, AKA HOLMES *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 219 N. J. 58, 95 A. 3d 683.

No. 14–7993. LEE *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 628 Pa. 10, 102 A. 3d 419.

No. 14–8008. BRICE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 753.

No. 14–8160. JONES *v.* LOCKHEED MARTIN CORP. C. A. 11th Cir. Certiorari denied.

No. 14–8401. J. M., A JUVENILE *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 2014–0054 (La. App. 4 Cir. 8/27/14), 147 So. 3d 1270.

No. 14–8492. WILSON *v.* UNITED STATES; and
No. 14–8545. GADSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 763 F. 3d 1189.

No. 14–8624. MILIAN *v.* WELLS FARGO BANK, N. A., ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 151 So. 3d 1257.

No. 14–8894. GETHERS *v.* HARRISON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 587 Fed. Appx. 763.

No. 14–8907. HARRIS *v.* ARKANSAS DEPARTMENT OF HUMAN SERVICES ET AL. Ct. App. Ark. Certiorari denied. Reported below: 2014 Ark. App. 447.

No. 14–8908. SEWELL *v.* HOWARD. C. A. 4th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 277.

No. 14–8922. SMITH *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 94.

No. 14–8929. FOSTER *v.* FRANKLIN COUNTY COMMON PLEAS COURT ET AL. C. A. 6th Cir. Certiorari denied.

No. 14–8934. GUILLEMETTE *v.* GUILLEMETTE. Sup. Ct. N. H. Certiorari denied.

No. 14–8935. HILL *v.* CHAVIS. C. A. 4th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 97.

No. 14–8941. GREENSHIELDS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied.

No. 14–8945. HARMON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 136 So. 3d 1223.

No. 14–8947. DAKER *v.* BRYSON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–8948. DAKER *v.* BRYSON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–8949. DAKER *v.* HEAD ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–8950. DAKER *v.* BRYSON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–8951. DAKER *v.* WARREN, SHERIFF, COBB COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–8957. ANDRADE CALLES *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY. C. A. 9th Cir. Certiorari denied.

No. 14–8962. AMES *v.* KOTORA. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 14–8966. HILL *v.* VIRGA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 723.

No. 14–8975. HOFFMAN *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 14–8977. BLANCO-HERNANDEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 14–8978. GRAVES *v.* WINGARD, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 14–8982. FISHER *v.* YELICH, SUPERINTENDENT, BARE HILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 14–8984. GARCIA *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 14–8986. SHABAZZ *v.* RICHARDS, ACTING JUDGE, FRANKLIN COUNTY COURT OF NEW YORK, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 22 N. Y. 3d 990, 2 N. E. 3d 924.

No. 14–8988. CAMPBELL *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 14–8990. TANASESCU *v.* STATE BAR OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 569 Fed. Appx. 502.

No. 14–8991. LEGRONE *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 571 Fed. Appx. 417.

No. 14–8992. ROBINSON *v.* JARRELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 212.

No. 14–8994. MCGEE *v.* CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 638.

No. 14–8998. HULETT *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 296 Ga. 49, 766 S. E. 2d 1.

No. 14–9002. MASSEY *v.* WALKER ET AL. C. A. 6th Cir. Certiorari denied.

No. 14–9003. JONES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2014 IL App (1st) 111525–U.

No. 14–9006. BIGBY *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 595 Fed. Appx. 350.

No. 14–9009. TYLER *v.* LASSITER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 104.

No. 14–9014. CUMBERLAND *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 14–9028. SHEHEE *v.* BACA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 716.

No. 14–9031. BARASHKOFF *v.* CITY OF SEATTLE, WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied.

No. 14–9033. BREWER *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 14–9040. MCCLENDON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 14–9046. MOORE *v.* HELLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 763 F. 3d 1011.

No. 14–9059. DEROCK *v.* SPRINT-NEXTEL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 603 Fed. Appx. 556.

No. 14–9061. HENRY *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 586 Fed. Appx. 359.

No. 14–9069. CODIGA *v.* UTTECHT, SUPERINTENDENT, COYOTE RIDGE CORRECTIONS CENTER. Sup. Ct. Wash. Certiorari denied.

No. 14–9099. D'AMICO *v.* HOLMES, ADMINISTRATOR, SOUTH WOODS STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 592 Fed. Appx. 76.

No. 14–9112. KRETCHMAR *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 14–9125. SULLIVAN *v.* BITER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 14–9177. PEREZ-CHINCHILLA *v.* LYNCH, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 595 Fed. Appx. 139.

No. 14–9192. ELLIS *v.* IDAHO. Ct. App. Idaho. Certiorari denied.

