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OFFICIAL REPORTS

OF

THE SUPREME COURT

JANUARY 25 THROUGH MARCH 28, 2016

END OF VOLUME

CHRISTINE LUCHOK FALLON
REPORTER OF DECISIONS

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JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

JOHN G. ROBERTS, Jr., Chief Justice.
ANTONIN SCALIA, Associate Justice.*
ANTHONY M. KENNEDY, Associate Justice.
CLARENCE THOMAS, Associate Justice.
RUTH BADER GINSBURG, Associate Justice.
STEPHEN BREYER, Associate Justice.
SAMUEL A. ALITO, Jr., Associate Justice.
SONIA SOTOMAYOR, Associate Justice.
ELENA KAGAN, Associate Justice.

RETIRED

JOHN PAUL STEVENS, Associate Justice.
SANDRA DAY O'CONNOR, Associate Justice.
DAVID H. SOUTER, Associate Justice.

OFFICERS OF THE COURT

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SCOTT S. HARRIS, Clerk.
CHRISTINE LUCHOK FALLON, Reporter of Decisions.
PAMELA TALKIN, Marshal.
LINDA S. MASLOW, Librarian.

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*Justice Scalia died in Shafter, Texas, on February 13, 2016. Services were held at the Basilica of the National Shrine of the Immaculate Conception in Washington, D. C., on February 20, 2016, and interment was in Fairfax Memorial Park in Fairfax, Virginia, on the same date. See *post*, p. v.

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.)
(For next subsequent allotment, 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 February 25, 2016, viz.:

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

For the First Circuit, Stephen Breyer, Associate Justice.

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

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

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

For the Tenth Circuit, Sonia Sotomayor, Associate Justice.

For the Eleventh Circuit, Clarence Thomas, Associate Justice.

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

February 25, 2016.

(For next previous allotment, see *ante*, p. ii.)

DEATH OF JUSTICE SCALIA

Supreme Court of the United States

FEBRUARY, 22, 2016

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

The Chief Justice said:

The memorial drapery on the bench and chair beside me signifies mourning for a Justice who has died in active service on the Court. Today, it marks the loss of our friend and colleague, Antonin Scalia, who died unexpectedly on February 13, 2016.

Justice Scalia was born in Trenton, New Jersey, on March 11, 1936, to parents of Italian descent. He attended public grade school in Queens, New York, and then a Jesuit military school in Manhattan, graduating first in his class. He enrolled at Georgetown University, graduating summa cum laude and as valedictorian in 1957. He next attended Harvard Law School, graduating magna cum laude in 1960.

While at Harvard, he met Maureen McCarthy, and they married in 1960. Their devoted union produced nine beloved children: Ann Forrest; Eugene; John Francis; Catherine Elisabeth; Mary Clare; Paul David; Matthew; Christopher James; and Margaret Jane.

After graduating from law school, Justice Scalia embarked on a career in private practice in Cleveland, Ohio, but his love of knowledge drew him to academia. In 1967, he received an appointment to the faculty of the University of

Virginia Law School. After four years of teaching and writing, he entered public service as General Counsel of the White House Office of Telecommunications Policy, at the dawn of the cable television age. He later served as Chairman of the Administrative Conference of the United States, and as Assistant Attorney General for the Office of Legal Counsel at the Department of Justice. In 1976, during his tenure at the Justice Department, Justice Scalia argued his first and only Supreme Court case. He prevailed, establishing a perfect record before the Court.

Justice Scalia returned to teaching as Professor of Law at the University of Chicago Law School. In 1982, President Reagan appointed him to the United States Court of Appeals for the District of Columbia Circuit. On June 24, 1986, President Reagan nominated him to this Court. Justice Scalia took his seat on September 26 of that year, becoming the 103d Justice to serve on this Court.

Justice Scalia devoted nearly 30 years of his life to this Court in service to the country he so loved. He authored 292 majority opinions for the Court. He was also known, on occasion, to dissent. We remember his incisive intellect, his agile wit, and his captivating prose. But we cannot forget his irrepressible *spirit*. He was our man for all seasons, and we shall miss him beyond measure. We extend our condolences to his wife Maureen, his children, and the entire Scalia family.

At an appropriate time, the traditional memorial service of the Court and the bar will be held in this courtroom.

And now we turn to the business of the Court.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2015

Syllabus

MONTGOMERY *v.* LOUISIANA

CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 14–280. Argued October 13, 2015—Decided January 25, 2016

Petitioner Montgomery was 17 years old in 1963, when he killed a deputy sheriff in Louisiana. The jury returned a verdict of "guilty without capital punishment," which carried an automatic sentence of life without parole. Nearly 50 years after Montgomery was taken into custody, this Court decided that mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment's prohibition on "'cruel and unusual punishments.'" *Miller* v. *Alabama*, 567 U. S. 460, 465. Montgomery sought state collateral relief, arguing that *Miller* rendered his mandatory life-without-parole sentence illegal. The trial court denied his motion, and his application for a supervisory writ was denied by the Louisiana Supreme Court, which had previously held that *Miller* does not have retroactive effect in cases on state collateral review.

Held:

1. This Court has jurisdiction to decide whether the Louisiana Supreme Court correctly refused to give retroactive effect to *Miller*. Pp. 197–205.

(a) *Teague* v. *Lane*, 489 U. S. 288, a federal habeas case, set forth a framework for the retroactive application of a new constitutional rule to convictions that were final when the new rule was announced. While the Court held that new constitutional rules of criminal procedure are generally not retroactive, it recognized that courts must give retroactive effect to new watershed procedural rules and to substantive rules of constitutional law. Substantive constitutional rules include "rules forbidding criminal punishment of certain primary conduct" and "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense," *Penry* v. *Lynaugh*, 492 U. S. 302, 330. Court-appointed *amicus* contends that because *Teague* was an interpretation of the federal habeas statute, not a constitutional command, its retroactivity holding has no application in state collateral review proceedings. However, neither *Teague* nor *Danforth* v. *Minnesota*, 552 U. S. 264—which concerned only *Teague*'s general retroactivity bar for new constitutional rules of criminal procedure—had occasion to address whether States are required as a constitutional matter to give retroactive effect to new substantive rules. Pp. 197–200.

(b) When a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review

courts to give retroactive effect to that rule. This conclusion is established by precedents addressing the nature of substantive rules, their differences from procedural rules, and their history of retroactive application. As *Teague*, *supra*, at 292, 312, and *Penry*, *supra*, at 330, indicate, substantive rules set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose. It follows that when a State enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful. In contrast, where procedural error has infected a trial, a conviction or sentence may still be accurate and the defendant's continued confinement may still be lawful, see *Schriro* v. *Summerlin*, 542 U. S. 348, 352–353; for this reason, a trial conducted under a procedure found unconstitutional in a later case does not automatically invalidate a defendant's conviction or sentence. The same possibility of a valid result does not exist where a substantive rule has eliminated a State's power to proscribe the defendant's conduct or impose a given punishment. See *United States* v. *United States Coin & Currency*, 401 U. S. 715, 724. By holding that new substantive rules are, indeed, retroactive, *Teague* continued a long tradition of recognizing that substantive rules must have retroactive effect regardless of when the defendant's conviction became final; for a conviction under an unconstitutional law "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment," *Ex parte Siebold*, 100 U. S. 371, 376–377. The same logic governs a challenge to a punishment that the Constitution deprives States of authority to impose, *Penry*, *supra*, at 330. It follows that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced. This Court's precedents may not directly control the question here, but they bear on the necessary analysis, for a State that may not constitutionally insist that a prisoner remain in jail on federal habeas review may not constitutionally insist on the same result in its own postconviction proceedings. Pp. 200–205.

2. *Miller*'s prohibition on mandatory life without parole for juvenile offenders announced a new substantive rule that, under the Constitution, is retroactive in cases on state collateral review. The "foundation stone" for *Miller*'s analysis was the line of precedent holding certain punishments disproportionate when applied to juveniles, 567 U. S., at 470, n. 4. Relying on *Roper* v. *Simmons*, 543 U. S. 551, and *Graham* v. *Florida*, 560 U. S. 48, *Miller* recognized that children differ from adults in their "diminished culpability and greater prospects for reform," 567 U. S., at 471, and that these distinctions "diminish the penological justifications" for imposing life without parole on juvenile offend-

ers, *id.*, at 472. Because *Miller* determined that sentencing a child to life without parole is excessive for all but "'the rare juvenile offender whose crime reflects irreparable corruption,'" *id.*, at 479–480, it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—*i. e.*, juvenile offenders whose crimes reflect the transient immaturity of youth, *Penry*, *supra*, at 330. *Miller* therefore announced a substantive rule of constitutional law, which, like other substantive rules, is retroactive because it "'necessarily carr[ies] a significant risk that a defendant'"—here, the vast majority of juvenile offenders—"'faces a punishment that the law cannot impose upon him.'" *Schriro*, *supra*, at 352.

A State may remedy a *Miller* violation by extending parole eligibility to juvenile offenders. This would neither impose an onerous burden on the States nor disturb the finality of state convictions. And it would afford someone like Montgomery, who submits that he has evolved from a troubled, misguided youth to a model member of the prison community, the opportunity to demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change. Pp. 206–213.

2013–1163 (La. 6/20/14), 141 So. 3d 264, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined, *post*, p. 213. THOMAS, J., filed a dissenting opinion, *post*, p. 227.

Richard D. Bernstein, by invitation of the Court, 575 U. S. 933, argued the cause as *amicus curiae* against jurisdiction. With him on the briefs was *Frank Scaduto*.

Mark D. Plaisance argued the cause for petitioner. With him on the briefs were *Sean Collins*, *Marsha Levick*, *Emily C. Keller*, and *Jeffrey J. Pokorak*.

Deputy Solicitor General Dreeben argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Caldwell*, *Nicole A. Saharsky*, and *Robert A. Parker*.

S. Kyle Duncan argued the cause for respondent. With him on the brief were *James D. "Buddy" Caldwell*, Attorney General of Louisiana, *Trey Phillips*, First Assistant Attor-

ney General, *Colin A. Clark*, Assistant Attorney General, *Hillar C. Moore III*, and *Dylan C. Alge*.*

JUSTICE KENNEDY delivered the opinion of the Court.

This is another case in a series of decisions involving the sentencing of offenders who were juveniles when their crimes were committed. In *Miller* v. *Alabama*, 567 U. S. 460 (2012), the Court held that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juve-

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*Briefs of *amici curiae* urging reversal were filed for the American Bar Association by *William C. Hubbard* and *Lawrence A. Wojcik*; for the American Civil Liberties Union et al. by *Steven R. Shapiro*, *Brandon J. Buskey*, and *Ezekiel R. Edwards*; for Certain Family Members of Victims Killed by Youths by *Angela C. Vigil* and *Elizabeth L. Yingling*; for the Equal Justice Initiative by *Bryan A. Stevenson*, *Alicia A. D'Addario*, and *John W. Dalton*; for Former Juvenile Court Judges by *Douglas T. Kendall*, *Elizabeth B. Wydra*, and *Brianne J. Gorod*; for Northwestern University School of Law's Children and Family Justice Center et al. by *Steven A. Drizin*, *Laura H. Nirider*, *Megan G. Crane*, *Shobha L. Mahadev*, and *Scott F. Main*; for Douglas A. Berman by *Matthew C. Corcoran* and *Chad A. Readler*; and for Pascal F. Calogero, Jr., et al. by *Stephen M. Nickelsburg* and *Keith Nordyke*.

A brief of *amici curiae* urging affirmance was filed for the State of Michigan et al. by *Bill Schuette*, Attorney General of Michigan, *Aaron D. Lindstrom*, Solicitor General, and *B. Eric Restuccia*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Leslie Rutledge* of Arkansas, *George Jepsen* of Connecticut, *Gregory F. Zoeller* of Indiana, *Derek Schmidt* of Kansas, *Douglas J. Peterson* of Nebraska, *Timothy C. Fox* of Montana, *Adam Paul Lexalt* of Nevada, *Joseph A. Foster* of New Hampshire, *Peter F. Kilmartin* of Rhode Island, *Alan Wilson* of South Carolina, *Marty J. Jackley* of South Dakota, *Ken Paxton* of Texas, *Sean D. Reyes* of Utah, and *Peter K. Michael* of Wyoming.

Charles J. Ogletree and *Ronald Sullivan* filed a brief for Charles Hamilton Houston Institute for Race and Justice et al. as *amici curiae*.

Robert L. Littlehale and *Damon C. Andrews* filed a brief as *amicus curiae* for the Center on the Administration of Criminal Law in support of jurisdiction.

nile sentencing. In the wake of *Miller*, the question has arisen whether its holding is retroactive to juvenile offenders whose convictions and sentences were final when *Miller* was decided. Courts have reached different conclusions on this point. Compare, *e. g.*, *Martin* v. *Symmes*, 782 F. 3d 939, 943 (CA8 2015); *Johnson* v. *Ponton*, 780 F. 3d 219, 224–226 (CA4 2015); *Chambers* v. *State*, 831 N. W. 2d 311, 331 (Minn. 2013); and *State* v. *Tate*, 2012–2763, p. 17 (La. 11/5/13), 130 So. 3d 829, 841, with *Diatchenko* v. *District Attorney for Suffolk Dist.*, 466 Mass. 655, 661–667, 1 N. E. 3d 270, 278–282 (2013); *Aiken* v. *Byars*, 410 S. C. 534, 548, 765 S. E. 2d 572, 578 (2014); *State* v. *Mares*, 2014 WY 126, ¶¶47–63, 335 P. 3d 487, 504–508; and *People* v. *Davis*, 2014 IL 115595, ¶41, 6 N. E. 3d 709, 722. Certiorari was granted in this case to resolve the question.

I

Petitioner is Henry Montgomery. In 1963, Montgomery killed Charles Hurt, a deputy sheriff in East Baton Rouge, Louisiana. Montgomery was 17 years old at the time of the crime. He was convicted of murder and sentenced to death, but the Louisiana Supreme Court reversed his conviction after finding that public prejudice had prevented a fair trial. *State* v. *Montgomery*, 181 So. 2d 756, 762 (1966).

Montgomery was retried. The jury returned a verdict of "guilty without capital punishment." *State* v. *Montgomery*, 242 So. 2d 818 (La. 1970). Under Louisiana law, this verdict required the trial court to impose a sentence of life without parole. The sentence was automatic upon the jury's verdict, so Montgomery had no opportunity to present mitigation evidence to justify a less severe sentence. That evidence might have included Montgomery's young age at the time of the crime; expert testimony regarding his limited capacity for foresight, self-discipline, and judgment; and his potential for rehabilitation. Montgomery, now 69 years old, has spent almost his entire life in prison.

Almost 50 years after Montgomery was first taken into custody, this Court decided *Miller* v. *Alabama*, 567 U. S. 460. *Miller* held that mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment's prohibition on "'cruel and unusual punishments.'" *Id.*, at 465. "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence," mandatory life without parole "poses too great a risk of disproportionate punishment." *Id.*, at 479. *Miller* required that sentencing courts consider a child's "diminished culpability and heightened capacity for change" before condemning him or her to die in prison. *Ibid.* Although *Miller* did not foreclose a sentencer's ability to impose life without parole on a juvenile, the Court explained that a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect "'irreparable corruption.'" *Id.*, at 479–480 (quoting *Roper* v. *Simmons*, 543 U. S. 551, 573 (2005)).

After this Court issued its decision in *Miller*, Montgomery sought collateral review of his mandatory life-without-parole sentence. In Louisiana there are two principal mechanisms for collateral challenge to the lawfulness of imprisonment. Each begins with a filing in the trial court where the prisoner was convicted and sentenced. La. Code Crim. Proc. Ann., Arts. 882, 926 (West 2008). The first procedure permits a prisoner to file an application for postconviction relief on one or more of seven grounds set forth in the statute. Art. 930.3. The Louisiana Supreme Court has held that none of those grounds provides a basis for collateral review of sentencing errors. See *State ex rel. Melinie* v. *State*, 93–1380 (La. 1/12/96), 665 So. 2d 1172 (*per curiam*). Sentencing errors must instead be raised through Louisiana's second collateral review procedure.

This second mechanism allows a prisoner to bring a collateral attack on his or her sentence by filing a motion to correct an illegal sentence. See Art. 882. Montgomery invoked

this procedure in the East Baton Rouge Parish District Court.

The state statute provides that "[a]n illegal sentence may be corrected at any time by the court that imposed the sentence." *Ibid.* An illegal sentence "is primarily restricted to those instances in which the *term* of the prisoner's sentence is not authorized by the statute or statutes which govern the penalty" for the crime of conviction. *State* v. *Mead*, 2014–1051, p. 3 (La. App. 4 Cir. 4/22/15), 165 So. 3d 1044, 1047; see also *State* v. *Alexander*, 2014–0401 (La. 11/7/14), 152 So. 3d 137 (*per curiam*). In the ordinary course Louisiana courts will not consider a challenge to a disproportionate sentence on collateral review; rather, as a general matter, it appears that prisoners must raise Eighth Amendment sentencing challenges on direct review. See *State* v. *Gibbs*, 620 So. 2d 296, 296–297 (La. App. 1993); *Mead*, *supra*, at 1047.

Louisiana's collateral review courts will, however, consider a motion to correct an illegal sentence based on a decision of this Court holding that the Eighth Amendment to the Federal Constitution prohibits a punishment for a type of crime or a class of offenders. When, for example, this Court held in *Graham* v. *Florida*, 560 U. S. 48 (2010), that the Eighth Amendment bars life-without-parole sentences for juvenile nonhomicide offenders, Louisiana courts heard *Graham* claims brought by prisoners whose sentences had long been final. See, *e. g.*, *State* v. *Shaffer*, 2011–1756, pp. 1–4 (La. 11/23/11), 77 So. 3d 939, 940–942 (*per curiam*) (considering motion to correct an illegal sentence on the ground that *Graham* rendered illegal a life-without-parole sentence for a juvenile nonhomicide offender). Montgomery's motion argued that *Miller* rendered his mandatory life-without-parole sentence illegal.

The trial court denied Montgomery's motion on the ground that *Miller* is not retroactive on collateral review. Montgomery then filed an application for a supervisory writ. The Louisiana Supreme Court denied the application. 2013–

1163 (6/20/14), 141 So. 3d 264. The court relied on its earlier decision in *State* v. *Tate*, 130 So. 3d 829, which held that *Miller* does not have retroactive effect in cases on state collateral review. Chief Justice Johnson and Justice Hughes dissented in *Tate*, and Chief Justice Johnson again noted her dissent in Montgomery's case.

This Court granted Montgomery's petition for certiorari. The petition presented the question "whether *Miller* adopts a new substantive rule that applies retroactively on collateral review to people condemned as juveniles to die in prison." Pet. for Cert. i. In addition, the Court directed the parties to address the following question: "Do we have jurisdiction to decide whether the Supreme Court of Louisiana correctly refused to give retroactive effect in this case to our decision in *Miller*?" 575 U. S. 911 (2015).

II

The parties agree that the Court has jurisdiction to decide this case. To ensure this conclusion is correct, the Court appointed Richard D. Bernstein as *amicus curiae* to brief and argue the position that the Court lacks jurisdiction. He has ably discharged his assigned responsibilities.

Amicus argues that a State is under no obligation to give a new rule of constitutional law retroactive effect in its own collateral review proceedings. As those proceedings are created by state law and under the State's plenary control, *amicus* contends, it is for state courts to define applicable principles of retroactivity. Under this view, the Louisiana Supreme Court's decision does not implicate a federal right; it only determines the scope of relief available in a particular type of state proceeding—a question of state law beyond this Court's power to review.