No. 14–9199. KRAFT *v.* CITY OF MOBILE, ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 867.

No. 14–9259. SERRANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 598 Fed. Appx. 72.

No. 14–9265. KIRK *v.* PRICE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 595 Fed. Appx. 684.

No. 14–9307. SUMMERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 593 Fed. Appx. 157.

No. 14–9316. MUTH *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2014 IL App (2d) 120914–U.

No. 14–9334. BARTKO *v.* WHEELER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 181.

No. 14–9345. MAGALLON PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 285.

No. 14–9353. BERRELLEZA-VERDUZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 707.

No. 14–9354. ANDREWS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 14–9360. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 512.

No. 14–9361. JENKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 14–9364. GARCIA-MONROY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 429.

No. 14–9365. GARREY *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied.

No. 14–9377. GERAGHTY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 572 Fed. Appx. 456.

No. 14–9390. Cooper *v.* Varouxis, Executrix of Theodore Varouxis Estate and Trust. Sup. Ct. Va. Certiorari denied.

No. 14–9399. Files *v.* Jarvis, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 576 Fed. Appx. 938.

No. 14–9404. Padilla-Garcia *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 253.

No. 14–9406. Nunley *v.* Nooth, Superintendent, Snake River Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 14–9407. Rodriguez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 430.

No. 14–9418. Candelario *v.* Wilson, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 592 Fed. Appx. 784.

No. 14–9424. Santiago-Serrano *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 598 Fed. Appx. 17.

No. 14–9426. Taylor *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 14–9428. Aquino Lafuente *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 141.

No. 14–9444. Webster *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 775 F. 3d 897.

No. 14–9445. Trufant *v.* Department of the Air Force. C. A. Fed. Cir. Certiorari denied. Reported below: 578 Fed. Appx. 982.

No. 14–9449. Atwood *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 581 Fed. Appx. 455.

No. 14–9454. Ojeda Cabada *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 593 Fed. Appx. 613.

No. 14–9456. Brewer *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 14–9457. Andrews *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 14–9458. FULTZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 226.

No. 14–9461. BERGRIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 599 Fed. Appx. 439.

No. 14–9466. HOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 774 F. 3d 638.

No. 14–9468. CARTAGENA-CRUZ, AKA MELLA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 14–9474. KING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 170.

No. 14–9475. JONES *v.* UNITED STATES CONGRESS ET AL. C. A. 9th Cir. Certiorari denied.

No. 14–9478. CARWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 773 F. 3d 837.

No. 14–9480. CRADDOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 583 Fed. Appx. 235.

No. 14–9482. CHILDS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 14–9488. ESTUPINAN-SOLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 260.

No. 14–9492. CHAMBERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 597 Fed. Appx. 707.

No. 14–751. PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA ET AL. *v.* COUNTY OF ALAMEDA, CALIFORNIA, ET AL. C. A. 9th Cir. Motions of Chamber of Commerce of the United States of America and Washington Legal Foundation et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 768 F. 3d 1037.

No. 14–1199. TARTT *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 14–9013. CHENG *v.* SCHLUMBERGER. C. A. 5th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 583 Fed. Appx. 422.

No. 14–9368. GREEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 14–7543. WHITE *v.* MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., 574 U. S. 1168;

No. 14–7791. GONZALEZ *v.* FLORIDA, 574 U. S. 1196;

No. 14–8137. DAVIS *v.* PARKER, AKA ADAMS, AKA SPEARBECK, *ante*, p. 940;

No. 14–8200. DEMARY *v.* VIRGINIA, *ante*, p. 952;

No. 14–8215. SCHEUING *v.* ALABAMA, *ante*, p. 941;

No. 14–8347. GREEN *v.* LESTER, WARDEN, *ante*, p. 942;

No. 14–8488. JOSEPH *v.* DONAHOE, POSTMASTER GENERAL, *ante*, p. 943;

No. 14–8594. CASTEEL *v.* UNITED STATES, *ante*, p. 944; and

No. 14–8741. BAMDAD *v.* UNITED STATES, *ante*, p. 956. Petitions for rehearing denied.

JUNE 1, 2015

Certiorari Granted—Vacated and Remanded

No. 14–238. UNITED STATES EX REL. SHEA *v.* CELLCO PARTNERSHIP, DBA VERIZON WIRELESS, ET AL. C. A. D. C. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kellogg Brown & Root Services, Inc.* v. *United States ex rel. Carter*, *ante*, p. 650. Reported below: 748 F. 3d 338.

Certiorari Granted—Reversed. (See No. 14–939, *ante*, p. 822.)