If, however, the Constitution establishes a rule and requires that the rule have retroactive application, then a state court's refusal to give the rule retroactive effect is reviewable by this Court. Cf. *Griffith* v. *Kentucky*, 479 U. S. 314,

328 (1987) (holding that on direct review, a new constitutional rule must be applied retroactively "to all cases, state or federal"). States may not disregard a controlling, constitutional command in their own courts. See *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 340–341, 344 (1816); see also *Yates* v. *Aiken*, 484 U. S. 211, 218 (1988) (when a State has not "placed any limit on the issues that it will entertain in collateral proceedings . . . it has a duty to grant the relief that federal law requires"). *Amicus*' argument therefore hinges on the premise that this Court's retroactivity precedents are not a constitutional mandate.

Justice O'Connor's plurality opinion in *Teague* v. *Lane*, 489 U. S. 288 (1989), set forth a framework for retroactivity in cases on federal collateral review. Under *Teague*, a new constitutional rule of criminal procedure does not apply, as a general matter, to convictions that were final when the new rule was announced. *Teague* recognized, however, two categories of rules that are not subject to its general retroactivity bar. First, courts must give retroactive effect to new substantive rules of constitutional law. Substantive rules include "rules forbidding criminal punishment of certain primary conduct," as well as "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Penry* v. *Lynaugh*, 492 U. S. 302, 330 (1989); see also *Teague*, *supra*, at 307. Although *Teague* describes new substantive rules as an exception to the bar on retroactive application of procedural rules, this Court has recognized that substantive rules "are more accurately characterized as . . . not subject to the bar." *Schriro* v. *Summerlin*, 542 U. S. 348, 352, n. 4 (2004). Second, courts must give retroactive effect to new "'"watershed rules of criminal procedure" implicating the fundamental fairness and accuracy of the criminal proceeding.'" *Id.*, at 352; see also *Teague*, 489 U. S., at 312–313.

It is undisputed, then, that *Teague* requires the retroactive application of new substantive and watershed procedural

rules in federal habeas proceedings. *Amicus*, however, contends that *Teague* was an interpretation of the federal habeas statute, not a constitutional command; and so, the argument proceeds, *Teague*'s retroactivity holding simply has no application in a State's own collateral review proceedings.

To support this claim, *amicus* points to language in *Teague* that characterized the Court's task as "'defin[ing] the scope of the writ.'" *Id.*, at 308 (quoting *Kuhlmann* v. *Wilson*, 477 U. S. 436, 447 (1986) (plurality opinion)); see also 489 U. S., at 317 (White, J., concurring in part and concurring in judgment) ("If we are wrong in construing the reach of the habeas corpus statutes, Congress can of course correct us . . . "); *id.*, at 332 (Brennan, J., dissenting) ("No new facts or arguments have come to light suggesting that our [past] reading of the federal habeas statute . . . was plainly mistaken").

In addition, *amicus* directs us to *Danforth* v. *Minnesota*, 552 U. S. 264 (2008), in which a majority of the Court held that *Teague* does not preclude state courts from giving retroactive effect to a broader set of new constitutional rules than *Teague* itself required. 552 U. S., at 266. The *Danforth* majority concluded that *Teague*'s general rule of nonretroactivity for new constitutional rules of criminal procedure "was an exercise of this Court's power to interpret the federal habeas statute." 552 U. S., at 278. Since *Teague*'s retroactivity bar "limit[s] only the scope of *federal* habeas relief," the *Danforth* majority reasoned, States are free to make new procedural rules retroactive on state collateral review. 552 U. S., at 281–282.

Amicus, however, reads too much into these statements. Neither *Teague* nor *Danforth* had reason to address whether States are required as a constitutional matter to give retroactive effect to new substantive or watershed procedural rules. *Teague* originated in a federal, not state, habeas proceeding; so it had no particular reason to discuss whether any part of its holding was required by the Constitution in addition to the federal habeas statute. And *Danforth* held

only that *Teague*'s general rule of nonretroactivity was an interpretation of the federal habeas statute and does not prevent States from providing greater relief in their own collateral review courts. The *Danforth* majority limited its analysis to *Teague*'s general retroactivity bar, leaving open the question whether *Teague*'s two exceptions are binding on the States as a matter of constitutional law. 552 U. S., at 278; see also *id.*, at 277 ("[T]he case before us now does not involve either of the '*Teague* exceptions' ").

In this case, the Court must address part of the question left open in *Danforth*. The Court now holds that when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule. *Teague*'s conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises. That constitutional command is, like all federal law, binding on state courts. This holding is limited to *Teague*'s first exception for substantive rules; the constitutional status of *Teague*'s exception for watershed rules of procedure need not be addressed here.

This Court's precedents addressing the nature of substantive rules, their differences from procedural rules, and their history of retroactive application establish that the Constitution requires substantive rules to have retroactive effect regardless of when a conviction became final.

The category of substantive rules discussed in *Teague* originated in Justice Harlan's approach to retroactivity. *Teague* adopted that reasoning. See 489 U. S., at 292, 312 (discussing *Mackey* v. *United States*, 401 U. S. 667, 692 (1971) (opinion concurring in judgments in part and dissenting in part); and *Desist* v. *United States*, 394 U. S. 244, 261, n. 2 (1969) (dissenting opinion)). Justice Harlan defined substantive constitutional rules as "those that place, as a matter of constitutional interpretation, certain kinds of primary, private individual conduct beyond the power of the criminal

law-making authority to proscribe." *Mackey*, *supra*, at 692. In *Penry* v. *Lynaugh*, decided four months after *Teague*, the Court recognized that "the first exception set forth in *Teague* should be understood to cover not only rules forbidding criminal punishment of certain primary conduct but also rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." 492 U. S., at 330. *Penry* explained that Justice Harlan's first exception spoke "in terms of substantive categorical guarantees accorded by the Constitution, regardless of the procedures followed." *Id.*, at 329. Whether a new rule bars States from proscribing certain conduct or from inflicting a certain punishment, "[i]n both cases, the Constitution itself deprives the State of the power to impose a certain penalty." *Id.*, at 330.

Substantive rules, then, set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose. It follows that when a State enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful. Procedural rules, in contrast, are designed to enhance the accuracy of a conviction or sentence by regulating "the *manner of determining* the defendant's culpability." *Schriro*, 542 U. S., at 353; *Teague*, *supra*, at 313. Those rules "merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise." *Schriro*, *supra*, at 352. Even where procedural error has infected a trial, the resulting conviction or sentence may still be accurate; and, by extension, the defendant's continued confinement may still be lawful. For this reason, a trial conducted under a procedure found to be unconstitutional in a later case does not, as a general matter, have the automatic consequence of invalidating a defendant's conviction or sentence.

The same possibility of a valid result does not exist where a substantive rule has eliminated a State's power to proscribe the defendant's conduct or impose a given punishment.

"[E]ven the use of impeccable factfinding procedures could not legitimate a verdict" where "the conduct being penalized is constitutionally immune from punishment." *United States* v. *United States Coin & Currency*, 401 U. S. 715, 724 (1971). Nor could the use of flawless sentencing procedures legitimate a punishment where the Constitution immunizes the defendant from the sentence imposed. "No circumstances call more for the invocation of a rule of complete retroactivity." *Ibid.*

By holding that new substantive rules are, indeed, retroactive, *Teague* continued a long tradition of giving retroactive effect to constitutional rights that go beyond procedural guarantees. See *Mackey*, *supra*, at 692–693 (opinion of Harlan, J.) ("[T]he writ has historically been available for attacking convictions on [substantive] grounds"). Before *Brown* v. *Allen*, 344 U. S. 443 (1953), "federal courts would never consider the merits of a constitutional claim if the habeas petitioner had a fair opportunity to raise his arguments in the original proceeding." *Desist*, 394 U. S., at 261 (Harlan, J., dissenting). Even in the pre-1953 era of restricted federal habeas, however, an exception was made "when the habeas petitioner attacked the constitutionality of the state statute under which he had been convicted. Since, in this situation, the State had no power to proscribe the conduct for which the petitioner was imprisoned, it could not constitutionally insist that he remain in jail." *Id.*, at 261, n. 2 (citation omitted).

In *Ex parte Siebold*, 100 U. S. 371 (1880), the Court addressed why substantive rules must have retroactive effect regardless of when the defendant's conviction became final. At the time of that decision, "[m]ere error in the judgment or proceedings, under and by virtue of which a party is imprisoned, constitute[d] no ground for the issue of the writ." *Id.*, at 375. Before *Siebold*, the law might have been thought to establish that so long as the conviction and sentence were imposed by a court of competent jurisdiction, no

habeas relief could issue. In *Siebold*, however, the petitioners attacked the judgments on the ground that they had been convicted under unconstitutional statutes. The Court explained that if "this position is well taken, it affects the foundation of the whole proceedings." *Id.*, at 376. A conviction under an unconstitutional law

> "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But . . . if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes." *Id.*, at 376–377.

As discussed, the Court has concluded that the same logic governs a challenge to a punishment that the Constitution deprives States of authority to impose. *Penry*, 492 U. S., at 330; see also Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev. 142, 151 (1970) ("Broadly speaking, the original sphere for collateral attack on a conviction was where the tribunal lacked jurisdiction either in the usual sense or because the statute under which the defendant had been prosecuted was unconstitutional or because the sentence was one the court could not lawfully impose" (footnote omitted)). A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. See *Siebold*, 100 U. S., at 376. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.

Siebold and the other cases discussed in this opinion, of course, do not directly control the question the Court now answers for the first time. These precedents did not involve a state court's postconviction review of a conviction or sen-

tence and so did not address whether the Constitution requires new substantive rules to have retroactive effect in cases on state collateral review. These decisions, however, have important bearing on the analysis necessary in this case.

In support of its holding that a conviction obtained under an unconstitutional law warrants habeas relief, the *Siebold* Court explained that "[a]n unconstitutional law is void, and is as no law." *Ibid.* A penalty imposed pursuant to an unconstitutional law is no less void because the prisoner's sentence became final before the law was held unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbids. To conclude otherwise would undercut the Constitution's substantive guarantees. Writing for the Court in *United States Coin & Currency*, Justice Harlan made this point when he declared that "[n]o circumstances call more for the invocation of a rule of complete retroactivity" than when "the conduct being penalized is constitutionally immune from punishment." 401 U. S., at 724. *United States Coin & Currency* involved a case on direct review; yet, for the reasons explained in this opinion, the same principle should govern the application of substantive rules on collateral review. As Justice Harlan explained, where a State lacked the power to proscribe the habeas petitioner's conduct, "it could not constitutionally insist that he remain in jail." *Desist*, *supra*, at 261, n. 2 (dissenting opinion).

If a State may not constitutionally insist that a prisoner remain in jail on federal habeas review, it may not constitutionally insist on the same result in its own postconviction proceedings. Under the Supremacy Clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is open to a claim controlled by federal law, the state court "has a duty to grant the relief

that federal law requires." *Yates*, 484 U. S., at 218. Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.

As a final point, it must be noted that the retroactive application of substantive rules does not implicate a State's weighty interests in ensuring the finality of convictions and sentences. *Teague* warned against the intrusiveness of "*continually* forc[ing] the States to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards." 489 U. S., at 310. This concern has no application in the realm of substantive rules, for no resources marshaled by a State could preserve a conviction or sentence that the Constitution deprives the State of power to impose. See *Mackey*, 401 U. S., at 693 (opinion of Harlan, J.) ("There is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose").

In adjudicating claims under its collateral review procedures a State may not deny a controlling right asserted under the Constitution, assuming the claim is properly presented in the case. Louisiana follows these basic Supremacy Clause principles in its postconviction proceedings for challenging the legality of a sentence. The State's collateral review procedures are open to claims that a decision of this Court has rendered certain sentences illegal, as a substantive matter, under the Eighth Amendment. See, *e. g.*, *State* v. *Dyer*, 2011–1758, pp. 1–2 (La. 11/23/11), 77 So. 3d 928, 928–929 (*per curiam*) (considering claim on collateral review that this Court's decision in *Graham* v. *Florida*, 560 U. S. 48, rendered petitioner's life-without-parole sentence illegal). Montgomery alleges that *Miller* announced a substantive constitutional rule and that the Louisiana Supreme Court erred by failing to recognize its retroactive effect. This Court has jurisdiction to review that determination.

III

This leads to the question whether *Miller*'s prohibition on mandatory life without parole for juvenile offenders indeed did announce a new substantive rule that, under the Constitution, must be retroactive.

As stated above, a procedural rule "regulate[s] only the *manner of determining* the defendant's culpability." *Schriro*, 542 U. S., at 353. A substantive rule, in contrast, forbids "criminal punishment of certain primary conduct" or prohibits "a certain category of punishment for a class of defendants because of their status or offense." *Penry*, 492 U. S., at 330; see also *Schriro*, *supra*, at 353 (A substantive rule "alters the range of conduct or the class of persons that the law punishes"). Under this standard, and for the reasons explained below, *Miller* announced a substantive rule that is retroactive in cases on collateral review.

The "foundation stone" for *Miller*'s analysis was this Court's line of precedent holding certain punishments disproportionate when applied to juveniles. 567 U. S., at 470, n. 4. Those cases include *Graham* v. *Florida*, *supra*, which held that the Eighth Amendment bars life without parole for juvenile nonhomicide offenders, and *Roper* v. *Simmons*, 543 U. S. 551, which held that the Eighth Amendment prohibits capital punishment for those under the age of 18 at the time of their crimes. Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of determining a defendant's sentence. See *Graham*, *supra*, at 59 ("The concept of proportionality is central to the Eighth Amendment"); see also *Weems* v. *United States*, 217 U. S. 349, 367 (1910); *Harmelin* v. *Michigan*, 501 U. S. 957, 997–998 (1991) (KENNEDY, J., concurring in part and concurring in judgment).

Miller took as its starting premise the principle established in *Roper* and *Graham* that "children are constitutionally different from adults for purposes of sentencing." 567

U. S., at 471 (citing *Roper*, *supra*, at 569–570; and *Graham*, *supra*, at 68). These differences result from children's "diminished culpability and greater prospects for reform," and are apparent in three primary ways:

> "First, children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking. Second, children 'are more vulnerable to negative influences and outside pressures,' including from their family and peers; they have limited 'control over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievable depravity.'" 567 U. S., at 471 (quoting *Roper*, *supra*, at 569–570; alterations, citations, and some internal quotation marks omitted).

As a corollary to a child's lesser culpability, *Miller* recognized that "the distinctive attributes of youth diminish the penological justifications" for imposing life without parole on juvenile offenders. 567 U. S., at 472. Because retribution "relates to an offender's blameworthiness, the case for retribution is not as strong with a minor as with an adult." *Ibid.* (quoting *Graham*, *supra*, at 71; internal quotation marks omitted). The deterrence rationale likewise does not suffice, since "the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." 567 U. S., at 472 (internal quotation marks omitted). The need for incapacitation is lessened, too, because ordinary adolescent development diminishes the likelihood that a juvenile offender "'forever will be a danger to society.'" *Ibid.* (quoting *Graham*, *supra*, at 72). Rehabilitation is not a satisfactory rationale, either. Rehabilitation cannot justify the sentence, as life without parole "for-

swears altogether the rehabilitative ideal." 567 U. S., at 473 (quoting *Graham*, *supra*, at 74).

These considerations underlay the Court's holding in *Miller* that mandatory life-without-parole sentences for children "pos[e] too great a risk of disproportionate punishment." 567 U. S., at 479. *Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*, at 480. The Court recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of "children's diminished culpability and heightened capacity for change," *Miller* made clear that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Id.*, at 479.

Miller, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of "the distinctive attributes of youth." *Id.*, at 472. Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects "'unfortunate yet transient immaturity.'" *Id.*, at 479 (quoting *Roper*, *supra*, at 573). Because *Miller* determined that sentencing a child to life without parole is excessive for all but "'the rare juvenile offender whose crime reflects irreparable corruption,'" 567 U. S., at 479–480 (quoting *Roper*, *supra*, at 573), it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—that is, juvenile offenders whose crimes reflect the transient immaturity of youth, *Penry*, 492 U. S., at 330. As a result, *Miller* announced a substantive rule of constitutional law. Like other substantive rules, *Miller* is retroactive because it "'necessarily car-

r[ies] a significant risk that a defendant' "—here, the vast majority of juvenile offenders—"faces a punishment that the law cannot impose upon him." *Schriro*, 542 U. S., at 352 (quoting *Bousley* v. *United States*, 523 U. S. 614, 620 (1998)).

Louisiana nonetheless argues that *Miller* is procedural because it did not place any punishment beyond the State's power to impose; it instead required sentencing courts to take children's age into account before condemning them to die in prison. In support of this argument, Louisiana points to *Miller*'s statement that the decision "does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Miller*, *supra*, at 483. *Miller*, it is true, did not bar a punishment for all juvenile offenders, as the Court did in *Roper* or *Graham*. *Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. For that reason, *Miller* is no less substantive than are *Roper* and *Graham*. Before *Miller*, every juvenile convicted of a homicide offense could be sentenced to life without parole. After *Miller*, it will be the rare juvenile offender who can receive that same sentence. The only difference between *Roper* and *Graham*, on the one hand, and *Miller*, on the other hand, is that *Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption. The fact that life without parole could be a proportionate sentence for the latter kind of juvenile offender does not mean that all other children imprisoned under a disproportionate sentence have not suffered the deprivation of a substantive right.

To be sure, *Miller*'s holding has a procedural component. *Miller* requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that

life without parole is a proportionate sentence. See 567 U. S., at 483. Louisiana contends that because *Miller* requires this process, it must have set forth a procedural rule. This argument, however, conflates a procedural requirement necessary to implement a substantive guarantee with a rule that "regulate[s] only the *manner of determining* the defendant's culpability." *Schriro*, *supra*, at 353. There are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish. See *Mackey*, 401 U. S., at 692, n. 7 (opinion of Harlan, J.) ("Some rules may have both procedural and substantive ramifications, as I have used those terms here"). For example, when an element of a criminal offense is deemed unconstitutional, a prisoner convicted under that offense receives a new trial where the government must prove the prisoner's conduct still fits within the modified definition of the crime. In a similar vein, when the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that he belongs to the protected class. See, *e. g.*, *Atkins* v. *Virginia*, 536 U. S. 304, 317 (2002) (requiring a procedure to determine whether a particular individual with an intellectual disability "fall[s] within the range of [intellectually disabled] offenders about whom there is a national consensus" that execution is impermissible). Those procedural requirements do not, of course, transform substantive rules into procedural ones.

The procedure *Miller* prescribes is no different. A hearing where "youth and its attendant characteristics" are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not. 567 U. S., at 465. The hearing does not replace but rather gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.

Louisiana suggests that *Miller* cannot have made a constitutional distinction between children whose crimes reflect transient immaturity and those whose crimes reflect irreparable corruption because *Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility. That this finding is not required, however, speaks only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee. When a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems. See *Ford* v. *Wainwright*, 477 U. S. 399, 416–417 (1986) ("[W]e leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences"). Fidelity to this important principle of federalism, however, should not be construed to demean the substantive character of the federal right at issue. That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment.

For this reason, the death penalty cases Louisiana cites in support of its position are inapposite. See, *e. g.*, *Beard* v. *Banks*, 542 U. S. 406, 408 (2004) (holding nonretroactive the rule that forbids instructing a jury to disregard mitigating factors not found by a unanimous vote); *O'Dell* v. *Netherland*, 521 U. S. 151, 153 (1997) (holding nonretroactive the rule providing that, if the prosecutor cites future dangerousness, the defendant may inform the jury of his ineligibility for parole); *Sawyer* v. *Smith*, 497 U. S. 227, 229 (1990) (holding nonretroactive the rule that forbids suggesting to a capital jury that it is not responsible for a death sentence). Those decisions altered the processes in which States must engage before sentencing a person to death. The processes may have had

some effect on the likelihood that capital punishment would be imposed, but none of those decisions rendered a certain penalty unconstitutionally excessive for a category of offenders.

The Court now holds that *Miller* announced a substantive rule of constitutional law. The conclusion that *Miller* states a substantive rule comports with the principles that informed *Teague*. *Teague* sought to balance the important goals of finality and comity with the liberty interests of those imprisoned pursuant to rules later deemed unconstitutional. *Miller*'s conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution.

Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. See, *e. g.*, Wyo. Stat. Ann. § 6–10–301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.

Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change.

Petitioner has discussed in his submissions to this Court his evolution from a troubled, misguided youth to a model

member of the prison community. Petitioner states that he helped establish an inmate boxing team, of which he later became a trainer and coach. He alleges that he has contributed his time and labor to the prison's silkscreen department and that he strives to offer advice and serve as a role model to other inmates. These claims have not been tested or even addressed by the State, so the Court does not confirm their accuracy. The petitioner's submissions are relevant, however, as an example of one kind of evidence that prisoners might use to demonstrate rehabilitation.

* * *

Henry Montgomery has spent each day of the past 46 years knowing he was condemned to die in prison. Perhaps it can be established that, due to exceptional circumstances, this fate was a just and proportionate punishment for the crime he committed as a 17-year-old boy. In light of what this Court has said in *Roper*, *Graham*, and *Miller* about how children are constitutionally different from adults in their level of culpability, however, prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.

The judgment of the Supreme Court of Louisiana is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice Scalia, with whom Justice Thomas and Justice Alito join, dissenting.

The Court has no jurisdiction to decide this case, and the decision it arrives at is wrong. I respectfully dissent.

I. Jurisdiction

Louisiana postconviction courts willingly entertain Eighth Amendment claims but, with limited exceptions, apply the

law as it existed when the state prisoner was convicted and sentenced. Shortly after this Court announced *Teague* v. *Lane*, 489 U. S. 288 (1989), the Louisiana Supreme Court adopted *Teague*'s framework to govern the provision of post-conviction remedies available to *state* prisoners in its *state* courts as a matter of *state* law. *Taylor* v. *Whitley*, 606 So. 2d 1292 (1992). In doing so, the court stated that it was "not bound" to adopt that federal framework. *Id.*, at 1296. One would think, then, that it is none of our business that a 69-year-old Louisiana prisoner's state-law motion to be resentenced according to *Miller* v. *Alabama*, 567 U. S. 460 (2012), a case announced almost half a century after his sentence was final, was met with a firm rejection on state-law grounds by the Louisiana Supreme Court. But a majority of this Court, eager to reach the merits of this case, resolves the question of our jurisdiction by deciding that the Constitution *requires* state postconviction courts to adopt *Teague*'s exception for so-called "substantive" new rules and to provide state-law remedies for the violations of those rules to prisoners whose sentences long ago became final. This conscription into federal service of state postconviction courts is nothing short of astonishing.

A

Teague announced that federal courts could not grant habeas corpus to overturn state convictions on the basis of a "new rule" of constitutional law—meaning one announced after the convictions became final—*unless* that new rule was a "substantive rule" or a "watershed rul[e] of criminal procedure." 489 U. S., at 311. The *Teague* prescription followed from Justice Harlan's view of the "retroactivity problem" detailed in his separate opinion in *Desist* v. *United States*, 394 U. S. 244, 256 (1969) (dissenting opinion), and later in *Mackey* v. *United States*, 401 U. S. 667, 675 (1971) (opinion concurring in judgment in part and dissenting in part). Placing the

rule's first exception in context requires more analysis than the majority has applied.

The Court in the mid-20th century was confounded by what Justice Harlan called the "swift pace of constitutional change," *Pickelsimer* v. *Wainwright*, 375 U. S. 2, 4 (1963) (dissenting opinion), as it vacated and remanded many cases in the wake of *Gideon* v. *Wainwright*, 372 U. S. 335 (1963). Justice Harlan called upon the Court to engage in "informed and deliberate consideration" of "whether the States are constitutionally required to apply [*Gideon*'s] new rule retrospectively, which may well require the reopening of cases long since finally adjudicated in accordance with then applicable decisions of this Court." *Pickelsimer*, *supra*, at 3. The Court answered that call in *Linkletter* v. *Walker*, 381 U. S. 618 (1965). *Linkletter* began with the premise "that we are neither required to apply, nor prohibited from applying, a decision retrospectively" and went on to adopt an equitable rule-by-rule approach to retroactivity, considering "the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." *Id.*, at 629.

The *Linkletter* framework proved unworkable when the Court began applying the rule-by-rule approach not only to cases on collateral review but also to cases on direct review, rejecting any distinction "between convictions now final" and "convictions at various stages of trial and direct review." *Stovall* v. *Denno*, 388 U. S. 293, 300 (1967). It was this rejection that drew Justice Harlan's reproach in *Desist* and later in *Mackey*. He urged that "all 'new' rules of constitutional law must, at a minimum, be applied to all those cases which are still subject to direct review by this Court at the time the 'new' decision is handed down." *Desist*, *supra*, at 258 (dissenting opinion). "Simply fishing one case from the stream of appellate review, using it as a vehicle for pronouncing new constitutional standards, and then permitting a

stream of similar cases subsequently to flow by unaffected by that new rule constitute an indefensible departure from th[e] model of judicial review." *Mackey*, *supra*, at 679.

The decision in *Griffith* v. *Kentucky*, 479 U. S. 314 (1987), heeded this constitutional concern. The Court jettisoned the *Linkletter* test for cases pending on direct review and adopted for them Justice Harlan's rule of redressability: "[F]ailure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of *constitutional* adjudication." 479 U. S., at 322 (emphasis added). We established in *Griffith* that this Court must play by our own "old rules"—rules we have settled before the defendant's conviction and sentence become final, even those that are a clear break from existing precedent—for cases pending before us on direct appeal. *Id.*, at 323. Since the *Griffith* rule is constitutionally compelled, we instructed the lower state and federal courts to comply with it as well. *Ibid.*

When *Teague* followed on *Griffith*'s heels two years later, the opinion contained no discussion of "basic norms of constitutional adjudication," *Griffith*, *supra*, at 322, nor any discussion of the obligations of state courts. Doing away with *Linkletter* for good, the Court adopted Justice Harlan's solution to "the retroactivity problem" for cases pending on collateral review—which he described not as a constitutional problem but as "a problem as to the *scope of the habeas writ*." *Mackey*, *supra*, at 684 (emphasis added). *Teague* held that federal habeas courts could no longer upset state-court convictions for violations of so-called "new rules," not yet announced when the conviction became final. 489 U. S., at 310. But it allowed for the previously mentioned exceptions to this rule of nonredressability: substantive rules placing " 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe' " and "watershed rules of criminal procedure." *Id.*, at 311. Then in *Penry* v. *Lynaugh*, 492 U. S. 302 (1989),

the Court expanded this first exception for substantive rules to embrace new rules "prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Id.*, at 330.

Neither *Teague* nor its exceptions are constitutionally compelled. Unlike today's majority, the *Teague*-era Court understood that cases on collateral review are fundamentally different from those pending on direct review because of "considerations of finality in the judicial process." *Shea* v. *Louisiana*, 470 U. S. 51, 59–60 (1985). That line of finality demarcating the constitutionally required rule in *Griffith* from the habeas rule in *Teague* supplies the answer to the not-so-difficult question whether a state postconviction court must remedy the violation of a new substantive rule: No. A state court need only apply the law as it existed at the time a defendant's conviction and sentence became final. See *Griffith*, *supra*, at 322. And once final, "a new rule cannot reopen a door already closed." *James B. Beam Distilling Co.* v. *Georgia*, 501 U. S. 529, 541 (1991) (opinion of Souter, J.). Any relief a prisoner might receive in a state court after finality is a matter of grace, not constitutional prescription.

B

The majority can marshal no case support for its contrary position. It creates a constitutional rule where none had been before: "*Teague*'s conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises" binding in both federal and state courts. *Ante*, at 200. "Best understood." Because of what? Surely not because of its history and derivation.

Because of the Supremacy Clause, says the majority. *Ante*, at 204. But the Supremacy Clause cannot possibly answer the question before us here. It only elicits another question: What federal law is supreme? Old or new? The majority's champion, Justice Harlan, said the old rules apply for federal habeas review of a state-court conviction: "[T]he

habeas court need only apply the constitutional standards that prevailed at the time the original proceedings took place," *Desist*, 394 U. S., at 263 (dissenting opinion), for a state court cannot "toe the constitutional mark" that does not yet exist, *Mackey*, 401 U. S., at 687 (opinion of Harlan, J.). Following his analysis, we have clarified time and again—recently in *Greene* v. *Fisher*, 565 U. S. 34, 38–39 (2011)—that *federal* habeas courts are to review state-court decisions against the law and factual record that existed at the time the decisions were made. "Section 2254(d)(1) [of the federal habeas statute] refers, in the past tense, to a state-court adjudication that 'resulted in' a decision that was contrary to, or 'involved' an unreasonable application of, established law. This backward-looking language requires an examination of the state-court decision at the time it was made." *Cullen* v. *Pinholster*, 563 U. S. 170, 181–182 (2011). How can it possibly be, then, that the Constitution requires a *state* court's review of its own convictions to be governed by "new rules" rather than (what suffices when federal courts review state courts) "old rules"?

The majority relies on the statement in *United States* v. *United States Coin & Currency*, 401 U. S. 715 (1971), that "'[n]o circumstances call more for the invocation of a rule of complete retroactivity'" than when "'the conduct being penalized is constitutionally immune from punishment.'" *Ante*, at 202 (quoting 401 U. S., at 724). The majority neglects to mention that this statement was addressing the "circumstances" of a conviction that "had *not become final*," *id.*, at 724, n. 13 (emphasis added), when the "rule of complete retroactivity" was invoked. *Coin & Currency*, an opinion written by (guess whom?) Justice Harlan, merely foreshadowed the rule announced in *Griffith*, that all cases pending on direct review receive the benefit of newly announced rules—better termed "old rules" for such rules were announced *before* finality.

The majority also misappropriates *Yates* v. *Aiken*, 484 U. S. 211 (1988), which reviewed a state habeas petitioner's

Fourteenth Amendment claim that the jury instructions at his trial lessened the State's burden to prove every element of his offense beyond a reasonable doubt. That case at least did involve a conviction that was final. But the majority is oblivious to the critical fact that Yates's claim depended upon an *old rule*, settled at the time of his trial. *Id.*, at 217. This Court reversed the state habeas court for its refusal to consider that the jury instructions violated that *old rule*. *Ibid.* The majority places great weight upon the dictum in *Yates* that the South Carolina habeas court "'ha[d] a duty to grant the relief that federal law requires.'" *Ante*, at 204–205 (quoting *Yates*, *supra*, at 218). It is simply wrong to divorce that dictum from the facts it addressed. In that context, *Yates* merely reinforces the line drawn by *Griffith*: when state courts provide a forum for postconviction relief, they need to play by the "old rules" announced *before* the date on which a defendant's conviction and sentence became final.

The other sleight of hand performed by the majority is its emphasis on *Ex parte Siebold*, 100 U. S. 371 (1880). That case considered a petition for a federal writ of habeas corpus following a federal conviction, and the initial issue it confronted was its jurisdiction. A federal court has no inherent habeas corpus power, *Ex parte Bollman*, 4 Cranch 75, 94 (1807), but only that which is conferred (and limited) by statute, see, *e. g.*, *Felker* v. *Turpin*, 518 U. S. 651, 664 (1996). As *Siebold* stated, it was forbidden to use the federal habeas writ "as a mere writ of error." 100 U. S., at 375. "The only ground on which this court, or any court, without some special statute authorizing it, [could] give relief on *habeas corpus* to a prisoner under conviction and sentence of another court is the want of jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings void." *Ibid.* Turning to the facts before it, the Court decided it was within its power to hear Siebold's claim, which did not merely protest that the conviction and sentence were "erroneous" but contended that the statute he was convicted of violating was unconstitutional and the conviction there-

fore void: "[I]f the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes." *Id.*, at 376–377. *Siebold* is thus a decision that expands the limits of this Court's power to issue a federal habeas writ for a federal prisoner.

The majority, however, divines from *Siebold* "a general principle" that "a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced." *Ante*, at 203. That is utterly impossible. No "general principle" can rationally be derived from *Siebold* about constitutionally required remedies in state courts; indeed, the opinion does not even speak to constitutionally required remedies in *federal* courts. It is a decision about this Court's statutory power to grant the Original Writ, not about its constitutional obligation to do so. Nowhere in *Siebold* did this Court intimate that relief was constitutionally required—or as the majority puts it, that a court would have had "no authority" to leave in place Siebold's conviction, *ante*, at 203.

The majority's sorry acknowledgment that "*Siebold* and the other cases discussed in this opinion, of course, do not directly control the question the Court now answers for the first time," *ibid.*, is not nearly enough of a disclaimer. It is not just that they "do not directly control," but that the dicta cherry picked from those cases are irrelevant; they addressed circumstances fundamentally different from those to which the majority now applies them. Indeed, we know for sure that the author of some of those dicta, Justice Harlan, held views that flatly contradict the majority.

The majority's maxim that "state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution," *ante*, at 204, begs the question rather than contributes to its solution. Until today, no federal court was *constitutionally obliged* to grant relief for the

past violation of a newly announced substantive rule. Until today, it was Congress's prerogative to do away with *Teague*'s exceptions altogether. Indeed, we had left unresolved the question whether Congress had already done that when it amended a section of the habeas corpus statute to add backward-looking language governing the review of state-court decisions. See Antiterrorism and Effective Death Penalty Act of 1996, § 104, 110 Stat. 1219, codified at 28 U. S. C. § 2254(d)(1); *Greene*, 565 U. S., at 39, n. A maxim shown to be more relevant to this case, by the analysis that the majority omitted, is this: The Supremacy Clause does not impose upon state courts a constitutional obligation it fails to impose upon federal courts.

C

All that remains to support the majority's conclusion is that all-purpose Latin canon: *ipse dixit*. The majority opines that because a substantive rule eliminates a State's power to proscribe certain conduct or impose a certain punishment, it has "the automatic consequence of invalidating a defendant's conviction or sentence." *Ante*, at 201. What provision of the Constitution could conceivably produce such a result? The Due Process Clause? It surely cannot be a denial of due process for a court to pronounce a final judgment which, though fully in accord with federal constitutional law at the time, fails to anticipate a change to be made by this Court half a century into the future. The Equal Protection Clause? Both statutory and (increasingly) constitutional laws change. If it were a denial of equal protection to hold an earlier defendant to a law more stringent than what exists today, it would also be a denial of equal protection to hold a later defendant to a law more stringent than what existed 50 years ago. No principle of equal protection requires the criminal law of all ages to be the same.

The majority grandly asserts that "[t]here is no grandfather clause that permits States to *enforce punishments the*

Constitution forbids." *Ante*, at 204 (emphasis added). Of course the italicized phrase begs the question. There most certainly is a grandfather clause—one we have called *finality*—which says that the Constitution does not require States to revise punishments that were lawful when they were imposed. Once a conviction has become final, whether new rules or old ones will be applied to revisit the conviction is a matter entirely within the State's control; the Constitution has nothing to say about that choice. The majority says that there is no "possibility of a valid result" when a new substantive rule is not applied retroactively. *Ante*, at 201. But the whole controversy here arises because many think there *is* a valid result when a defendant has been convicted under the law that existed when his conviction became final. And the States are unquestionably entitled to take that view of things.

The majority's imposition of *Teague*'s first exception upon the States is all the worse because it does not adhere to that exception as initially conceived by Justice Harlan—an exception for rules that "place, as a matter of constitutional interpretation, certain kinds of primary, private individual *conduct* beyond the power of the criminal law-making authority to proscribe." *Mackey*, 401 U. S., at 692 (emphasis added). Rather, it endorses the exception as expanded by *Penry*, to include "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." 492 U. S., at 330. That expansion empowered and obligated federal (and after today state) habeas courts to invoke this Court's Eighth Amendment "evolving standards of decency" jurisprudence to upset punishments that were constitutional when imposed but are "cruel and unusual," U. S. Const., Amdt. 8, in our newly enlightened society. See *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958). The "evolving standards" test concedes that in 1969 the State had the power to punish Henry Montgomery as it did. Indeed, Montgomery could at that time have been sentenced to death

by our yet unevolved society. Even 20 years later, this Court reaffirmed that the Constitution posed no bar to death sentences for juveniles. *Stanford* v. *Kentucky*, 492 U. S. 361 (1989). Not until our People's "standards of decency" evolved a mere 10 years ago—nearly 40 years after Montgomery's sentence was imposed—did this Court declare the death penalty unconstitutional for juveniles. *Roper* v. *Simmons*, 543 U. S. 551 (2005). Even then, the Court reassured States that "the punishment of life imprisonment without the possibility of parole is itself a severe sanction," implicitly still available for juveniles. *Id.*, at 572. And again five years ago this Court left in place this severe sanction for juvenile homicide offenders. *Graham* v. *Florida*, 560 U. S. 48, 69 (2010). So for the five decades Montgomery has spent in prison, not one of this Court's precedents called into question the legality of his sentence—until the People's "standards of decency," as perceived by five Justices, "evolved" yet again in *Miller*.

Teague's central purpose was to do away with the old regime's tendency to "*continually* forc[e] the States to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards." 489 U. S., at 310. Today's holding thwarts that purpose with a vengeance. Our ever-evolving Constitution changes the rules of "cruel and unusual punishments" every few years. In the passage from *Mackey* that the majority's opinion quotes, *ante*, at 205, Justice Harlan noted the diminishing force of finality (and hence the equitable propriety—not the constitutional requirement—of disregarding it) when the law punishes nonpunishable *conduct*, see 401 U. S., at 693. But one cannot imagine a clearer frustration of the sensible policy of *Teague* when the ever-moving target of impermissible *punishments* is at issue. Today's holding not only forecloses Congress from eliminating this expansion of *Teague* in federal courts, but also foists this distortion upon the States.

II. The Retroactivity of *Miller*

Having created jurisdiction by ripping *Teague*'s first exception from its moorings, converting an equitable rule governing federal habeas relief to a constitutional command governing state courts as well, the majority proceeds to the merits. And here it confronts a second obstacle to its desired outcome. *Miller*, the opinion it wishes to impose upon state postconviction courts, simply does not decree what the first part of the majority's opinion says *Teague*'s first exception requires to be given retroactive effect: a rule "set[ting] forth *categorical* constitutional guarantees that place certain criminal laws and punishments *altogether* beyond the State's power to impose." *Ante*, at 201 (emphasis added). No problem. Having distorted *Teague*, the majority simply proceeds to rewrite *Miller*.