Certiorari Dismissed

No. 14–9089. MARIN *v.* RICE. Sup. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 630 Pa. 330, 106 A. 3d 678.

No. 14–9144. DIXON *v.* HART, WARDEN. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 14M119. CARTER ET AL. *v.* HOUSTON BUSINESS DEVELOPMENT, INC.; and

No. 14M121. SCHAFLER *v.* BANK OF AMERICA MERRILL LYNCH. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 14M120. CHARNOCK *v.* VIRGINIA ET AL. Motion for leave to proceed as a veteran denied.

No. 14–1168. SMITH *v.* AEGON COMPANIES PENSION PLAN. C. A. 6th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 14–8491. WHITE *v.* SOUTHEAST MICHIGAN SURGICAL HOSPITAL ET AL. Ct. App. Mich. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 961] denied.

No. 14–9078. BARRY *v.* DIALLO. Super. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 25, 2015, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 14–1334. IN RE VADDE; and
No. 14–9667. IN RE SHEPPARD. Petitions for writs of habeas corpus denied.

No. 14–9683. IN RE CARLTON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 14–9075. IN RE PORTNOY. Petition for writ of mandamus denied.

No. 14–9126. IN RE SPENGLER. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 14–384. DIAZ-BARBA ET AL. *v.* KISMET ACQUISITION, LLC. C. A. 9th Cir. Certiorari denied. Reported below: 757 F. 3d 1044.

No. 14–740. Massi *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 761 F. 3d 512.

No. 14–790. Bridgestone Retail Operations, LLC, fka Morgan Tire & Auto, LLC *v.* Brown et al. Sup. Ct. Cal. Certiorari denied.

No. 14–932. City of Farmington Hills, Michigan, et al. *v.* Marshall et al. C. A. 6th Cir. Certiorari denied. Reported below: 578 Fed. Appx. 516.

No. 14–1000. Murphy et al. *v.* Verizon Communications, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 587 Fed. Appx. 140.

No. 14–1004. Pysarenko *v.* Carnival Corp., dba Carnival Cruise Lines. C. A. 11th Cir. Certiorari denied. Reported below: 581 Fed. Appx. 844.

No. 14–1005. Security Health Care, L. L. C., dba Grace Living Center-Norman, et al. *v.* Boler, Personal Representative of the Estate of Boler. Sup. Ct. Okla. Certiorari denied. Reported below: 2014 OK 80, 336 P. 3d 468.

No. 14–1008. Hardin *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 140 Ohio St. 3d 1409, 2014-Ohio-3785, 15 N. E. 3d 878.

No. 14–1028. Duble *v.* FedEx Ground Package System, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 572 Fed. Appx. 889.

No. 14–1040. Watchtower Bible & Tract Society of New York, Inc., et al. *v.* Garcia Padilla, Governor of Puerto Rico, et al. C. A. 1st Cir. Certiorari denied. Reported below: 773 F. 3d 1.

No. 14–1154. United States ex rel. Mastej *v.* Health Management Associates, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 693.

No. 14–1166. Travers *v.* Cellco Partnership, dba Verizon Wireless. C. A. 6th Cir. Certiorari denied. Reported below: 579 Fed. Appx. 409.

No. 14–1170. GUERRA-DELGADO ET AL. *v.* POPULAR, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 774 F. 3d 776.

No. 14–1178. KAMPS *v.* BAYLOR UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 592 Fed. Appx. 282.

No. 14–1186. SCIENTIFIC PLASTIC PRODUCTS, INC. *v.* BIOTAGE AB. C. A. Fed. Cir. Certiorari denied. Reported below: 766 F. 3d 1355.

No. 14–1187. HRALIMA *v.* BACA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 14–1195. DOWNEY ET AL. *v.* FEDERAL NATIONAL MORTGAGE ASSOCIATION. C. A. 6th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 587.

No. 14–1213. WETHERBE *v.* SMITH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 593 Fed. Appx. 323.

No. 14–1215. JONES *v.* JONES. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied.

No. 14–1228. JACKSON *v.* OWENS CORNING/FIBERBOARD ASBESTOS PERSONAL INJURY SETTLEMENT TRUST. C. A. 7th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 908.

No. 14–1243. MEINTS *v.* CITY OF BEATRICE, NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 289 Neb. 558, 856 N. W. 2d 410.

No. 14–1256. KAZZAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 592 Fed. Appx. 553.

No. 14–1282. BOSHEARS *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 85 Mass. App. 1124, 10 N. E. 3d 177.

No. 14–1283. ADMIRALTY CONDOMINIUM ASSN., INC. *v.* DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY, NATIONAL FLOOD INSURANCE PROGRAM. C. A. 3d Cir. Certiorari denied. Reported below: 594 Fed. Appx. 738.

No. 14–1303. PARAMOUNT CONTRACTORS & DEVELOPERS, INC., ET AL. *v.* CITY OF LOS ANGELES, CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 14–8011. Lester *v.* Long, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 738.

No. 14–8107. Camillo-Amisano *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 14–8204. Mangum et al., Individually and as Parents of I. M., a Minor *v.* Renton School District #403. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 618.

No. 14–8381. Modanlo *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 762 F. 3d 403.

No. 14–8413. Smith *v.* City of St. Martinville, Louisiana. C. A. 5th Cir. Certiorari denied. Reported below: 575 Fed. Appx. 435.

No. 14–8840. Guarascio *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 583 Fed. Appx. 288.

No. 14–9020. Wright *v.* Jones, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 761 F. 3d 1256.

No. 14–9047. Zamora *v.* Florida. C. A. 11th Cir. Certiorari denied.

No. 14–9052. Themeus *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 14–9053. Zink *v.* Missouri. Sup. Ct. Mo. Certiorari denied.

No. 14–9067. Alberto Salgado *v.* Biter, Warden. C. A. 9th Cir. Certiorari denied.

No. 14–9071. Wedgeworth *v.* Kelley, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 14–9072. Jacobs *v.* Biando et al. C. A. 11th Cir. Certiorari denied. Reported below: 592 Fed. Appx. 838.

No. 14–9074. McElfresh *v.* Ohio. Ct. App. Ohio, 5th App. Dist., Licking County. Certiorari denied. Reported below: 2014-Ohio-2605.

No. 14–9080. JONES *v.* WOLFE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 583 Fed. Appx. 242.

No. 14–9084. MCMANUS *v.* JUSTICE OF THE PEACE COURT #13. Sup. Ct. Del. Certiorari denied.

No. 14–9085. DAWSON *v.* ABSTON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 162.

No. 14–9088. DOSS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 14–9093. BURNS *v.* FOX, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–9097. ROBINSON *v.* BENJAMIN. C. A. 5th Cir. Certiorari denied.

No. 14–9098. DINGLE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 14–9101. ROBBINS *v.* BOULDER COUNTY, COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 592 Fed. Appx. 710.

No. 14–9110. TROY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 763 F. 3d 1305.

No. 14–9115. WEST *v.* MAGRUDER ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–9117. WILLIAMS *v.* ARTUS ET AL. C. A. 2d Cir. Certiorari denied.

No. 14–9120. PARKER *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 595 Fed. Appx. 595.

No. 14–9129. LANZA *v.* DISTRICT ATTORNEY OF DELAWARE COUNTY ET AL. C. A. 3d Cir. Certiorari denied.

No. 14–9131. AVILA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied.

No. 14–9134. MURFF *v.* CORIZON MEDICAL SERVICES ET AL. C. A. 6th Cir. Certiorari denied.

No. 14–9136. VALENZUELA, FKA MENDEZ *v.* CORIZON HEALTH CARE ET AL. C. A. 9th Cir. Certiorari denied.

No. 14–9137. LUCAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 60 Cal. 4th 153, 333 P. 3d 587.

No. 14–9141. COAKLEY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 14–9143. COLLINS *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 14–9179. DOWNING *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 158 So. 3d 575.

No. 14–9181. PETERKA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 14–9189. PREACELY *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 588 Fed. Appx. 996.

No. 14–9212. BENEFIELD *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 153 Conn. App. 691, 103 A. 3d 990.

No. 14–9234. CABEZA *v.* GRIFFIN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 14–9237. MOELLER *v.* GILBERT. C. A. 9th Cir. Certiorari denied.

No. 14–9241. FOSTER *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 14–9243. DICH *v.* JACQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 585 Fed. Appx. 639.

No. 14–9257. SALARY *v.* NUSS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 597 Fed. Appx. 543.

No. 14–9279. DAVIS *v.* KEITH, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 14–9287. DAMIAN PENA *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 181 Wash. App. 1023.

No. 14–9319. JAMISON *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 410 S. C. 456, 765 S. E. 2d 123.

No. 14–9322. KRATOCHVIL *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 14–9340. JACKSON *v.* DOMZALSKI. C. A. 3d Cir. Certiorari denied. Reported below: 598 Fed. Appx. 811.

No. 14–9352. BEARD *v.* LIZARRAGA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 584 Fed. Appx. 856.

No. 14–9356. CARRASCOSA *v.* ARTHUR, ADMINISTRATOR, EDNA MAHAN CORRECTIONAL FACILITY FOR WOMEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 14–9379. HINGLE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 153 So. 3d 659.