The majority asserts that *Miller* "rendered life without parole an unconstitutional penalty for 'a class of defendants because of their status'—that is, juvenile offenders whose crimes reflect the transient immaturity of youth." *Ante*, at 208. It insists that *Miller* barred life-without-parole sentences "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. For that reason, *Miller* is no less substantive than are *Roper* and *Graham*." *Ante*, at 209. The problem is that *Miller* stated, quite clearly, precisely the opposite: "Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer *follow a certain process*—considering an offender's youth and attendant characteristics—before imposing a particular penalty." 567 U. S., at 483 (emphasis added).

To contradict that clear statement, the majority opinion quotes passages from *Miller* that assert such things as "mandatory life-without-parole sentences for children 'pos[e] too great a risk of disproportionate punishment'" and "'appropriate occasions for sentencing juveniles to this harshest pos-

sible penalty will be uncommon.' " *Ante*, at 208 (quoting *Miller*, *supra*, at 479). But to say that a punishment might be inappropriate and disproportionate for certain juvenile offenders is not to say that it is unconstitutionally void. All of the statements relied on by the majority do nothing more than express the *reason* why the new, youth-protective *procedure* prescribed by *Miller* is desirable: to deter life sentences for certain juvenile offenders. On the issue of whether *Miller* rendered life-without-parole penalties unconstitutional, it is impossible to get past *Miller*'s unambiguous statement that "[o]ur decision does not categorically bar a penalty for a class of offenders" and "mandates only that a sentencer follow a certain process . . . before imposing a particular penalty." 567 U. S., at 483. It is plain as day that the majority is not applying *Miller*, but rewriting it.[1]

And the rewriting has consequences beyond merely making *Miller*'s procedural guarantee retroactive. If, indeed, a State is categorically prohibited from imposing life without parole on juvenile offenders whose crimes do not "reflect permanent incorrigibility," then even when the procedures that *Miller* demands are provided the constitutional requirement is not necessarily satisfied. It remains available for the defendant sentenced to life without parole to argue that his crimes did not in fact "reflect permanent incorrigibility." Or as the majority's opinion puts it: "That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child[2] whose crime reflects transient immaturity to life without parole. To the contrary,

[1] It is amusing that the majority's initial description of *Miller* is the same as our own: "[T]he Court held that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing." *Ante*, at 193–194. Only 15 pages later, after softening the reader with 3 pages of obfuscating analysis, does the majority dare to attribute to *Miller* that which *Miller* explicitly denies.

[2] The majority presumably regards any person one day short of voting age as a "child."

Miller established that this punishment is disproportionate under the Eighth Amendment." *Ante*, at 211.

How wonderful. Federal and (like it or not) state judges are henceforth to resolve the knotty "legal" question: whether a 17-year-old who murdered an innocent sheriff's deputy half a century ago was at the time of his trial "incorrigible." Under *Miller*, bear in mind, the inquiry is whether the inmate was seen to be incorrigible when he was sentenced—not whether he has proven corrigible and so can safely be paroled today. What silliness. (And how impossible in practice, see Brief for National District Attorneys Assn. et al. as *Amici Curiae* 9–17.) When in *Lockett* v. *Ohio*, 438 U. S. 586, 608 (1978), the Court imposed the thitherto unheard-of requirement that the sentencer in capital cases must consider and weigh all "relevant mitigating factors," it at least did not impose the substantive (and hence judicially reviewable) requirement that the aggravators must outweigh the mitigators; it would suffice that the sentencer *thought* so. And, fairly read, *Miller* did the same. Not so with the "incorrigibility" requirement that the Court imposes today to make *Miller* retroactive.

But have no fear. The majority does not seriously expect state and federal collateral-review tribunals to engage in this silliness, probing the evidence of "incorrigibility" that existed decades ago when defendants were sentenced. What the majority expects (and intends) to happen is set forth in the following not-so-subtle invitation: "A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Ante*, at 212. Of course. This whole exercise, this whole distortion of *Miller*, is just a devious way of eliminating life without parole for juvenile offenders. The Court might have done that expressly (as we know, the Court can decree *anything*), but that would have been something of an embarrassment. After all, one of the justifications the Court gave for decreeing an end to the death penalty for

murders (no matter how many) committed by a juvenile was that life without parole was a severe enough punishment. See *Roper*, 543 U. S., at 572. How could the majority—in an opinion written by the very author of *Roper*—now say *that* punishment is *also* unconstitutional? The Court expressly refused to say so in *Miller*. 567 U. S., at 479. So the Court refuses again today, but merely makes imposition of that severe sanction a practical impossibility. And then, in Godfather fashion, the majority makes state legislatures an offer they can't refuse: Avoid all the utterly impossible nonsense we have prescribed by simply "permitting juvenile homicide offenders to be considered for parole." *Ante*, at 212. Mission accomplished.

JUSTICE THOMAS, dissenting.

I join JUSTICE SCALIA's dissent. I write separately to explain why the Court's resolution of the jurisdictional question, *ante*, at 197–205, lacks any foundation in the Constitution's text or our historical traditions. We have jurisdiction under 28 U. S. C. § 1257 only if the Louisiana Supreme Court's decision implicates a federal right. That condition is satisfied, the Court holds, because the Constitution purportedly requires state and federal postconviction courts to give "retroactive effect" to new substantive constitutional rules by applying them to overturn long-final convictions and sentences. *Ante*, at 200. Because our Constitution and traditions embrace no such right, I respectfully dissent.

I

"[O]ur jurisprudence concerning the 'retroactivity' of 'new rules' of constitutional law is primarily concerned, not with the question whether a constitutional violation occurred, but with the availability or nonavailability of remedies." *Danforth* v. *Minnesota*, 552 U. S. 264, 290–291 (2008). Accordingly, the issue in this case is not whether prisoners who received mandatory life-without-parole sentences for crimes

they committed decades ago as juveniles had an Eighth Amendment right not to receive such a sentence. Rather, the question is how, when, and in what forum that newfound right can be enforced. See *ibid.*

The Court answers that question one way: It says that state postconviction and federal habeas courts are constitutionally required to supply a remedy because a sentence or conviction predicated upon an unconstitutional law is a legal nullity. See *ante*, at 200–205. But nothing in the Constitution's text or in our constitutional tradition provides such a right to a remedy on collateral review.

A

No provision of the Constitution supports the Court's holding. The Court invokes only the Supremacy Clause, asserting that the Clause deprives state and federal postconviction courts alike of power to leave an unconstitutional sentence in place. *Ante*, at 204–205. But that leaves the question of what provision of the Constitution supplies that underlying prohibition.

The Supremacy Clause does not do so. That Clause merely supplies a rule of decision: *If* a federal constitutional right exists, that right supersedes any contrary provisions of state law. See Art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"). Accordingly, as we reaffirmed just last Term, the Supremacy Clause is no independent font of substantive rights. *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U. S. 320, 325 (2015).

Nor am I aware of any other provision in the Constitution that would support the Court's new constitutional right to retroactivity. Of the natural places to look—Article III, the Due Process Clauses of the Fifth and Fourteenth Amend-

ments, and the Equal Protection Clause of the Fourteenth Amendment—none establishes a right to void an unconstitutional sentence that has long been final.

To begin, Article III does not contain the requirement that the Court announces today. Article III vests "[t]he judicial Power" in this Court and whatever inferior courts Congress creates, Art. III, § 1, and "extend[s]" that power to various "Cases . . . and Controversies," Art. III, § 2. Article III thus defines the scope of *federal* judicial power. It cannot compel *state* postconviction courts to apply new substantive rules retroactively.

Even if the Court's holding were limited to federal courts, Article III would not justify it. The nature of "judicial power" may constrain the retroactivity rules that Article III courts can apply.* But even our broad modern precedents treat Article III as requiring courts to apply new rules only on *direct* review. Thus in *Griffith* v. *Kentucky*, 479 U. S. 314 (1987), the Court suggested—based on Justice Harlan's views—that "after we have decided a new rule in the case selected, the integrity of judicial review requires that we apply that rule to all similar cases pending on direct review." *Id.*, at 322–323. But, as Justice Harlan had explained, that view of Article III has no force on collateral review: "While the entire theoretical underpinnings of judicial review and constitutional supremacy dictate that federal courts having jurisdiction on direct review adjudicate every issue of law . . . fairly implicated by the trial process below and properly presented on appeal, federal courts have never had a similar obligation on habeas corpus." *Mackey* v. *United States*, 401 U. S. 667, 682 (1971) (opinion concurring in judgment in part and dissenting in part).

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*For instance, Article III courts cannot arrive at a holding, refuse to apply it to the case at hand, and limit its application to future cases involving yet-to-occur events. The power to rule prospectively in this way is a quintessentially legislative power. See *Harper* v. *Virginia Dept. of Taxation*, 509 U. S. 86, 106–110 (1993) (SCALIA, J., concurring).

The Court's holding also cannot be grounded in the Due Process Clause's prohibition on "depriv[ations] . . . of life, liberty, or property, without due process of law." Amdts. V and XIV, § 1. Quite possibly, " '[d]ue process of law' was originally used as a shorthand expression for governmental proceedings according to the 'law of the land' *as it existed at the time of those proceedings*." *In re Winship*, 397 U. S. 358, 378 (1970) (Black, J., dissenting) (emphasis added); accord, *Johnson* v. *United States*, 576 U. S. 591, 623 (2015) (THOMAS, J., concurring in judgment). Under that understanding, due process excluded any right to have new substantive rules apply retroactively.

Even if due process required courts to anticipate this Court's new substantive rules, it would not compel courts to revisit settled convictions or sentences on collateral review. We have never understood due process to require further proceedings once a trial ends. The Clause "does not establish any right to an appeal . . . and certainly does not establish any right to collaterally attack a final judgment of conviction." *United States* v. *MacCollom*, 426 U. S. 317, 323 (1976) (plurality opinion); see *Pennsylvania* v. *Finley*, 481 U. S. 551, 557 (1987) ("States have no obligation to provide [postconviction] relief"). Because the Constitution does not require postconviction remedies, it certainly does not require postconviction courts to revisit every potential type of error. Cf. *Martinez* v. *Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U. S. 152, 165–166 (2000) (SCALIA, J., concurring in judgment) ("Since a State could . . . subject its trial-court determinations to no review whatever, it could *a fortiori* subject them to review which consists of a nonadversarial reexamination of convictions by a panel of government experts").

Nor can the Equal Protection Clause justify requiring courts on collateral review to apply new substantive rules retroactively. That Clause prohibits a State from "deny-

[ing] to any person within its jurisdiction the equal protection of the laws." Amdt. XIV, § 1. But under our precedents "a classification neither involving fundamental rights nor proceeding along suspect lines . . . cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Armour* v. *Indianapolis*, 566 U. S. 673, 680 (2012) (internal quotation marks omitted; ellipsis in original).

The disparity the Court eliminates today—between prisoners whose cases were on direct review when this Court announced a new substantive constitutional rule, and those whose convictions had already become final—is one we have long considered rational. "[T]he notion that different standards should apply on direct and collateral review runs throughout our recent habeas jurisprudence." *Wright* v. *West*, 505 U. S. 277, 292 (1992); see *Brecht* v. *Abrahamson*, 507 U. S. 619, 633–635 (1993). Thus, our precedents recognize a right to counsel on direct review, but not in collateral proceedings. Compare *Douglas* v. *California*, 372 U. S. 353, 355–358 (1963) (courts must provide counsel on an initial direct appeal), with *Finley*, *supra*, at 555 (no such right on habeas). The Fourth Amendment also applies differently on direct and collateral review. Compare *Mapp* v. *Ohio*, 367 U. S. 643, 654–660 (1961) (courts on direct review must exclude evidence obtained in violation of the Fourth Amendment), with *Stone* v. *Powell*, 428 U. S. 465, 489–496 (1976) (no relitigation of such claims on collateral review).

These distinctions are reasonable. They reflect the "significant costs" of collateral review, including disruption of "the State's significant interest in repose for concluded litigation." *Wright*, *supra*, at 293 (internal quotation marks omitted). Our equal protection precedents, therefore, do not compel a uniform rule of retroactivity in direct and collateral proceedings for new substantive constitutional rules.

B

The Court's new constitutional right also finds no basis in the history of state and federal postconviction proceedings. Throughout our history, postconviction relief for alleged constitutional defects in a conviction or sentence was available as a matter of legislative grace, not constitutional command.

The Constitution mentions habeas relief only in the Suspension Clause, which specifies that "[t]he Privilege of the Writ of *Habeas Corpus* shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." Art. I, § 9, cl. 2 (emphasis added). But that Clause does not specify the scope of the writ. And the First Congress, in prescribing federal habeas jurisdiction in the 1789 Judiciary Act, understood its scope to reflect "the black-letter principle of the common law that the writ was simply not available at all to one convicted of crime by a court of competent jurisdiction." Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv. L. Rev. 441, 466 (1963). Early cases echoed that understanding. *E. g.*, *Ex parte Watkins*, 3 Pet. 193, 202 (1830) ("An imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity; and it is not a nullity if the court has general jurisdiction of the subject, although it should be erroneous").

For nearly a century thereafter, this Court understood the Judiciary Act and successor provisions as limiting habeas relief to instances where the court that rendered the judgment lacked jurisdiction over the general category of offense or the person of the prisoner. See *Wright*, *supra*, at 285 (recounting history). Federal habeas courts thus afforded no remedy for a claim that a sentence or conviction was predicated on an unconstitutional law. Nor did States. Indeed, until 1836, Vermont made no provision for any state habeas proceedings. See Oaks, Habeas Corpus in the States 1776–1865, 32 U. Chi. L. Rev. 243, 250 (1965). Even when States allowed collateral attacks in state court, review was unavail-

able if the judgment of conviction was rendered by a court with general jurisdiction over the subject matter and the defendant. *Id.*, at 261–262.

The Court portrays *Ex parte Siebold*, 100 U. S. 371 (1880), as a departure from this history and as the genesis of a constitutional principle that "a conviction obtained under an unconstitutional law warrants habeas relief." *Ante*, at 204. But *Siebold*—a case construing the scope of federal habeas review under the 1789 Judiciary Act—does not support the Court's position. *Ante*, at 219–220 (SCALIA, J., dissenting). *Siebold* did not imply that the Constitution requires courts to stop enforcing convictions under an unconstitutional law. Rather, *Siebold* assumed that prisoners would lack a remedy if the federal habeas statute did not allow challenges to such convictions. 100 U. S., at 377 ("It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it").

Moreover, when Congress authorized appeals as a matter of right in federal criminal cases, the Court renounced *Siebold* and stopped entertaining federal habeas challenges to the constitutionality of the statute under which a defendant was sentenced or convicted. See Bator, *supra*, at 473–474, and n. 77. If the Constitution prevented courts from enforcing a void conviction or sentence even after the conviction is final, this Court would have been incapable of withdrawing relief.

The Court's purported constitutional right to retroactivity on collateral review has no grounding even in our modern precedents. In the 1950's, this Court began recognizing many new constitutional rights in criminal proceedings. Even then, however, the Court did not perceive any constitutional right for prisoners to vacate their convictions or sentences on collateral review based on the Court's new interpretations of the Constitution. To the contrary, the Court derived *Miranda* warnings and the exclusionary rule from the Constitution, yet drew the line at creating a constitu-

tional right to retroactivity. *E. g.*, *Linkletter* v. *Walker*, 381 U. S. 618, 629 (1965) ("[T]he Constitution neither prohibits nor requires retrospective effect. As Justice Cardozo said, 'We think the Federal Constitution has no voice upon the subject' ").

Only in 1987, in *Griffith* v. *Kentucky*, 479 U. S. 314, did this Court change course and hold that the Constitution requires courts to give constitutional rights some retroactive effect. Even then, *Griffith* was a directive only to courts on *direct* review. It held that "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final." *Id.*, at 328. It said nothing about what happens once a case becomes final. That was resolved in *Teague* v. *Lane*, 489 U. S. 288 (1989)—which announced the narrow exceptions to the rule against retroactivity on collateral review—but which did so by interpreting the scope of the federal habeas writ, not the Constitution.

II

A

Not only does the Court's novel constitutional right lack any constitutional foundation; the reasoning the Court uses to construct this right lacks any logical stopping point. If, as the Court supposes, the Constitution bars courts from insisting that prisoners remain in prison when their convictions or sentences are later deemed unconstitutional, why can courts let stand a judgment that wrongly decided any constitutional question?

The Court confronted this question when *Siebold* and other cases began expanding the federal habeas statute to encompass claims that a sentence or conviction was constitutionally void. But the Court could not find a satisfactory answer: "A judgment may be erroneous and not void, and it may be erroneous *because* it is void. The distinctions . . . are very nice, and they may fall under the one class or the

other as they are regarded for different purposes." *Ex parte Lange*, 18 Wall. 163, 175–176 (1874).

The lack of any limiting principle became apparent as the Court construed the federal habeas statute to supply jurisdiction to address prerequisites to a valid sentence or conviction (like an indictment). See Bator, *supra*, at 467–468, and n. 56, 471. As Justice Bradley, *Siebold*'s author, later observed for the Court: "It is difficult to see why a conviction and punishment under an unconstitutional law is more violative of a person's constitutional rights, than an unconstitutional conviction and punishment under a valid law." *In re Nielsen*, 131 U. S. 176, 183 (1889).

I doubt that today's rule will fare any better. By refashioning *Siebold* as the foundation of a purported constitutional right, the Court transforms an unworkable doctrine into an immutable command. Because Justice Bradley's dicta in *Siebold* was a gloss on the 1789 Judiciary Act, Congress could at least supply a fix to it. But the Court's reinvention of *Siebold* as a constitutional imperative eliminates any room for legislative adjustment.

B

There is one silver lining to today's ruling: States still have a way to mitigate its impact on their court systems. As the Court explains, States must enforce a constitutional right to remedies on collateral review only if such proceedings are "open to a claim controlled by federal law." *Ante*, at 204. State courts, on collateral review, thus must provide remedies for claims under *Miller* v. *Alabama*, 567 U. S. 460 (2012), only if those courts are open to "claims that a decision of this Court has rendered certain sentences illegal . . . under the Eighth Amendment." *Ante*, at 205.

Unlike the rule the Court announces today, this limitation at least reflects a constitutional principle. Only when state courts have chosen to entertain a federal claim can the Supremacy Clause conceivably command a state court to apply

federal law. As we explained last Term, private parties have no "constitutional . . . right to enforce federal laws against the States." *Armstrong*, 575 U. S., at 325. Instead, the Constitution leaves the initial choice to entertain federal claims up to state courts, which are "tribunals over which the government of the Union has no adequate control, and which may be closed to any claim asserted under a law of the United States." *Osborn* v. *Bank of United States*, 9 Wheat. 738, 821 (1824).

States therefore have a modest path to lessen the burdens that today's decision will inflict on their courts. States can stop entertaining claims alleging that this Court's Eighth Amendment decisions invalidated a sentence, and leave federal habeas courts to shoulder the burden of adjudicating such claims in the first instance. Whatever the desirability of that choice, it is one the Constitution allows States to make.

* * *

Today's decision repudiates established principles of finality. It finds no support in the Constitution's text, and cannot be reconciled with our Nation's tradition of considering the availability of postconviction remedies a matter about which the Constitution has nothing to say. I respectfully dissent.