No. 14–9384. SHI WEI GUO *v.* LYNCH, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 586 Fed. Appx. 140.

No. 14–9387. LYON *v.* WISE CARTER CHILD AND CARAWAY, P. A., ET AL. (three judgments). C. A. 5th Cir. Certiorari denied.

No. 14–9398. GIBSON *v.* PAQUIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 635.

No. 14–9400. HAMPTON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 113 App. Div. 3d 1131, 977 N. Y. S. 2d 859.

No. 14–9403. REECE *v.* DICKENSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 594 Fed. Appx. 398.

No. 14–9423. JONES *v.* WILSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 595 Fed. Appx. 826.

No. 14–9429. HAMMONDS *v.* BO'S FOOD STORE. C. A. 4th Cir. Certiorari denied. Reported below: 588 Fed. Appx. 279.

No. 14–9431. HILL *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2014 IL App (2d) 120506, 9 N. E. 3d 65.

No. 14–9437. BASNIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 14–9493. POWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 778 F. 3d 719.

No. 14–9494. ONCIU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 703.

No. 14–9502. VELAZQUEZ-CORCHADO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 14–9503. WARREN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 14–9507. ROBISON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 774 F. 3d 256.

No. 14–9510. ARMSTRONG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 591 Fed. Appx. 169.

No. 14–9511. BEJARANO-ORDONEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 254.

No. 14–9512. BAILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 14–9514. COX *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 14–9520. ALEXANDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 14–9522. DUNGY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 14–9529. DANIEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 14–9537. TRUMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 581 Fed. Appx. 26.

No. 14–9538. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 14–9546. NAILON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 766.

No. 14–9547. McMillian *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 777 F. 3d 444.

No. 14–9551. McDuffie *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 403.

No. 14–9553. Walker *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 596 Fed. Appx. 302.

No. 14–9557. Bryant *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 14–9558. Gallegos-Hernandez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 600 Fed. Appx. 238.

No. 13–1162. Purdue Pharma L. P. et al. *v.* United States ex rel. May et al. C. A. 4th Cir. Motions of Pharmaceutical Research and Manufacturers of America et al. and Washington Legal Foundation for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 737 F. 3d 908.

No. 14–631. Manzano *v.* Indiana. Ct. App. Ind. Certiorari denied. Justice Sotomayor dissents. Reported below: 12 N. E. 3d 321.

No. 14–825. County of Maricopa, Arizona, et al. *v.* Lopez-Valenzuela et al. C. A. 9th Cir. Certiorari denied. Justice Alito dissents. Reported below: 770 F. 3d 772.

Justice Thomas, with whom Justice Scalia joins, dissenting.

The Court's refusal to hear this case shows insufficient respect to the State of Arizona, its voters, and its Constitution. And it suggests to the lower courts that they have free rein to strike down state laws on the basis of dubious constitutional analysis. I respectfully dissent.

In 2006, Arizona voters amended their State Constitution to render ineligible for bail those individuals charged with "serious felony offenses" who have "entered or remained in the United States illegally and if the proof is evident or the presumption great as to the present charge." Ariz. Const., Art. II, § 22(A)(4). A divided en banc panel of the U. S. Court of Appeals for the Ninth Circuit held this provision unconstitutional under two theories based on the "substantive component of the Due Process Clause." *Lopez-Valenzuela* v. *Arpaio*, 770 F. 3d 772, 775 (2014).

It first reasoned that the amendment implicates a fundamental interest "'in liberty'" and is not narrowly tailored to serve Arizona's interest in ensuring that persons accused of crimes are available for trial. *Id.*, at 780–786. Second, the court held that the amendment "violate[s] substantive due process by imposing punishment before trial." *Id.*, at 791.

Shortly after that decision, Arizona sought a stay of the judgment from this Court. In a statement respecting denial of the stay application, I noted the unfortunate reality that there "appeare[d] to be no reasonable probability that four Justices [would] consider the issue sufficiently meritorious to grant certiorari." *Maricopa County* v. *Lopez-Valenzuela*, 574 U. S. 1006, 1007 (2014) (internal quotation marks omitted). Though I had hoped my prediction would prove wrong, today's denial confirms that there was "little reason to be optimistic." *Ibid.*

It is disheartening that there are not four Members of this Court who would even review the decision below. As I previously explained, States deserve our careful consideration when lower courts invalidate their constitutional provisions. *Ibid.* After all, that is the approach we take when lower courts hold federal statutes unconstitutional. See, *e. g.*, *Department of Transportation* v. *Association of American Railroads*, *ante*, p. 43 (granting review when a federal statutory provision was held unconstitutional, notwithstanding absence of a Circuit split). In fact, Congress historically required this Court to review any decision of a federal court of appeals holding that a state statute violated the Federal Constitution. 28 U. S. C. § 1254(2) (1982 ed.). It was not until 1988 that Congress eliminated that mandatory jurisdiction and gave this Court discretion to review such cases by writ of certiorari. See § 2, 102 Stat. 662. In my view, that discretion should be exercised with a strong dose of respect for state laws. In exercising that discretion, we should show at least as much respect for state laws as we show for federal laws.

Our indifference to cases such as this one will only embolden the lower courts to reject state laws on questionable constitutional grounds. This Court once emphasized the need for judicial restraint when asked to review the constitutionality of state laws. See, *e. g.*, *Ferguson* v. *Skrupa*, 372 U. S. 726, 729 (1963) (noting that this Court should refuse to use the Due Process Clause "to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social phi-

losophy"); *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 391 (1937) (refusing to strike down a state regulation on the basis of substantive due process because "the Constitution does not recognize an absolute and uncontrollable liberty"); *Nebbia* v. *New York*, 291 U. S. 502, 537–538 (1934) ("Times without number we have said that the legislature is primarily the judge of the necessity of [a regulation], that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power"); *Tyson & Brother* v. *Banton*, 273 U. S. 418, 446 (1927) (Holmes, J., dissenting) ("[A] state legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution . . . , and . . . Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain"). But for reasons that escape me, state statutes have encountered closer scrutiny under the Due Process Clause of the Fourteenth Amendment than federal statutes have under the sister Clause in the Fifth Amendment. *Davidson* v. *New Orleans*, 96 U. S. 97, 103–104 (1878) (declining to overturn a state tax assessment on due process grounds, and noting the "remarkable" fact that the Fifth Amendment Due Process Clause had been invoked very rarely since the founding, but that in the short time since the Fourteenth Amendment had been ratified, "the docket [had become] crowded with cases in which [the Court was] asked to hold that State courts and State legislatures have deprived their own citizens of life, liberty, or property without due process of law"). This Court's previous admonitions are all too rare today, and our steadfast refusal to review decisions straying from them only undercuts their influence.

For these reasons, I respectfully dissent from the Court's denial of certiorari.

No. 14–954. ANIMAL CARE TRUST ET AL. *v.* UNITED PET SUPPLY, INC. C. A. 6th Cir. Motions of International Municipal Lawyers Association et al. and American Society for the Prevention of Cruelty to Animals for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 768 F. 3d 464.

No. 14–1021. BYARS, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. *v.* AIKEN ET AL. Sup. Ct. S. C.

Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 410 S. C. 534, 765 S. E. 2d 572.

Rehearing Denied

No. 13–10787. HOVARTER *v.* CALIFORNIA ET AL., 574 U. S. 867;

No. 14–1026. GOSSAGE *v.* OFFICE OF PERSONNEL MANAGEMENT ET AL., *ante*, p. 951;

No. 14–7635. GREENFIELD *v.* DEUTSCHE BANK AG ET AL., 574 U. S. 1171;

No. 14–7765. BURGEST *v.* CARAWAY, WARDEN, 574 U. S. 1175;

No. 14–8157. MURRAY *v.* MIDDLETON ET AL., *ante*, p. 940;

No. 14–8234. REED-RAJAPASKE *v.* MEMPHIS LIGHT, GAS AND WATER, ET AL., *ante*, p. 953;

No. 14–8261. LOVE *v.* DUCART, WARDEN, *ante*, p. 953;

No. 14–8340. JONES *v.* ANDO, *ante*, p. 955;

No. 14–8370. DONGSHENG HUANG *v.* DEPARTMENT OF LABOR, ADMINISTRATIVE REVIEW BOARD, ET AL., *ante*, p. 955;

No. 14–8495. SLEDGE *v.* ILLINOIS, *ante*, p. 955;

No. 14–8616. OYELAKIN *v.* RENO, FORMER ATTORNEY GENERAL OF THE UNITED STATES, ET AL., *ante*, p. 988;

No. 14–8653. JOHNSON *v.* FARM CREDIT OF FLORIDA ET AL., *ante*, p. 989; and

No. 14–8774. ADAMS *v.* UNITED STATES, *ante*, p. 957. Petitions for rehearing denied.

JUNE 3, 2015

Miscellaneous Order

No. 14–1409 (14A1219). IN RE BOWER. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 14–1408 (14A1218). BOWER *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 612 Fed. Appx. 748.