Syllabus

MUSACCHIO *v.* UNITED STATES

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

No. 14–1095. Argued November 30, 2015—Decided January 25, 2016

Petitioner Musacchio resigned as president of Exel Transportation Services (ETS) in 2004, but with help from the former head of ETS' information-technology department, he accessed ETS' computer system without ETS' authorization through early 2006. In November 2010, Musacchio was indicted under 18 U. S. C. § 1030(a)(2)(C), which makes it a crime if a person "intentionally accesses a computer without authorization *or* exceeds authorized access" and thereby "obtains . . . information from any protected computer." (Emphasis added.) He was charged in count 1 with conspiring to commit both types of improper access and in count 23 with making unauthorized access "[o]n or about" November 24, 2005. In a 2012 superseding indictment, count 1 dropped the charge of conspiracy to exceed authorized access, and count 2 changed count 23's date to "[o]n or about" November 23–25, 2005. Musacchio never argued in the trial court that his prosecution violated the 5-year statute of limitations applicable to count 2. See § 3282(a). At trial, the Government did not object when the District Court instructed the jury that § 1030(a)(2)(C) "makes it a crime . . . to intentionally access a computer without authorization *and* exceed authorized access" (emphasis added), even though the conjunction "and" added an additional element. The jury found Musacchio guilty on counts 1 and 2. On appeal, he challenged the sufficiency of the evidence supporting his conspiracy conviction and argued, for the first time, that his prosecution on count 2 was barred by § 3282(a)'s statute of limitations. In affirming his conviction, the Fifth Circuit assessed Musacchio's sufficiency challenge against the charged elements of the conspiracy count rather than against the heightened jury instruction, and it concluded that he had waived his statute-of-limitations defense by failing to raise it at trial.

Held:

1. A sufficiency challenge should be assessed against the elements of the charged crime, not against the elements set forth in an erroneous jury instruction. Sufficiency review essentially addresses whether the Government's case was strong enough to reach the jury. A reviewing court conducts a limited inquiry tailored to ensuring that a defendant receives the minimum required by due process: a "meaningful opportunity to defend" against the charge against him and a jury finding of guilt

"beyond a reasonable doubt." *Jackson* v. *Virginia*, 443 U. S. 307, 314–315. It does this by considering only the "legal" question "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*, at 319. A reviewing court's determination thus does not rest on how the jury was instructed. The Government's failure to introduce evidence of an additional element does not implicate these principles, and its failure to object to a heightened jury instruction does not affect sufficiency review. Because Musacchio does not dispute that he was properly charged with conspiracy to obtain unauthorized access or that the evidence was sufficient to convict him of the charged crime, the Fifth Circuit correctly rejected his sufficiency challenge. Pp. 243–245.

2. A defendant cannot successfully raise § 3282(a)'s statute-of-limitations bar for the first time on appeal. Pp. 245–249.

(a) A time bar is jurisdictional only if Congress has "clearly state[d]" that it is. *Sebelius* v. *Auburn Regional Medical Center*, 568 U. S. 145, 153. Here, the "text, context, and relevant historical treatment" of § 3282(a), *Reed Elsevier, Inc.* v. *Muchnick*, 559 U. S. 154, 166, establish that it imposes a nonjurisdictional defense that becomes part of a case only if a defendant raises it in the district court. The provision does not expressly refer to subject-matter jurisdiction or speak in jurisdictional terms. It thus stands in marked contrast to § 3231, which speaks squarely to federal courts' general criminal subject-matter "jurisdiction" and does not "conditio[n] its jurisdictional grant on" compliance with § 3282(a)'s statute of limitations. *Id.*, at 165. The history of § 3282(a)'s limitations bar further confirms that the provision does not impose a jurisdictional limit. See *United States* v. *Cook*, 17 Wall. 168, 181; *Smith* v. *United States*, 568 U. S. 106, 112. Pp. 246–248.

(b) Because § 3282(a) does not impose a jurisdictional limit, the failure to raise the defense at or before trial is reviewable on appeal—if at all—only for plain error. A district court's failure to enforce an unraised limitations defense under § 3282(a) cannot be a plain error, however, because if a defendant fails to press the defense, it does not become part of the case and, thus, there is no error for an appellate court to correct. Pp. 248–249.

590 Fed. Appx. 359, affirmed.

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

Erik S. Jaffe argued the cause for petitioner. With him on the briefs was *Jody Rudman*.

Roman Martinez argued the cause for the United States. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Caldwell*, *Deputy Solicitor General Dreeben*, and *Praveen Krishna*.

JUSTICE THOMAS delivered the opinion of the Court.

In this case, the Government failed to object to a jury instruction that erroneously added an element that it had to prove, and petitioner failed to press a statute-of-limitations defense until his appeal. We address two questions arising from the parties' failures to raise timely challenges. We first consider how a court should assess a challenge to the sufficiency of the evidence in a criminal case when a jury instruction adds an element to the charged crime and the Government fails to object. We conclude that the sufficiency of the evidence should be assessed against the elements of the charged crime. We next consider whether the statute-of-limitations defense contained in 18 U. S. C. § 3282(a) (the general federal criminal statute of limitations) may be successfully raised for the first time on appeal. We conclude that it may not be.

I

Petitioner Michael Musacchio served as president of a logistics company, Exel Transportation Services (ETS), until his resignation in 2004. In 2005, he formed a rival company, Total Transportation Services (TTS). Musacchio was soon joined there by Roy Brown, who previously headed ETS' information-technology department. At TTS, Brown, using a password, continued to access ETS' computer system without ETS' authorization. Brown also gave Musacchio access to ETS' system. This improper access of ETS' system kept on until early 2006.

In November 2010, a grand jury indicted Musacchio under 18 U. S. C. § 1030(a)(2)(C). Under that provision, a person commits a crime when he "intentionally accesses a computer

without authorization *or* exceeds authorized access," and in doing so "obtains . . . information from any protected computer." (Emphasis added.) The statute thus provides two ways of committing the crime of improperly accessing a protected computer: (1) obtaining access without authorization; and (2) obtaining access with authorization but then using that access improperly. See *ibid.*; § 1030(e)(6) (defining "exceeds authorized access"). Count 1 of the indictment charged Musacchio with conspiring to commit both types of improper access. Count 23 charged him with making unauthorized access to ETS' e-mail server "[o]n or about" November 24, 2005. App. 70–71.[1]

In 2012, the Government filed a superseding indictment amending those charges. Count 1 dropped the charge of conspiracy to exceed authorized access, limiting that charge to conspiracy to make unauthorized access. Count 2 amended the allegations originally contained in count 23 by alleging that Musacchio accessed specific ETS e-mail accounts "[o]n or about" November 23–25, 2005. *Id.*, at 83–84. The Government later filed a second superseding indictment that made no changes relevant here.

Musacchio proceeded to a jury trial. At no time before or during trial did he argue that his prosecution violated the 5-year statute of limitations applicable to count 2. See 18 U. S. C. § 3282(a) (providing general 5-year statute of limitations).

For the Government's part, it submitted proposed jury instructions on the conspiracy count before and during the trial. Each set of proposed instructions identified that count as involving "Unauthorized Access to Protected Computer[s]," and none required the jury additionally to find that Musacchio conspired to exceed authorized access to pro-

[1] Counts 2 through 22 charged other defendants with exceeding authorized access to specific e-mail accounts. App. 68–70. Those defendants pleaded guilty, and later indictments dropped those counts.

tected computers. Musacchio did not propose instructions on the conspiracy count.

Diverging from the indictment and the proposed instructions, the District Court instructed the jury on count 1 that § 1030(a)(2)(C) "makes it a crime for a person to intentionally access a protected computer without authorization *and* exceed authorized access." App. 168 (emphasis added). The parties agree that this instruction was erroneous: By using the conjunction "and" when referring to both ways of violating § 1030(a)(2)(C), the instruction required the Government to prove an additional element. Yet the Government did not object to this error in the instructions.

The jury found Musacchio guilty on both counts 1 and 2. The District Court sentenced him to 60 months' imprisonment. Musacchio appealed, making the two challenges that he again advances in this Court. First, he challenged the sufficiency of the evidence supporting his conspiracy conviction on count 1. He maintained, moreover, that the sufficiency of the evidence should be assessed against the erroneous jury instruction that included the additional element. Second, he argued, for the first time, that his prosecution on count 2—for unauthorized access—was barred by the 5-year statute of limitations because the superseding indictment was filed seven years after the crime and did not relate back to the timely original indictment.

The Fifth Circuit rejected both challenges and affirmed Musacchio's conviction. 590 Fed. Appx. 359 (2014) (*per curiam*). First, the Court of Appeals concluded that it should assess Musacchio's sufficiency challenge against the charged elements of the conspiracy count, not against the erroneous jury instruction. See *id.*, at 362–363. Under Fifth Circuit precedent, the court explained, erroneously heightened jury instructions generally become the binding "law of the case" on appeal. *Id.*, at 362 (internal quotation marks omitted). Circuit precedent supplies an exception, however, when (1) the jury instruction is "'patently erroneous,'" and (2) "'the

issue is not misstated in the indictment.'" *Ibid.* (quoting *United States* v. *Guevara*, 408 F. 3d 252, 258 (CA5 2005)). The Fifth Circuit concluded that those conditions for applying the exception were satisfied. See 590 Fed. Appx., at 362–363. The court explained that the instruction's requirement of an additional element was "an obvious clerical error," and that the indictment correctly charged Musacchio only with "Conspiracy To Make Unauthorized Access to [a] Protected Computer." *Id.*, at 362. Therefore, the Fifth Circuit did not assess Musacchio's sufficiency challenge under the heightened jury instruction. *Id.*, at 362–363. Because Musacchio did not dispute that the evidence was sufficient to support a conviction under the elements set out in the indictment, the Fifth Circuit rejected his challenge. *Id.*, at 363.

Second, the Fifth Circuit rejected Musacchio's statute-of-limitations defense, concluding that he had "waived" the defense by failing to raise it at trial. *Id.*, at 363, 364.

We granted certiorari to resolve two questions that have divided the lower courts. 576 U. S. 1053 (2015). The first question is whether the sufficiency of the evidence in a criminal case should be measured against the elements described in the jury instructions where those instructions, without objection, require the Government to prove more elements than do the statute and indictment. Compare, *e. g.*, *United States* v. *Romero*, 136 F. 3d 1268, 1272–1273 (CA10 1998) (explaining that sufficiency is measured against heightened jury instructions), with *Guevara*, *supra*, at 258 (CA5) (adopting an exception to that rule). The second question is whether a statute-of-limitations defense not raised at or before trial is reviewable on appeal. Compare, *e. g.*, *United States* v. *Franco-Santiago*, 681 F. 3d 1, 12, and n. 18 (CA1 2012) (limitations defense not raised and preserved before or at trial is reviewable on appeal for plain error), with *United States* v. *Walsh*, 700 F. 2d 846, 855–856 (CA2 1983) (limitations defense not properly raised below is not reviewable on appeal).

II

We first address how a court should assess a sufficiency challenge when a jury instruction adds an element to the charged crime and the Government fails to object. We hold that, when a jury instruction sets forth all the elements of the charged crime but incorrectly adds one more element, a sufficiency challenge should be assessed against the elements of the charged crime, not against the erroneously heightened command in the jury instruction.

That conclusion flows from the nature of a court's task in evaluating a sufficiency-of-the-evidence challenge. Sufficiency review essentially addresses whether "the government's case was so lacking that it should not have even been submitted to the jury." *Burks* v. *United States*, 437 U. S. 1, 16 (1978) (emphasis deleted). On sufficiency review, a reviewing court makes a limited inquiry tailored to ensure that a defendant receives the minimum that due process requires: a "meaningful opportunity to defend" against the charge against him and a jury finding of guilt "beyond a reasonable doubt." *Jackson* v. *Virginia*, 443 U. S. 307, 314–315 (1979). The reviewing court considers only the "legal" question "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*, at 319 (emphasis in original). That limited review does not intrude on the jury's role "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Ibid.*

A reviewing court's limited determination on sufficiency review thus does not rest on how the jury was instructed. When a jury finds guilt after being instructed on all elements of the charged crime plus one more element, the jury has made all the findings that due process requires. If a jury instruction requires the jury to find guilt on the elements of the charged crime, a defendant will have had a "meaningful

opportunity to defend" against the charge. *Id.*, at 314. And if the jury instruction requires the jury to find those elements "beyond a reasonable doubt," the defendant has been accorded the procedure that this Court has required to protect the presumption of innocence. *Id.*, at 314–315. The Government's failure to introduce evidence of an additional element does not implicate the principles that sufficiency review protects. All that a defendant is entitled to on a sufficiency challenge is for the court to make a "legal" determination whether the evidence was strong enough to reach a jury at all. *Id.*, at 319. The Government's failure to object to the heightened jury instruction thus does not affect the court's review for sufficiency of the evidence.[2]

Musacchio does not contest that the indictment here properly charged him with the statutory elements for conspiracy to obtain unauthorized access. The jury instructions required the jury to find all of the elements of that charged offense beyond a reasonable doubt. Nor does he dispute that the evidence was sufficient to convict him of the crime charged in the indictment—of conspiring to make unauthorized access. Accordingly, the Fifth Circuit correctly rejected his sufficiency challenge.

The Fifth Circuit erred, however, in basing that conclusion on the law-of-the-case doctrine. See 590 Fed. Appx., at 362–363. That doctrine does not apply here. The law-of-the-case doctrine generally provides that " 'when a court decides

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[2] In resolving the first question presented, we leave open several matters. First, we express no view on the question whether sufficiency of the evidence at trial must be judged by reference to the elements charged in the indictment, even if the indictment charges one or more elements not required by statute. Second, we do not suggest that the Government adds an element to a crime for purposes of sufficiency review when the indictment charges different means of committing a crime in the conjunctive. Third, we also do not suggest that an erroneous jury instruction cannot result in reversible error just because the evidence was sufficient to support a conviction.

upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.'" *Pepper* v. *United States*, 562 U. S. 476, 506 (2011) (quoting *Arizona* v. *California*, 460 U. S. 605, 618 (1983)). The doctrine "expresses the practice of courts generally to refuse to reopen what has been decided," but it does not "limit [courts'] power." *Messenger* v. *Anderson*, 225 U. S. 436, 444 (1912). Thus, the doctrine may describe an appellate court's decision not to depart from a ruling that it made in a prior appeal in the same case. See C. Wright et al., 18B Federal Practice and Procedure § 4478, p. 646, and n. 16 (2d ed. 2002) (collecting cases). But the doctrine is "something of a misnomer" when used to describe how an appellate court assesses a lower court's rulings. *United States* v. *Wells*, 519 U. S. 482, 487, n. 4 (1997). An appellate court's function *is* to revisit matters decided in the trial court. When an appellate court reviews a matter on which a party failed to object below, its review may well be constrained by other doctrines such as waiver, forfeiture, and estoppel, as well as by the type of challenge that it is evaluating. But it is not bound by district court rulings under the law-of-the-case doctrine. That doctrine does not bear on how to assess a sufficiency challenge when a jury convicts a defendant after being instructed—without an objection by the Government—on all charged elements of a crime plus an additional element.

III

We now consider whether a defendant may successfully raise the statute-of-limitations bar in 18 U. S. C. § 3282(a) for the first time on appeal. Musacchio argues that he may do so, either because § 3282(a) imposes a nonwaivable limit on federal courts' subject-matter jurisdiction or because a previously unraised limitations claim may constitute plain error that can be noticed on appeal. We disagree with both points, and hold that a defendant cannot successfully raise this statute-of-limitations bar for the first time on appeal.

A

Statutes of limitations and other filing deadlines "ordinarily are not jurisdictional." *Sebelius* v. *Auburn Regional Medical Center*, 568 U. S. 145, 154 (2013). We treat a time bar as jurisdictional only if Congress has "clearly stated" that it is. *Id.*, at 153; (brackets and internal quotation marks omitted); see, *e. g.*, *Henderson* v. *Shinseki*, 562 U. S. 428, 436, 439 (2011) (requiring a "clear indication" that a statute is jurisdictional (internal quotation marks omitted)). To determine whether Congress has made the necessary clear statement, we examine the "text, context, and relevant historical treatment" of the provision at issue. *Reed Elsevier, Inc.* v. *Muchnick*, 559 U. S. 154, 166 (2010).

Congress has not made such a clear statement here. Rather, the statutory text, context, and history establish that § 3282(a) imposes a nonjurisdictional defense that becomes part of a case only if a defendant raises it in the district court.

The statutory text suggests that § 3282(a) does not impose a jurisdictional limit. Section 3282(a) provides:

> "Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed."

Although § 3282(a) uses mandatory language, it does not expressly refer to subject-matter jurisdiction or speak in jurisdictional terms. The text of § 3282(a) does not, therefore, provide a "clear indication that Congress wanted that provision to be treated as having jurisdictional attributes." *Henderson*, *supra*, at 439.

Context confirms that § 3282(a) does not impose a jurisdictional limit. Federal courts' general criminal subject-matter jurisdiction comes from 18 U. S. C. § 3231, which

states: "The district courts . . . shall have original jurisdiction . . . of all offenses against the laws of the United States." Section 3231 speaks squarely to federal courts' "jurisdiction," in marked contrast to § 3282(a), which does not mention "jurisdiction" or a variant of that term. And, nothing in § 3231 "conditions its jurisdictional grant on" compliance with § 3282(a)'s statute of limitations. *Reed Elsevier*, *supra*, at 165. This context supports the conclusion that § 3282(a) is not jurisdictional.

The history of the limitations bar in § 3282(a) demonstrates that it is a defense that becomes part of a case only if the defendant presses it in the district court. This Court held in *United States* v. *Cook*, 17 Wall. 168 (1872), that a statute of limitations—identical in all relevant respects to § 3282(a)—was "a matter of defence and must be pleaded or given in evidence by the accused." *Id.*, at 181; see § 32, 1 Stat. 119 (statute of limitations); see also *Cook*, *supra*, at 173, and n. * (citing and describing statute of limitations). When a defendant introduces the limitations defense into the case, the Government then has "the right to reply or give evidence" on the limitations claim. 17 Wall., at 179.

Cook was decided more than 140 years ago, and we have adhered to its holding. Just three Terms ago, we reaffirmed that "[c]ommission of [a federal] crime within the statute-of-limitations period is not an element of the . . . offense," and "it is up to the defendant to raise the limitations defense." *Smith* v. *United States*, 568 U. S. 106, 112 (2013) (citing *Cook*; emphasis deleted); see also *Biddinger* v. *Commissioner of Police of City of New York*, 245 U. S. 128, 135 (1917) ("The statute of limitations is a defense and must be asserted on the trial by the defendant in criminal cases . . . " (citing *Cook*)). There is, in sum, a long history of treating the operative language in § 3282(a) as providing a nonjurisdictional defense that a defendant must press at trial to insert into the case.

In keeping with § 3282(a)'s text, context, and history, we conclude that § 3282(a) provides a nonjurisdictional defense, not a jurisdictional limit.

B

Because § 3282(a) does not impose a jurisdictional limit, the failure to raise it at or before trial means that it is reviewable on appeal—if at all—only for plain error. See Fed. Rule Crim. Proc. 52(b) (providing for consideration of "[a] plain error that affects substantial rights" even though the error "was not brought to the court's attention"). We conclude, however, that a district court's failure to enforce an unraised limitations defense under § 3282(a) cannot be a plain error.[3]

As explained above, a statute-of-limitations defense becomes part of a case only if the defendant puts the defense in issue. When a defendant presses a limitations defense, the Government *then* bears the burden of establishing compliance with the statute of limitations by presenting evidence that the crime was committed within the limitations period or by establishing an exception to the limitations period. See *Cook*, *supra*, at 179. When a defendant fails to press a limitations defense, the defense does not become part of the case and the Government does not otherwise have the burden of proving that it filed a timely indictment. When a defendant does not press the defense, then, there is no error for an appellate court to correct—and certainly no plain error.