JUNE 5, 2015

Dismissals Under Rule 46

No. 14–1043. CYCLONE MICROSYSTEMS, INC., ET AL. *v.* INTERNET MACHINES LLC; and

No. 14–1088. INTERNET MACHINES LLC *v.* CYCLONE MICROSYSTEMS, INC., ET AL. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 575 Fed. Appx. 895.

AMENDMENTS TO FEDERAL RULES OF BANKRUPTCY PROCEDURE

The following amendments to the Federal Rules of Bankruptcy Procedure were prescribed by the Supreme Court of the United States on April 29, 2015, pursuant to 28 U. S. C. § 2075, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1050. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U. S. C. § 2075, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier publication of the Federal Rules of Bankruptcy Procedure and amendments thereto, see, *e. g.*, 461 U. S. 973, 471 U. S. 1147, 480 U. S. 1077, 490 U. S. 1119, 500 U. S. 1017, 507 U. S. 1075, 511 U. S. 1169, 514 U. S. 1145, 517 U. S. 1263, 520 U. S. 1285, 526 U. S. 1169, 529 U. S. 1147, 532 U. S. 1077, 535 U. S. 1139, 538 U. S. 1075, 541 U. S. 1097, 544 U. S. 1163, 547 U. S. 1227, 550 U. S. 989, 553 U. S. 1105, 556 U. S. 1307, 559 U. S. 1127, 563 U. S. 1051, 566 U. S. 1045, 569 U. S. 1141, and 572 U. S. 1169.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 29, 2015

To the Senate and House of Representatives of the United States of America in Congress Assembled:

I have the honor to submit to the Congress the amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying this rule are excerpts from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

(Signed) JOHN G. ROBERTS, JR.
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 29, 2015

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rule 1007.

[See *infra*, p. 1053.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2015, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Bankruptcy Procedure in accordance with the provisions of Section 2075 of Title 28, United States Code.

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 1007. Lists, schedules, statements, and other documents; time limits.

(*a*) *Corporate ownership statement, list of creditors and equity security holders, and other lists.*

(*1*) *Voluntary case.*—In a voluntary case, the debtor shall file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms. If the debtor is a corporation, other than a governmental unit, the debtor shall file with the petition a corporate ownership statement containing the information described in Rule 7007.1. The debtor shall file a supplemental statement promptly upon any change in circumstances that renders the corporate ownership statement inaccurate.

(*2*) *Involuntary case.*—In an involuntary case, the debtor shall file, within seven days after entry of the order for relief, a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms.

. . . . .

AMENDMENTS TO FEDERAL RULES OF CIVIL PROCEDURE

The following amendments to the Federal Rules of Civil Procedure were prescribed by the Supreme Court of the United States on April 29, 2015, pursuant to 28 U. S. C. § 2072, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1056. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U. S. C. § 2074, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier publication of the Federal Rules of Civil Procedure and amendments thereto, see 308 U. S. 645, 308 U. S. 642, 329 U. S. 839, 335 U. S. 919, 341 U. S. 959, 368 U. S. 1009, 374 U. S. 861, 383 U. S. 1029, 389 U. S. 1121, 398 U. S. 977, 401 U. S. 1017, 419 U. S. 1133, 446 U. S. 995, 456 U. S. 1013, 461 U. S. 1095, 471 U. S. 1153, 480 U. S. 953, 485 U. S. 1043, 500 U. S. 963, 507 U. S. 1089, 514 U. S. 1151, 517 U. S. 1279, 520 U. S. 1305, 523 U. S. 1221, 526 U. S. 1183, 529 U. S. 1155, 532 U. S. 1085, 535 U. S. 1147, 538 U. S. 1083, 544 U. S. 1173, 547 U. S. 1233, 550 U. S. 1003, 553 U. S. 1149, 556 U. S. 1341, 559 U. S. 1139, 569 U. S. 1149, and 572 U. S. 1217.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 29, 2015

To the Senate and House of Representatives of the United States of America in Congress Assembled:

I have the honor to submit to the Congress the amendments to the Federal Rules of Civil Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are excerpts from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

(Signed) JOHN G. ROBERTS, JR.
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 29, 2015

ORDERED:

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein amendments to Civil Rules 1, 4, 16, 26, 30, 31, 33, 34, 37, 55, and 84, and the Appendix of Forms.

[See *infra*, pp. 1059–1068.]

2. That the foregoing amendments to the Federal Rules of Civil Procedures shall take effect on December 1, 2015, and shall govern in all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

Rule 1. Scope and purpose.

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 4. Summons.

. . . . .

(*d*) *Waiving service.*

(*1*) *Requesting a waiver.*—An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

. . . . .