A defendant thus cannot successfully raise the statute-of-limitations defense in § 3282(a) for the first time on appeal.

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[3] Because we conclude that the failure to enforce § 3282(a)'s limitations defense cannot be plain error, we do not resolve whether the failure to raise that defense in the District Court amounts to waiver (which some courts have held to preclude all appellate review of the defense) or forfeiture (which some courts have held to allow at least plain-error review). See *United States* v. *Franco-Santiago*, 681 F. 3d 1, 12, n. 18 (CA1 2012) (collecting cases).

The Fifth Circuit correctly refused to consider Musacchio's limitations defense here.

* * *

For the foregoing reasons, we affirm the judgment of the Fifth Circuit.

It is so ordered.

Syllabus

MENOMINEE INDIAN TRIBE OF WISCONSIN *v.* UNITED STATES ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14–510. Argued December 1, 2015—Decided January 25, 2016

Pursuant to the Indian Self-Determination and Education Assistance Act (ISDA), petitioner Menominee Indian Tribe of Wisconsin contracted with the Indian Health Service (IHS) to operate what would otherwise have been a federal program and to receive an amount of money equal to what the Government would have spent on operating the program itself, including reimbursement for reasonable contract support costs. 25 U. S. C. §§ 450f, 450j–1(a). After other tribal entities successfully litigated complaints against the Federal Government for failing to honor its obligation to pay contract support costs, the Menominee Tribe presented its own contract support claims to IHS in accordance with the Contract Disputes Act of 1978 (CDA), which requires contractors to present each claim to a contracting officer for decision, 41 U. S. C. § 7103(a)(1). The contracting officer denied some of the Tribe's claims because they were not presented within the CDA's 6-year limitations period. See § 7103(a)(4)(A).

The Tribe challenged the denials in Federal District Court, arguing that the limitations period should be tolled for the nearly two years in which a putative class action, brought by Tribes with parallel complaints, was pending. As relevant here, the District Court eventually denied the Tribe's equitable-tolling claim, and the Court of Appeals affirmed, holding that no extraordinary circumstances beyond the Tribe's control caused the delay.

Held: Equitable tolling does not apply to the presentment of petitioner's claims. Pp. 255–259.

(a) To be entitled to equitable tolling of a statute of limitations, a litigant must establish "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Holland* v. *Florida*, 560 U. S. 631, 649. The Tribe argues that diligence and extraordinary circumstances should be considered together as factors in a unitary test, and it faults the Court of Appeals for declining to consider the Tribe's diligence in connection with its finding that no extraordinary circumstances existed. But this Court has expressly characterized these two components as "elements," not merely factors of indeterminate or commensurable

weight, *Pace* v. *DiGuglielmo*, 544 U. S. 408, 418, and has treated them as such in practice, see *Lawrence* v. *Florida*, 549 U. S. 327, 336–337. The Tribe also objects to the Court of Appeals' interpretation of the "extraordinary circumstances" prong as requiring the showing of an "external obstacle" to timely filing. This Court reaffirms that this prong is met only where the circumstances that caused a litigant's delay are both extraordinary *and* beyond its control. Pp. 255–257.

(b) None of the Tribe's excuses satisfy the "extraordinary circumstances" prong of the test. The Tribe had unilateral authority to present its claims in a timely manner. Its claimed obstacles, namely, a mistaken reliance on a putative class action and a belief that presentment was futile, were not outside the Tribe's control. And the significant risk and expense associated with presenting and litigating its claims are far from extraordinary. Finally, the special relationship between the United States and Indian tribes, as articulated in the ISDA, does not override clear statutory language. Pp. 257–259.

764 F. 3d 51, affirmed.

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

Geoffrey D. Strommer argued the cause for petitioner. With him on the briefs were *Jerry C. Straus*, *Stephen D. Osborne*, *Caroline P. Mayhew*, *Adam P Bailey*, and *Paul D. Clement*.

Ilana H. Eisenstein argued the cause for respondents. With her on the brief were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Kneedler*, *William B. Schultz*, *Alan S. Dorn*, *Douglas Ferguson*, *Julia B. Pierce*, and *Melissa Jamison*.*

JUSTICE ALITO delivered the opinion of the Court.

Petitioner Menominee Indian Tribe of Wisconsin (Tribe) seeks equitable tolling to preserve contract claims not timely presented to a federal contracting officer. Because the Tribe cannot establish extraordinary circumstances that stood in the way of timely filing, we hold that equitable tolling does not apply.

**Melody L. McCoy* and *John E. Echohawk* filed a brief for the National Congress of American Indians as *amicus curiae* urging reversal.

I

Congress enacted the Indian Self-Determination and Education Assistance Act (ISDA), Pub. L. 93–638, 88 Stat. 2203, 25 U. S. C. § 450 *et seq.*, in 1975 to help Indian tribes assume responsibility for aid programs that benefit their members. Under the ISDA, tribes may enter into "self-determination contracts" with federal agencies to take control of a variety of federally funded programs. § 450f. A contracting tribe is eligible to receive the amount of money that the Government would have otherwise spent on the program, see § 450j–1(a)(1), as well as reimbursement for reasonable "contract support costs," which include administrative and overhead costs associated with carrying out the contracted programs, §§ 450j–1(a)(2), (3), (5).

In 1988, Congress amended the ISDA to apply the Contract Disputes Act of 1978 (CDA), 41 U. S. C. § 7101 *et seq.*, to disputes arising under the ISDA. See 25 U. S. C. § 450m–1(d); Indian Self-Determination and Education Assistance Act Amendments of 1988, § 206(2), 102 Stat. 2295. As part of its mandatory administrative process for resolving contract disputes, the CDA requires contractors to present "[e]ach claim" they may have to a contracting officer for decision. 41 U. S. C. § 7103(a)(1). Congress later amended the CDA to include a 6-year statute of limitations for presentment of each claim. Federal Acquisition Streamlining Act of 1994, 41 U. S. C. § 7103(a)(4)(A).

Under the CDA, the contracting officer's decision is generally final, unless challenged through one of the statutorily authorized routes. § 7103(g). A contractor dissatisfied with the officer's decision may either take an administrative appeal to a board of contract appeals or file an action for breach of contract in the United States Court of Federal Claims. §§ 7104(a), (b)(1), 7105(b). Both routes then lead to the United States Court of Appeals for the Federal Circuit for any further review. 28 U. S. C. § 1295(a)(3); 41 U. S. C. § 7107(a)(1); see 25 U. S. C. § 450m–1(d). Under the ISDA,

tribal contractors have a third option. They may file a claim for money damages in federal district court, §§ 450m–1(a), (d), and if they lose, they may pursue an appeal in one of the regional courts of appeals, 28 U. S. C. § 1291.

Tribal contractors have repeatedly complained that the Federal Government has not fully honored its obligations to pay contract support costs. Three lawsuits making such claims are relevant here.

The first was a class action filed by the Ramah Navajo Chapter alleging that the Bureau of Indian Affairs (BIA) systematically underpaid certain contract support costs. *Ramah Navajo Chapter* v. *Lujan*, No. 1:90–cv–0957 (D NM) (filed Oct. 4, 1990). In 1993, Ramah successfully moved for certification of a nationwide class of all tribes that had contracted with the BIA under the ISDA. See Order and Memorandum Opinion in *Ramah Navajo Chapter* v. *Lujan*, No. 1:90–cv–0957 (D NM, Oct. 1, 1993), App. 35–40. The Government argued that each tribe needed to present its claims to a contracting officer before it could participate in the class. *Id.*, at 37–38. But the trial court held that tribal contractors could participate in the class without presentment, because the suit alleged systemwide flaws in the BIA's contracting scheme, not merely breaches of individual contracts. *Id.*, at 39. The Government did not appeal the certification order, and the *Ramah* class action proceeded to further litigation and settlement.

The second relevant ISDA suit raised similar claims about contract support costs but arose from contracts with the Indian Health Service (IHS). *Cherokee Nation of Okla.* v. *United States*, No. 6:99–cv–0092 (ED Okla.) (filed Mar. 5, 1999). In *Cherokee Nation*, two Tribes filed a putative class action against IHS. On February 9, 2001, the District Court denied class certification without addressing whether tribes would need to present claims to join the class. *Cherokee Nation of Okla.* v. *United States*, 199 F. R. D. 357, 363–366 (ED Okla.). The two plaintiff Tribes did not appeal the de-

nial of class certification but proceeded to the merits on their own, eventually prevailing before this Court in a parallel suit. See *Cherokee Nation of Okla.* v. *Leavitt*, 543 U. S. 631 (2005).

The third relevant case is the one now before us. In this case, the Tribe presented its contract support claims (for contract years 1995 through 2004) to IHS on September 7, 2005, shortly after our *Cherokee Nation* ruling. As relevant here, the contracting officer denied the Tribe's claims based on its 1996, 1997, and 1998 contracts because, *inter alia*, those claims were barred by the CDA's 6-year statute of limitations.[1] The Tribe challenged the denials in the United States District Court for the District of Columbia, arguing, based on theories of class-action and equitable tolling, that the limitations period should be tolled for the 707 days that the putative *Cherokee Nation* class had been pending. See *American Pipe & Constr. Co.* v. *Utah*, 414 U. S. 538 (1974) (class-action tolling); *Holland* v. *Florida*, 560 U. S. 631 (2010) (equitable tolling).

Initially, the District Court held that the limitations period was jurisdictional and thus forbade tolling of any sort. 539 F. Supp. 2d 152, 154, and n. 2 (DC 2008). On appeal, the United States Court of Appeals for the District of Columbia Circuit concluded that the limitations period was not jurisdictional and thus did not necessarily bar tolling. 614 F. 3d 519, 526 (2010). But the court held that the Tribe was ineligible for class-action tolling during the pendency of the putative *Cherokee Nation* class, because the Tribe's failure to present its claims to IHS made it "ineligible to participate in the class action at the time class certification [was] de-

[1] Because the contract claims accrued no later than the end of each calendar-year contract, the District Court determined, the statute of limitations for the 1996, 1997, and 1998 contracts had run by January 1st of the years 2003, 2004, and 2005, respectively. 539 F. Supp. 2d 152, 154, n. 1 (DC 2008). The Tribe does not dispute the timing of accrual before this Court.

nied." 614 F. 3d, at 527 (applying *American Pipe*). The court then remanded the case to the District Court to determine the Tribe's eligibility for equitable tolling.

On remand, the District Court concluded that the Tribe's asserted reasons for failing to present its claims within the specified time "do not, individually or collectively, amount to an extraordinary circumstance" that could warrant equitable tolling. 841 F. Supp. 2d 99, 107 (DC 2012) (internal quotation marks omitted). This time, the Court of Appeals affirmed. 764 F. 3d 51 (CADC 2014). It explained that, "[t]o count as sufficiently 'extraordinary' to support equitable tolling, the circumstances that caused a litigant's delay must have been beyond its control" and "cannot be a product of that litigant's own misunderstanding of the law or tactical mistakes in litigation." *Id.*, at 58. Because none of the Tribe's proffered circumstances was beyond its control, the court held, there were no extraordinary circumstances that could merit equitable tolling.

The Court of Appeals' decision created a split with the Federal Circuit, which granted another tribal entity equitable tolling under similar circumstances. See *Arctic Slope Native Assn., Ltd.* v. *Sebelius*, 699 F. 3d 1289 (2012). We granted certiorari to resolve the conflict. 576 U. S. 1083 (2015).

II

The Court of Appeals denied the Tribe's request for equitable tolling by applying the test that we articulated in *Holland* v. *Florida*, 560 U. S. 631. Under *Holland*, a litigant is entitled to equitable tolling of a statute of limitations only if the litigant establishes two elements: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Id.*, at 649 (internal quotation marks omitted).

The Tribe calls this formulation of the equitable-tolling test overly rigid, given the doctrine's equitable nature. First, it argues that diligence and extraordinary circum-

stances should be considered together as two factors in a unitary test, and it faults the Court of Appeals for declining to consider the Tribe's diligence in connection with its finding that no extraordinary circumstances existed. But we have expressly characterized equitable tolling's two components as "elements," not merely factors of indeterminate or commensurable weight. *Pace* v. *DiGuglielmo*, 544 U. S. 408, 418 (2005) ("Generally, a litigant seeking equitable tolling bears the burden of establishing two elements"). And we have treated the two requirements as distinct elements in practice, too, rejecting requests for equitable tolling where a litigant failed to satisfy one without addressing whether he satisfied the other. See, *e. g.*, *Lawrence* v. *Florida*, 549 U. S. 327, 336–337 (2007) (rejecting equitable tolling without addressing diligence because habeas petitioner fell "far short of showing 'extraordinary circumstances' "); *Pace*, *supra*, at 418 (holding, without resolving litigant's argument that he had "satisfied the extraordinary circumstance test," that, "[e]ven if we were to accept [his argument], he would not be entitled to relief because he has not established the requisite diligence").

Second, the Tribe objects to the Court of Appeals' interpretation of the "extraordinary circumstances" prong as requiring a litigant seeking tolling to show an "external obstacl[e]" to timely filing, *i. e.*, that "the circumstances that caused a litigant's delay must have been beyond its control." 764 F. 3d, at 58–59. The Tribe complains that this "external obstacle" formulation amounts to the same kind of " 'overly rigid *per se* approach' " we rejected in *Holland*. Brief for Petitioner 32 (quoting 560 U. S., at 653). But in truth, the phrase "external obstacle" merely reflects our requirement that a litigant seeking tolling show "that some extraordinary circumstance *stood in his way*." *Id.*, at 649 (emphasis added; internal quotation marks omitted). This phrasing in *Holland* (and in *Pace* before that) would make little sense if

equitable tolling were available when a litigant was responsible for its *own* delay. Indeed, the diligence prong already covers those affairs within the litigant's control; the extraordinary-circumstances prong, by contrast, is meant to cover matters outside its control. We therefore reaffirm that the second prong of the equitable-tolling test is met only where the circumstances that caused a litigant's delay are both extraordinary *and* beyond its control.[2]

III

The Tribe offers no circumstances that meet this standard.

Its mistaken reliance on the putative *Cherokee Nation* class action was not an obstacle beyond its control.[3] As the Tribe conceded below, see 614 F. 3d, at 526–527, it could not have been a member of the putative *Cherokee Nation* class because it did not present its claims to an IHS contracting officer before class certification was denied. Before then, the Tribe had unilateral authority to present its claims and to join the putative class. Presentment was blocked not by an obstacle outside its control, but by the Tribe's mistaken belief that presentment was unneeded.

The Tribe's mistake, in essence, was its inference that the reasoning of the *Ramah* class certification decision (allowing tribes to participate—without presentment—in the class challenging underpayment of BIA contract support costs) applied to the putative *Cherokee Nation* class. This mistake was fundamentally no different from "a garden variety

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[2] *Holland* v. *Florida*, 560 U. S. 631 (2010), is a habeas case, and we have never held that its equitable-tolling test necessarily applies outside the habeas context. Nevertheless, because we agree that the Tribe cannot meet *Holland*'s test, we have no occasion to decide whether an even stricter test might apply to a nonhabeas case. Nor does the Tribe argue that a more generous test than *Holland*'s should apply here.

[3] Because we conclude that the Tribe's mistake of law was not outside its control, we need not decide whether a mistake of law, however reasonable, could ever be extraordinary.

claim of excusable neglect," *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 96 (1990), "such as a simple 'miscalculation' that leads a lawyer to miss a filing deadline," *Holland*, *supra*, at 651 (quoting *Lawrence*, *supra*, at 336). And it is quite different from relying on *actually binding* precedent that is subsequently reversed.[4]

The Tribe's other excuses are even less compelling. Its belief that presentment was futile was not an obstacle beyond its control but a species of the same mistake that kept it out of the putative *Cherokee Nation* class. And the fact that there may have been significant risk and expense associated with presenting and litigating its claims is far from extraordinary. As the District Court noted below, "it is common for a litigant to be confronted with significant costs to litigation, limited financial resources, an uncertain outcome based upon an uncertain legal landscape, and impending deadlines. These circumstances are not 'extraordinary.'" 841 F. Supp. 2d, at 107.

Finally, the Tribe also urges us to consider the special relationship between the United States and Indian tribes, as articulated in the ISDA. See 25 U. S. C. § 450a(b) ("Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole"). We do not question the "general trust relationship between the United States and the Indian tribes," but any specific obligations the Government may have under that relationship are "governed by statute rather than the common law." *United States* v. *Jicarilla Apache Nation*, 564 U. S. 162, 165 (2011). The ISDA and CDA establish a clear procedure for the resolution of disputes over ISDA contracts, with an unambiguous 6-year deadline for

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[4] The Court of Appeals speculated, without deciding, that such a development might merit tolling, but like that court we have no occasion to decide the question.

presentment of claims. The "general trust relationship" does not override the clear language of those statutes.[5]

IV

For these reasons, the judgment of the United States Court of Appeals for the District of Columbia Circuit is affirmed.

It is so ordered.

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[5] Because we hold that there were no extraordinary circumstances, we need not decide whether the Tribe was diligently pursuing its rights. We also need not accept the Tribe's invitation to assess prejudice to the Government, because the absence of prejudice to the opposing party "is not an independent basis for invoking the doctrine [of equitable tolling] and sanctioning deviations from established procedures." *Baldwin County Welcome Center* v. *Brown*, 466 U. S. 147, 152 (1984) (*per curiam*). Rather, the absence of prejudice is "a factor to be considered in determining whether the doctrine of equitable tolling should apply *once a factor that might justify such tolling is identified*." *Ibid.* (emphasis added).

Syllabus

FEDERAL ENERGY REGULATORY COMMISSION *v.* ELECTRIC POWER SUPPLY ASSOCIATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14–840. Argued October 14, 2015—Decided January 25, 2016*

The Federal Power Act (FPA) authorizes the Federal Energy Regulatory Commission (FERC) to regulate "the sale of electric energy at wholesale in interstate commerce," including both wholesale electricity rates and any rule or practice "affecting" such rates. 16 U. S. C. §§ 824(b), 824d(a), 824e(a). But it places beyond FERC's power, leaving to the States alone, the regulation of "any other sale"—that is, any intrastate wholesale sale or, more pertinent here, any retail sale—of electricity. § 824(b).

In an increasingly competitive interstate electricity market, FERC has undertaken to ensure "just and reasonable" wholesale rates, § 824d(a), by encouraging the creation of nonprofit entities to manage regions of the nationwide electricity grid. These wholesale market operators administer their portions of the grid to ensure that the network conducts electricity reliably, and each holds competitive auctions to set wholesale prices. These auctions balance supply and demand continuously by matching bids to provide electricity from generators with orders from utilities and other "load-serving entities" that buy power at wholesale for resale to users. All bids to supply electricity are stacked from lowest to highest, and accepted in that order until all requests for power have been met. Every electricity supplier is paid the price of the highest-accepted bid, known as the locational marginal price (LMP).

In periods of high electricity demand, prices can reach extremely high levels as the least efficient generators have their supply bids accepted in the wholesale market auctions. Not only do rates rise dramatically during these peak periods, but the increased flow of electricity threatens to overload the grid and cause substantial service problems. Faced with these challenges, wholesale market operators devised wholesale demand response programs, which pay consumers for commitments to reduce their use of power during these peak periods. Just like bids to supply electricity, offers from aggregators of multiple users of electricity or large individual consumers to reduce consumption can be bid into the wholesale market auctions. When it costs less to pay consumers to

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*Together with No. 14–841, *EnerNOC, Inc., et al.* v. *Electric Power Supply Association et al.*, also on certiorari to the same court.

refrain from using power than it does to pay producers to supply more of it, demand response can lower these wholesale prices and increase grid reliability. Wholesale operators began integrating these programs into their markets some 15 years ago and FERC authorized their use. Congress subsequently encouraged further development of demand response.

Spurred on by Congress, FERC issued Order No. 719, which, among other things, requires wholesale market operators to receive demand response bids from aggregators of electricity consumers, except when the state regulatory authority overseeing those users' retail purchases bars demand response participation. 18 CFR § 35.28(g)(1). Concerned that the order had not gone far enough, FERC then issued the rule under review here, Order No. 745. § 35.28(g)(1)(v) (Rule). It requires market operators to pay the same price to demand response providers for conserving energy as to generators for producing it, so long as a "net benefits test," which ensures that accepted bids actually save consumers money, is met. The Rule rejected an alternative compensation scheme that would have subtracted from LMP the savings consumers receive from not buying electricity in the retail market, a formula known as LMP–G. The Rule also rejected claims that FERC lacked statutory authority to regulate the compensation operators pay for demand response bids.

The Court of Appeals for the District of Columbia Circuit vacated the Rule, holding that FERC lacked authority to issue the order because it directly regulates the retail electricity market, and holding in the alternative that the Rule's compensation scheme is arbitrary and capricious under the Administrative Procedure Act.

Held:

1. The FPA provides FERC with the authority to regulate wholesale market operators' compensation of demand response bids. The Court's analysis proceeds in three parts. First, the practices at issue directly affect wholesale rates. Second, FERC has not regulated retail sales. Taken together, these conclusions establish that the Rule complies with the FPA's plain terms. Third, the contrary view would conflict with the FPA's core purposes. Pp. 276–291.

(a) The practices at issue directly affect wholesale rates. The FPA has delegated to FERC the authority—and, indeed, the duty—to ensure that rules or practices "affecting" wholesale rates are just and reasonable. §§ 824d(a), 824e(a). To prevent the statute from assuming near-infinite breadth, see, *e. g.*, *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 655, this Court adopts the D. C. Circuit's common-sense construction limiting FERC's "affecting" jurisdiction to rules or practices that "*directly* affect the

[wholesale] rate," *California Independent System Operator Corp.* v. *FERC*, 372 F. 3d 395, 403 (emphasis added). That standard is easily met here. Wholesale demand response is all about reducing wholesale rates; so too the rules and practices that determine how those programs operate. That is particularly true here, as the formula for compensating demand response necessarily lowers wholesale electricity prices by displacing higher-priced generation bids. Pp. 277–279.

(b) The Rule also does not regulate retail electricity sales in violation of § 824(b). A FERC regulation does not run afoul of § 824(b)'s proscription just because it affects the quantity or terms of retail sales. Transactions occurring on the wholesale market have natural consequences at the retail level, and so too, of necessity, will FERC's regulation of those wholesale matters. That is of no legal consequence. See, *e. g.*, *Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U. S. 354, 365, 370–373. When FERC regulates what takes place on the wholesale market, as part of carrying out its charge to improve how that market runs, then no matter the effect on retail rates, § 824(b) imposes no bar. Here, every aspect of FERC's regulatory plan happens exclusively on the wholesale market and governs exclusively that market's rules. FERC's justifications for regulating demand response are likewise only about improving the wholesale market. Cf. *Oneok, Inc.* v. *Learjet, Inc.*, 575 U. S. 373, 385. Pp. 279–288.

(c) In addition, respondent Electric Power Supply Association's (EPSA) position would subvert the FPA. EPSA's arguments suggest that the entire practice of wholesale demand response falls outside what FERC can regulate, and EPSA concedes that States also lack that authority. But under the FPA, wholesale demand response programs could not go forward if no entity had jurisdiction to regulate them. That outcome would flout the FPA's core purposes of protecting "against excessive prices" and ensuring effective transmission of electric power. *Pennsylvania Water & Power Co.* v. *FPC*, 343 U. S. 414, 418; see *Gulf States Util. Co.* v. *FPC*, 411 U. S. 747, 758. The FPA should not be read, against its clear terms, to halt a practice that so evidently enables FERC to fulfill its statutory duties of holding down prices and enhancing reliability in the wholesale energy market. Pp. 288–291.

2. FERC's decision to compensate demand response providers at LMP—the same price paid to generators—instead of at LMP–G, is not arbitrary and capricious. Under the narrow scope of review in *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43, this Court's important but limited role is to ensure that FERC engaged in reasoned decisionmaking—that it weighed competing views, selected a compensation formula with adequate support in the record, and intelligibly explained the reasons for making that decision. Here, FERC provided a detailed explanation of

its choice of LMP and responded at length to contrary views. FERC's serious and careful discussion of the issue satisfies the arbitrary and capricious standard. Pp. 291–296.

753 F. 3d 216, reversed and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 296. ALITO, J., took no part in the consideration or decision of the cases.

Solicitor General Verrilli argued the cause for petitioner in No. 14–840. With him on the briefs were *Deputy Solicitor General Kneedler*, *John F. Bash*, *Robert H. Solomon*, and *Holly E. Cafer*. *Carter G. Phillips* argued the cause for private petitioners in No. 14–841. With him on the briefs were *C. Frederick Beckner III*, *Matthew J. Cushing*, *Marvin T. Griff*, and *Robert A. Weishaar, Jr.* *Ransom E. Davis*, *Bohdan R. Pankiw*, and *Kriss E. Brown* filed a brief for respondents Joint States in support of petitioners in both cases pursuant to this Court's Rule 12.6. *Elizabeth Dorman*, *Aroceles Aguilar*, and *Harvey Y. Morris* filed a brief for respondent California Public Utilities Commission and *Barry S. Spector* and *Paul M. Flynn* filed a brief for respondent PJM Interconnection, L.L.C., both in support of petitioner in No. 14–840 pursuant to this Court's Rule 12.6.

Paul D. Clement argued the cause for respondents Electric Power Supply Association et al. in both cases. With him on the brief were *Erin E. Murphy*, *Edmund G. LaCour, Jr.*, *Ashley C. Parrish*, *David G. Tewksbury*, *Stephanie S. Lim*, *James P. Sullivan*, *Harvey L. Reiter*, *Edward H. Comer*, *Henri D. Bartholomot*, *Sandra E. Rizzo*, *Randolph Lee Elliott*, *Jesse A. Dillon*, and *Michael A. McGrail*. *Cynthia S. Bogorad*, *William S. Huang*, *Katharine M. Mapes*, and *Jessica R. Bell* filed a brief for respondents Midwest Load-Serving Entities in both cases pursuant to this Court's Rule 12.6.†

†Briefs of *amici curiae* urging reversal were filed in both cases for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *Regina A. Iorrii*, Deputy Attorney General of Delaware, *David T. Evrard*,

JUSTICE KAGAN delivered the opinion of the Court.

The Federal Power Act (FPA or Act), 41 Stat. 1063, as amended, 16 U. S. C. § 791a *et seq.*, authorizes the Federal Energy Regulatory Commission (FERC or Commission) to regulate "the sale of electric energy at wholesale in inter-

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Sandra Mattavous-Frye, *Robert G. Mork*, *Paula M. Carmody*, *Stefanie A. Brand*, and *Jacqueline Lake Roberts*; for the Conservation Law Foundation et al. by *David T. Goldberg*, *Sean H. Donahue*, *John N. Moore*, *Vickie L. Patton*, *Peter Zalzal*, *Jerry Elmer*, and *Howard A. Learner*; for Electricity Consumers and Demand Response Providers by *Seth P. Waxman*, *Mark C. Kalpin*, and *David M. Lehn*; for Energy Law Scholars by *Richard J. Pierce, Jr.*; for the Microgrid Resources Coalition by *Erik S. Jaffe*; for Charles J. Cicchetti by *Hope M. Babcock*; and for Charles D. Kolstad by *Wendy B. Jacobs*.

Richard B. Stewart filed a brief for the Guarini Center on Environmental, Energy and Land Use Law at New York University School of Law urging reversal in No. 14–840.

Briefs of *amici curiae* urging affirmance were filed in both cases for the State of Indiana et al. by *Gregory F. Zoeller*, Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, and *Laura Langeneckert*, Deputy Attorney General, by *Scott Pruitt*, Attorney General of Oklahoma, *Patrick Wyrick*, Solicitor General, and *Mithun Mansinghani*, Deputy Solicitor General, and by the Attorneys General of their respective States as follows: *Luther Strange* of Alabama, *Mark Brnovich* of Arizona, *Leslie Rutledge* of Arkansas, *Lawrence G. Wasden* of Idaho, *Derek Schimdt* of Kansas, *Alan Wilson* of South Carolina, *Ken Paxton* of Texas, *Sean D. Reyes* of Utah, *Patrick Morrisey* of West Virginia, and *Peter K. Michael* of Wyoming; for CES et al. by *Peter J. Brann* and *Stacy O. Stitham*; for the North Carolina Utilities Commission by *Kimberly W. Duffley*, *Donald L. Howell II*, *Rolayne Ailts Wiest*, *Luther Daniel Bentley IV*, and *Maureen A. Scott*; for Southern Company Services, Inc., by *Andrew W. Tunnell*; and for Robert L. Borlick et al. by *Jeffrey A. Lamken* and *John Lee Shepard, Jr.*

Gerald Norlander and *Richard Berkely* filed a brief for the Public Utility Law Project of New York urging affirmance in No. 14–840.

Erick M. Sandler and *Ellen C. Ginsberg* filed a brief for the Nuclear Energy Institute et al. urging affirmance in No. 14–841.

Briefs of *amici curiae* were filed in both cases for Grid Engineers et al. by *Douglas Hallward-Driemeier* and *Justin Florence*; for NRG Energy, Inc., by *Aaron M. Panner*; and for the Public Service Commission of the State of New York by *Jonathan D. Feinberg*.

state commerce," including both wholesale electricity rates and any rule or practice "affecting" such rates. §§ 824(b), 824e(a). But the law places beyond FERC's power, and leaves to the States alone, the regulation of "any other sale"—most notably, any retail sale—of electricity. § 824(b). That statutory division generates a steady flow of jurisdictional disputes because—in point of fact if not of law—the wholesale and retail markets in electricity are inextricably linked.

These cases concern a practice called "demand response," in which operators of wholesale markets pay electricity consumers for commitments *not* to use power at certain times. That practice arose because wholesale market operators can sometimes—say, on a muggy August day—offer electricity both more cheaply and more reliably by paying users to dial down their consumption than by paying power plants to ramp up their production. In the regulation challenged here, FERC required those market operators, in specified circumstances, to compensate the two services equivalently—that is, to pay the same price to demand response providers for conserving energy as to generators for making more of it.

Two issues are presented here. First, and fundamentally, does the FPA permit FERC to regulate these demand response transactions at all, or does any such rule impinge on the States' authority? Second, even if FERC has the requisite statutory power, did the Commission fail to justify adequately why demand response providers and electricity producers should receive the same compensation? The court below ruled against FERC on both scores. We disagree.

I

A

Federal regulation of electricity owes its beginnings to one of this Court's decisions. In the early 20th century, state

and local agencies oversaw nearly all generation, transmission, and distribution of electricity. But this Court held in *Public Util. Comm'n of R. I.* v. *Attleboro Steam & Elec. Co.*, 273 U. S. 83, 89–90 (1927), that the Commerce Clause bars the States from regulating certain interstate electricity transactions, including wholesale sales (*i. e.*, sales for resale) across state lines. That ruling created what became known as the "*Attleboro* gap"—a regulatory void which, the Court pointedly noted, only Congress could fill. See *id.*, at 90.

Congress responded to that invitation by passing the FPA in 1935. The Act charged FERC's predecessor agency with undertaking "effective federal regulation of the expanding business of transmitting and selling electric power in interstate commerce." *New York* v. *FERC*, 535 U. S. 1, 6 (2002) (quoting *Gulf States Util. Co.* v. *FPC*, 411 U. S. 747, 758 (1973)). Under the statute, the Commission has authority to regulate "the transmission of electric energy in interstate commerce" and "the sale of electric energy at wholesale in interstate commerce." 16 U. S. C. § 824(b)(1).

In particular, the FPA obligates FERC to oversee all prices for those interstate transactions and all rules and practices affecting such prices. The statute provides that "[a]ll rates and charges made, demanded, or received by any public utility for or in connection with" interstate transmissions or wholesale sales—as well as "all rules and regulations affecting or pertaining to such rates or charges"—must be "just and reasonable." § 824d(a). And if "any rate [or] charge," or "any rule, regulation, practice, or contract affecting such rate [or] charge[,]" falls short of that standard, the Commission must rectify the problem: It then shall determine what is "just and reasonable" and impose "the same by order." § 824e(a).

Alongside those grants of power, however, the Act also limits FERC's regulatory reach, and thereby maintains a zone of exclusive state jurisdiction. As pertinent here,

§ 824(b)(1)—the same provision that gives FERC authority over wholesale sales—states that "this subchapter," including its delegation to FERC, "shall not apply to any other sale of electric energy." Accordingly, the Commission may not regulate either within-state wholesale sales or, more pertinent here, retail sales of electricity (*i. e.*, sales directly to users). See *New York*, 535 U. S., at 17, 23. State utility commissions continue to oversee those transactions.

Since the FPA's passage, electricity has increasingly become a competitive interstate business, and FERC's role has evolved accordingly. Decades ago, state or local utilities controlled their own power plants, transmission lines, and delivery systems, operating as vertically integrated monopolies in confined geographic areas. That is no longer so. Independent power plants now abound, and almost all electricity flows not through "the local power networks of the past," but instead through an interconnected "grid" of near-nationwide scope. See *id.*, at 7 ("electricity that enters the grid immediately becomes a part of a vast pool of energy that is constantly moving in interstate commerce," linking producers and users across the country). In this new world, FERC often forgoes the cost-based rate-setting traditionally used to prevent monopolistic pricing. The Commission instead undertakes to ensure "just and reasonable" wholesale rates by enhancing competition—attempting, as we recently explained, "to break down regulatory and economic barriers that hinder a free market in wholesale electricity." *Morgan Stanley Capital Group Inc.* v. *Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U. S. 527, 536 (2008).

As part of that effort, FERC encouraged the creation of nonprofit entities to manage wholesale markets on a regional basis. Seven such wholesale market operators now serve areas with roughly two-thirds of the country's electricity "load" (an industry term for the amount of electricity used). See FERC, Energy Primer: A Handbook of Energy Market

Basics 58–59 (Nov. 2015) (Energy Primer). Each administers a portion of the grid, providing generators with access to transmission lines and ensuring that the network conducts electricity reliably. See *ibid.* And still more important for present purposes, each operator conducts a competitive auction to set wholesale prices for electricity.

These wholesale auctions serve to balance supply and demand on a continuous basis, producing prices for electricity that reflect its value at given locations and times throughout each day. Such a real-time mechanism is needed because, unlike most products, electricity cannot be stored effectively. Suppliers must generate—every day, hour, and minute—the exact amount of power necessary to meet demand from the utilities and other "load-serving entities" (LSEs) that buy power at wholesale for resale to users. To ensure that happens, wholesale market operators obtain (1) orders from LSEs indicating how much electricity they need at various times and (2) bids from generators specifying how much electricity they can produce at those times and how much they will charge for it. Operators accept the generators' bids in order of cost (least expensive first) until they satisfy the LSEs' total demand. The price of the last unit of electricity purchased is then paid to every supplier whose bid was accepted, regardless of its actual offer; and the total cost is split among the LSEs in proportion to how much energy they have ordered. So, for example, suppose that at 9 a.m. on August 15, four plants serving Washington, D. C. can each produce some amount of electricity for, respectively, $10/unit, $20/unit, $30/unit, and $40/unit. And suppose that LSEs' demand at that time and place is met after the operator accepts the three cheapest bids. The first three generators would then all receive $30/unit. That amount is (think back to Econ 101) the marginal cost—*i. e.*, the added cost of meeting another unit of demand—which is the price an efficient market would produce. See 1 A. Kahn, The Economics of Regulation: Principles and Institutions 65–67 (1988). FERC calls

that cost (in jargon that will soon become oddly familiar) the locational marginal price, or LMP.[1]

As in any market, when wholesale buyers' demand for electricity increases, the price they must pay rises correspondingly; and in those times of peak load, the grid's reliability may also falter. Suppose that by 2 p.m. on August 15, it is 98 degrees in D. C. In every home, store, or office, people are turning the air conditioning up. To keep providing power to their customers, utilities and other LSEs must ask their market operator for more electricity. To meet that spike in demand, the operator will have to accept more expensive bids from suppliers. The operator, that is, will have to agree to the $40 bid that it spurned before—and maybe, beyond that, to bids of $50 or $60 or $70. In such periods, operators often must call on extremely inefficient generators whose high costs of production cause them to sit idle most of the time. See Energy Primer 41–42. As that happens, LMP—the price paid by *all* LSEs to *all* suppliers—climbs ever higher. And meanwhile, the increased flow of electricity through the grid threatens to overload transmission lines. See *id.*, at 44. As every consumer knows, it is just when the weather is hottest and the need for air conditioning most acute that blackouts, brownouts, and other service problems tend to occur.

Making matters worse, the wholesale electricity market lacks the self-correcting mechanism of other markets. Usually, when the price of a product rises, buyers naturally adjust by reducing how much they purchase. But consumers of electricity—and therefore the utilities and other LSEs buying power for them at wholesale—do not respond to price signals in that way. To use the economic term, demand for electricity is inelastic. That is in part because electricity is a necessity with few ready substitutes: When the tempera-

[1] To be more precise, LMP generally includes, in addition to the price of the highest-accepted bid, certain costs of moving power through the grid. But those costs are not relevant here, and we therefore disregard them.

ture reaches 98 degrees, many people see no option but to switch on the AC. And still more: Many State regulators insulate consumers from short-term fluctuations in wholesale prices by insisting that LSEs set stable retail rates. See *id.*, at 41, 43–44. That, one might say, short-circuits the normal rules of economic behavior. Even in peak periods, as costs surge in the wholesale market, consumers feel no pinch, and so keep running the AC as before. That means, in turn, that LSEs must keep buying power to send to those users—no matter that wholesale prices spiral out of control and increased usage risks overtaxing the grid.

But what if there were an alternative to that scenario? Consider what would happen if wholesale market operators could induce consumers to refrain from using (and so LSEs from buying) electricity during peak periods. Whenever doing that costs less than adding more power, an operator could bring electricity supply and demand into balance at a lower price. And simultaneously, the operator could ease pressure on the grid, thus protecting against system failures. That is the idea behind the practice at issue here: Wholesale demand response, as it is called, pays consumers for commitments to curtail their use of power, so as to curb wholesale rates and prevent grid breakdowns. See *id.*, at 44–46.[2]

These demand response programs work through the operators' regular auctions. Aggregators of multiple users of electricity, as well as large-scale individual users like factories or big-box stores, submit bids to decrease electricity consumption by a set amount at a set time for a set price. The wholesale market operators treat those offers just like bids from generators to increase supply. The operators, that is, rank order all the bids—both to produce and to refrain from consuming electricity—from least to most expensive, and

[2] Differently designed demand response programs can operate in retail markets. Some States, for example, either encourage or require utilities to offer "critical-peak rebates" to customers for curtailing electricity use at times of high load. See Energy Primer 45.

then accept the lowest bids until supply and demand come into equipoise. And, once again, the LSEs pick up the cost of all those payments. So, to return to our prior example, if a store submitted an offer *not* to use a unit of electricity at 2 p.m. on August 15 for $35, the operator would accept that bid before calling on the generator that offered to produce a unit of power for $40. That would result in a lower LMP—again, wholesale market price—than if the market operator could not avail itself of demand response pledges. See ISO/RTO Council, Harnessing the Power of Demand: How ISOs and RTOs Are Integrating Demand Response Into Wholesale Electricity Markets 40–43 (2007) (estimating that, in one market, a demand response program reducing electricity usage by 3% in peak hours would lead to price declines of 6% to 12%). And it would decrease the risk of blackouts and other service problems.