(C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form;

(D) inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;

. . . . .

(*m*) *Time limit for service.*—If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order

that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1) or to service of a notice under Rule 71.1(d)(3)(A).

. . . . .

RULE 4 NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF SUMMONS.

(Caption)

To *(name the defendant or—if the defendant is a corporation, partnership, or association—name an officer or agent authorized to receive service)*:

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within (*give at least 30 days or at least 60 days if the defendant is outside any judicial district of the United States*) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____

_____
(Signature of the attorney
or unrepresented party)

_____
(Printed name)

_____
(Address)

_____
(E-mail address)

_____
(Telephone number)

RULE 4 WAIVER OF THE SERVICE OF SUMMONS.

(Caption)

To *(name the plaintiff's attorney or the unrepresented plaintiff)*:

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

_____
(Signature of the attorney
or unrepresented party)

_____
(Printed name)

_____
(Address)

_____
(E-mail address)

_____
(Telephone number)

(Attach the following)

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

Rule 16. Pretrial conferences; scheduling; management.

. . . . .

(*b*) *Scheduling.*

(*1*) *Scheduling order.*—Except in categories of actions exempted by local rule, the district judge or a magistrate judge when authorized by local rule—must issue a scheduling order:

(A) after receiving the parties' report under Rule 26(f); or

(B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference.

(*2*) *Time to issue.*—The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.

(*3*) *Contents of the order.*

. . . . .

(*B*) *Permitted contents.* The scheduling order may:

. . . . .

(iii) provide for disclosure, discovery, or preservation of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced, including agreements reached under Federal Rule of Evidence 502;

(v) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(vi) set dates for pretrial conferences and for trial; and

(vii) include other appropriate matters.

. . . . .

Rule 26. Duty to disclose; general provisions governing discovery.

. . . . .

(*b*) *Discovery scope and limits.*

(*1*) *Scope in general.*—Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(*2*) *Limitations on frequency and extent.*

. . . . .

(*C*) *When required.*—On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

. . . . .

(iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

. . . . .

(*c*) *Protective orders.*

(*1*) *In general.*—A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

. . . . .

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;

. . . . .

(*d*) *Timing and sequence of discovery.*

. . . . .

(*2*) *Early Rule 34 requests.*

(*A*) *Time to deliver.*—More than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered:

(i) to that party by any other party, and

(ii) by that party to any plaintiff or to any other party that has been served.

(*B*) *When considered served.*—The request is considered to have been served at the first Rule 26(f) conference.

(*3*) *Sequence.*—Unless the parties stipulate or the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

. . . . .

(*f*) *Conference of the parties; planning for discovery.*

. . . . .

(*3*) *Discovery plan.*—A discovery plan must state the parties' views and proposals on:

. . . . .

(C) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502;

. . . . .

Rule 30. Depositions by oral examination.

(*a*) *When a deposition may be taken.*

. . . . .

(*2*) *With leave.*—A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

. . . . .

(*d*) *Duration; sanction; motion to terminate or limit.*

(*1*) *Duration.*—Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

. . . . .

Rule 31. Depositions by written questions.

(*a*) *When a deposition may be taken.*

. . . . .

(*2*) *With leave.*—A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

. . . . .

Rule 33. Interrogatories to parties.

(*a*) *In general.*

(*1*) *Number.*—Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).

. . . . .

Rule 34. Producing documents, electronically stored information, and tangible things, or entering onto land, for inspection and other purposes.

. . . . .

(*b*) *Procedure.*

. . . . .

(*2*) *Responses and objections.*

(*A*) *Time to respond.*—The party to whom the request is directed must respond in writing within 30 days after being served or—if the request was delivered under Rule 26(d)(2)—within 30 days after the parties' first Rule 26(f) conference. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(*B*) *Responding to each item.*—For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electroni-

cally stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(*C*) *Objections.*—An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

. . . . .

Rule 37. Failure to make disclosures or to cooperate in discovery; sanctions.

(*a*) *Motion for an order compelling disclosure or discovery.*

. . . . .

(*3*) *Specific motions.*

. . . . .

(*B*) *To compel a discovery response.*—A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

. . . . .

(iv) a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

. . . . .

(*e*) *Failure to preserve electronically stored information.*—If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

. . . . .

Rule 55. Default; default judgment.

. . . . .

(*c*) *Setting aside a default or a default judgment.*—The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

. . . . .

Rule 84. Forms.

[Abrogated (Apr. 29, 2015, eff. Dec. 1, 2015).]

APPENDIX OF FORMS

[Abrogated (Apr. 29, 2015, eff. Dec. 1, 2015).]