Wholesale market operators began using demand response some 15 years ago, soon after they assumed the role of overseeing wholesale electricity sales. Recognizing the value of demand response for both system reliability and efficient pricing, they urged FERC to allow them to implement such programs. See, *e. g.*, *PJM Interconnection, L. L. C.*, Order Accepting Tariff Sheets as Modified, 95 FERC ¶61,306 (2001); *California Independent System Operator Corp.*, Order Conditionally Accepting for Filing Tariff Revisions, 91 FERC ¶61,256 (2000). And as demand response went into effect, market participants of many kinds came to view it—in the words of respondent Electric Power Supply Association (EPSA)—as an "important element[ ] of robust, competitive wholesale electricity markets." App. 94, EPSA, Comments on Proposed Rule on Demand Response Compensation in Organized Wholesale Energy Markets (May 12, 2010).

Congress added to the chorus of voices praising wholesale demand response. In the Energy Policy Act of 2005, 119 Stat. 594 (EPAct), it declared as "the policy of the United States" that such demand response "shall be encouraged."

§ 1252(f), 119 Stat. 966, 16 U. S. C. § 2642 note. In particular, Congress directed, the deployment of "technology and devices that enable electricity customers to participate in . . . demand response systems shall be facilitated, and unnecessary barriers to demand response participation in energy . . . markets shall be eliminated." *Ibid.*[3]

B

Spurred on by Congress, the Commission determined to take a more active role in promoting wholesale demand response programs. In 2008, FERC issued Order No. 719, which (among other things) requires wholesale market operators to receive demand response bids from aggregators of electricity consumers, except when the state regulatory authority overseeing those users' retail purchases bars such demand response participation. See 73 Fed. Reg. 64119, ¶154 (codified 18 CFR § 35.28(g)(1) (2015)). That original order allowed operators to compensate demand response providers differently from generators if they so chose. No party sought judicial review.

Concerned that Order No. 719 had not gone far enough, FERC issued the rule under review here in 2011, with one commissioner dissenting. See *Demand Response Competition in Organized Wholesale Energy Markets*, Order No. 745, 76 Fed. Reg. 16658 (Rule) (codified 18 CFR § 35.28(g)(1)(v)). The Rule attempts to ensure "just and rea-

[3] The dissent misreads this subsection of the EPAct in suggesting that it encourages States' use of retail demand response, rather than the wholesale programs at issue here. See *post*, at 303–304 (opinion of SCALIA, J.); n. 2, *supra*. The prior subsection, § 1252(e), as the dissent notes, promotes demand response in the States—but then the EPAct switches gears. Subsection (f) expressly addresses the programs of "regional electricity entit[ies]"—that is, wholesale market operators. Indeed, the provision lists all the markets those operators run: not just the electricity market involved here, but also the "capacity and ancillary service markets." Those are established components of the wholesale system with no counterparts at the state level. See Energy Primer 59.

sonable" wholesale rates by requiring market operators to appropriately compensate demand response providers and thus bring about "meaningful demand-side participation" in the wholesale markets. 76 Fed. Reg. 16658, ¶1, 16660, ¶10; 16 U. S. C. § 824d(a). The Rule's most significant provision directs operators, under two specified conditions, to pay LMP for any accepted demand response bid, just as they do for successful supply bids. See 76 Fed. Reg. 16666–16669, ¶¶45–67. In other words, the Rule requires that demand response providers in those circumstances receive as much for conserving electricity as generators do for producing it.

The two specified conditions ensure that a bid to use less electricity provides the same value to the wholesale market as a bid to make more. First, a demand response bidder must have "the capability to provide the service" offered; it must, that is, actually be able to reduce electricity use and thereby obviate the operator's need to secure additional power. *Id.*, at 16666, ¶¶48–49. Second, paying LMP for a demand response bid "must be cost-effective," as measured by a standard called "the net benefits test." *Ibid.*, ¶48. That test makes certain that accepting a lower-priced demand response bid over a higher-priced supply bid will actually save LSEs (*i. e.*, wholesale purchasers) money. In some situations it will not, even though accepting a lower-priced bid (by definition) reduces LMP. That is because (to oversimplify a bit) LSEs share the cost of paying successful bidders, and reduced electricity use makes some LSEs drop out of the market, placing a proportionally greater burden on those that are left. Each remaining LSE may thus wind up paying more even though the total bill is lower; or said otherwise, the costs associated with an LSE's increased share of compensating bids may exceed the savings that the LSE obtains from a lower wholesale price.[4] The net bene-

[4] The explanation is a stylized version of the actual phenomenon. In reality, LSEs rarely drop out of the market entirely because of demand response; instead, they will merely order less electricity. But the effect

fits test screens out such counterproductive demand response bids, exempting them from the Rule's compensation requirement. See *id.*, at 16659, 16666–16667, ¶¶3, 50–53. What remains are only those offers whose acceptance will result in actual savings to wholesale purchasers (along with more reliable service to end users). See *id.*, at 16671, ¶¶78–80.

The Rule rejected an alternative scheme for compensating demand response bids. Several commenters had urged that, in paying a demand response provider, an operator should subtract from the ordinary wholesale price the savings that the provider nets by not buying electricity on the retail market. Otherwise, the commenters claimed, demand response providers would receive a kind of "double-payment" relative to generators. See *id.*, at 16663, ¶24. That proposal, which the dissenting commissioner largely accepted, became known as LMP minus G, or more simply LMP–G, where "G" stands for the retail price of electricity. See *id.*, at 16668, ¶60, 16680 (Moeller, dissenting). But FERC explained that, under the conditions it had specified, the value of an accepted demand response bid to the wholesale market is identical to that of an accepted supply bid because each succeeds in cost-effectively "balanc[ing] supply and demand." *Id.*, at 16667, ¶55. And, the Commission reasoned, that comparable value is what ought to matter given FERC's goal of strengthening competition in the wholesale market: Rates should reflect not the costs that each market participant incurs, but instead the services it provides. See *id.*, at 16668, ¶62. Moreover, the Rule stated, compensating demand response bids at their actual value—*i. e.*, LMP—will help overcome various technological barriers, including a lack of needed infrastructure, that impede aggregators and large-scale users of electricity

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is the same as in the text, because the total cost of accepted bids is spread among LSEs in proportion to the units of electricity they purchase; and as those units decline, each remaining one bears a greater share of the bill.

from fully participating in demand response programs. See *id.*, at 16667–16668, ¶¶57–58.

The Rule also responded to comments challenging FERC's statutory authority to regulate the compensation operators pay for demand response bids. Pointing to the Commission's analysis in Order No. 719, the Rule explained that the FPA gives FERC jurisdiction over such bids because they "directly affect[ ] wholesale rates." *Id.*, at 16676, ¶112 (citing 74 *id.*, at 37783, ¶47, and 18 U. S. C. § 824d). Nonetheless, the Rule noted, FERC would continue Order No. 719's policy of allowing any state regulatory body to prohibit consumers in its retail market from taking part in wholesale demand response programs. See 76 Fed. Reg. 16676, ¶114; 73 *id.*, at 64119, ¶154. Accordingly, the Rule does not require any "action[ ] that would violate State laws or regulations." 76 *id.*, at 16676, ¶114.

C

A divided panel of the Court of Appeals for the District of Columbia Circuit vacated the Rule as "*ultra vires* agency action." 753 F. 3d 216, 225 (2014). The court held that FERC lacked authority to issue the Rule even though "demand response compensation affects the wholesale market." *Id.*, at 221. The Commission's "jurisdiction to regulate practices 'affecting' rates," the court stated, "does not erase the specific limit[ ]" that the FPA imposes on FERC's regulation of retail sales. *Id.*, at 222. And the Rule, the court concluded, exceeds that limit: In "luring . . . *retail* customers" into the wholesale market, and causing them to decrease "levels of *retail* electricity consumption," the Rule engages in "direct regulation of the retail market." *Id.*, at 223–224.

The Court of Appeals held, alternatively, that the Rule is arbitrary and capricious under the Administrative Procedure Act, 5 U. S. C. § 706(2)(A), because FERC failed to "adequately explain[ ]" why paying LMP to demand response providers "results in just compensation." 753 F. 3d, at 225.

According to the court, FERC did not "properly consider" the view that such a payment would give those providers a windfall by leaving them with "the full LMP *plus* . . . the savings associated with" reduced consumption. *Ibid.* (quoting *Demand Response Competition in Organized Wholesale Energy Markets: Order on Rehearing and Clarification*, Order No. 745–A (Rehearing Order), 137 FERC ¶61,215, p. 62,316 (2011) (Moeller, dissenting)). The court dismissed out of hand the idea that "comparable contributions [could] be the reason for equal compensation." 753 F. 3d, at 225.

Judge Edwards dissented. He explained that the rules governing wholesale demand response have a "direct effect . . . on wholesale electricity rates squarely within FERC's jurisdiction." *Id.*, at 227. And in setting those rules, he argued, FERC did not engage in "direct regulation of the retail market"; rather, "[a]uthority over retail rates . . . remains vested solely in the States." *Id.*, at 234 (internal quotation marks omitted). Finally, Judge Edwards rejected the majority's view that the Rule is arbitrary and capricious. He noted the substantial deference due to the Commission in cases involving ratemaking, and concluded that FERC provided a "thorough" and "reasonable" explanation for choosing LMP as the appropriate compensation formula. *Id.*, at 236–238.

We granted certiorari, 575 U. S. 995 (2015), to decide whether the Commission has statutory authority to regulate wholesale market operators' compensation of demand response bids and, if so, whether the Rule challenged here is arbitrary and capricious. We now hold that the Commission has such power and that the Rule is adequately reasoned. We accordingly reverse.

II

Our analysis of FERC's regulatory authority proceeds in three parts. First, the practices at issue in the Rule—market operators' payments for demand response commitments—directly affect wholesale rates. Second, in address-

ing those practices, the Commission has not regulated retail sales. Taken together, those conclusions establish that the Rule complies with the FPA's plain terms. And third, the contrary view would conflict with the Act's core purposes by preventing all use of a tool that no one (not even EPSA) disputes will curb prices and enhance reliability in the wholesale electricity market.[5]

A

The FPA delegates responsibility to FERC to regulate the interstate wholesale market for electricity—both wholesale rates and the panoply of rules and practices affecting them. As noted earlier, the Act establishes a scheme for federal regulation of "the sale of electric energy at wholesale in interstate commerce." 16 U. S. C. § 824(b)(1); see *supra*, at 266. Under the statute, "[a]ll rates and charges made, demanded, or received by any public utility for or in connection with" interstate wholesale sales "shall be just and reasonable"; so too shall "all rules and regulations affecting or pertaining to such rates or charges." § 824d(a). And if FERC sees a violation of that standard, it must take remedial action. More specifically, whenever the Commission "shall find that any rate [or] charge"—or "any rule, regulation, practice, or contract affecting such rate [or] charge"—is "unjust [or] unreasonable," then the Commission "shall determine the just and reasonable rate, charge[,] rule, regulation, practice or contract" and impose "the same by order." § 824e(a). That means FERC has the authority—and, indeed, the duty—to ensure that rules or practices "affecting" wholesale rates are just and reasonable.

Taken for all it is worth, that statutory grant could extend FERC's power to some surprising places. As the court below noted, markets in all electricity's inputs—steel, fuel,

[5] Because we think FERC's authority clear, we need not address the Government's alternative contention that FERC's interpretation of the statute is entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984).

and labor most prominent among them—might affect generators' supply of power. See 753 F. 3d, at 221; *id.*, at 235 (Edwards, J., dissenting). And for that matter, markets in just about everything—the whole economy, as it were—might influence LSEs' demand. So if indirect or tangential impacts on wholesale electricity rates sufficed, FERC could regulate now in one industry, now in another, changing a vast array of rules and practices to implement its vision of reasonableness and justice. We cannot imagine that was what Congress had in mind.

For that reason, an earlier D. C. Circuit decision adopted, and we now approve, a common-sense construction of the FPA's language, limiting FERC's "affecting" jurisdiction to rules or practices that "*directly* affect the [wholesale] rate." *California Independent System Operator Corp.* v. *FERC*, 372 F. 3d 395, 403 (2004) (emphasis added); see 753 F. 3d, at 235 (Edwards, J., dissenting). As we have explained in addressing similar terms like "relating to" or "in connection with," a non-hyperliteral reading is needed to prevent the statute from assuming near-infinite breadth. See *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 655 (1995) ("If 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes [the statute] would never run its course"); *Maracich* v. *Spears*, 570 U. S. 48, 59 (2013) ("The phrase 'in connection with' is essentially indeterminat[e] because connections, like relations, stop nowhere" (internal quotation marks omitted)). The Commission itself incorporated the D. C. Circuit's standard in addressing its authority to issue the Rule. See 76 Fed. Reg. 16676, ¶112 (stating that FERC has jurisdiction because wholesale demand response "directly affects wholesale rates"). We think it right to do the same.

Still, the rules governing wholesale demand response programs meet that standard with room to spare. In general (and as earlier described), wholesale market operators em-

ploy demand response bids in competitive auctions that balance wholesale supply and demand and thereby set wholesale prices. See *supra*, at 270–271. The operators accept such bids if and only if they bring down the wholesale rate by displacing higher-priced generation. And when that occurs (most often in peak periods), the easing of pressure on the grid, and the avoidance of service problems, further contributes to lower charges. See Brief for Grid Engineers et al. as *Amici Curiae* 26–27. Wholesale demand response, in short, is all about reducing wholesale rates; so too, then, the rules and practices that determine how those programs operate.

And that is particularly true of the formula that operators use to compensate demand response providers. As in other areas of life, greater pay leads to greater participation. If rewarded at LMP, rather than at some lesser amount, more demand response providers will enter more bids capable of displacing generation, thus necessarily lowering wholesale electricity prices. Further, the Commission found, heightened demand response participation will put "downward pressure" on generators' own bids, encouraging power plants to offer their product at reduced prices lest they come away empty-handed from the bidding process. 76 Fed. Reg. 16660, ¶10. That, too, ratchets down the rates wholesale purchasers pay. Compensation for demand response thus directly affects wholesale prices. Indeed, it is hard to think of a practice that does so more.

B

The above conclusion does not end our inquiry into the Commission's statutory authority; to uphold the Rule, we also must determine that it does not regulate *retail* electricity sales. That is because, as earlier described, § 824(b) "limit[s] FERC's sale jurisdiction to that at wholesale," reserving regulatory authority over retail sales (as well as intrastate wholesale sales) to the States. *New York*, 535 U. S., at 17 (emphasis deleted); see 16 U. S. C. § 824(b); *supra*, at

266–267.[6] FERC cannot take an action transgressing that limit no matter how direct, or dramatic, its impact on wholesale rates. Suppose, to take a far-fetched example, that the Commission issued a regulation compelling every consumer to buy a certain amount of electricity on the retail market. Such a rule would necessarily determine the load purchased on the wholesale market too, and thus would alter wholesale prices. But even given that ineluctable consequence, the regulation would exceed FERC's authority, as defined in § 824(b), because it specifies terms of sale at retail—which is a job for the States alone.[7]

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[6] EPSA additionally cites § 824(a) as constraining the Commission's authority, see Brief for Respondent EPSA et al. 25, 31, 43 (Brief for Respondents), but that provision adds nothing to the analysis. Section 824(a), the FPA's "declaration of policy," states that federal regulation of electricity is to "extend only to those matters which are not subject to regulation by the States." We have often explained that this declaration serves only to frame the Act's basic structure and purpose. See, *e. g.*, *New York*, 535 U. S., at 22 (Section 824(a) "broadly expresse[s] [the Act's] purpose" (quoting *FPC* v. *Southern Cal. Edison Co.*, 376 U. S. 205, 215 (1964))); *id.*, at 215 (Section 824(a) is "merely a 'policy declaration . . . of great generality'" (quoting *Connecticut Light & Power Co.* v. *FPC*, 324 U. S. 515, 527 (1945))). That means, as applied to the issue here, that § 824(a) merely points toward the division of regulatory authority that § 824(b) carries out. The operative provision is what counts.

[7] The dissent disputes this framing of the issue, but its criticism (made by neither EPSA nor its *amici*) is irrelevant to deciding this case. According to the dissent, the FPA prohibits FERC from regulating not only retail sales of electricity (as we agree) but also any other sales of electricity aside from wholesale sales. See *post*, at 297–299. But the dissent turns out not to argue that the Rule regulates some kind of non-retail, non-wholesale sale of electric energy (whatever that might be). Rather, the dissent claims that the Rule regulates retail sales, see *post*, at 299–301—exactly the point that we address, and reject, in the following pages. And in any event, the dissent's framing of the issue is wrong if and to the extent it posits some undefined category of other electricity sales falling within neither FERC's nor the States' regulatory authority. Sales of electric energy come in two varieties: wholesale and retail. The very case the dissent relies on recognizes that fact by referring to "other sales, that

Yet a FERC regulation does not run afoul of § 824(b)'s proscription just because it affects—even substantially—the quantity or terms of retail sales. It is a fact of economic life that the wholesale and retail markets in electricity, as in every other known product, are not hermetically sealed from each other. To the contrary, transactions that occur on the wholesale market have natural consequences at the retail level. And so too, of necessity, will FERC's regulation of those wholesale matters. Cf. *Oneok, Inc.* v. *Learjet, Inc.*, 575 U. S. 373, 387 (2015) (noting that in the similarly structured world of natural gas regulation, a "Platonic ideal" of strict separation between federal and state realms cannot exist). When FERC sets a wholesale rate, when it changes wholesale market rules, when it allocates electricity as between wholesale purchasers—in short, when it takes virtually any action respecting wholesale transactions—it has some effect, in either the short or the long term, on retail rates. That is of no legal consequence. See, *e. g.*, *Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U. S. 354, 365, 370–373 (1988) (holding that an order regulating wholesale purchases fell within FERC's jurisdiction, and preempted contrary state action, even though it clearly affected retail prices); *Nantahala Power & Light Co.* v. *Thornburg*, 476 U. S. 953, 959–961, 970 (1986) (same); *FPC* v. *Louisiana Power & Light Co.*, 406 U. S. 621, 636–641 (1972) (holding similarly in the natural gas context). When FERC regulates what takes place on the wholesale market, as part of carrying out its charge to improve how that market runs,

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is, to direct sales for consumptive use." *Panhandle Eastern Pipe Line Co.* v. *Public Serv. Comm'n of Ind.*, 332 U. S. 507, 516 (1947). FERC regulates interstate wholesale sales of electricity; the States regulate retail sales of electricity. And FERC may also regulate, as it did here, practices and rules affecting wholesale prices—that is, matters beyond wholesale sales themselves—so long as, in doing so, it does not trespass on the States' authority to regulate retail sales of electric power. See *supra*, at 266–267.

then no matter the effect on retail rates, § 824(b) imposes no bar.

And in setting rules for demand response, that is all FERC has done. The Commission's Rule addresses—and addresses only—transactions occurring on the wholesale market. Recall once again how demand response works—and forgive the coming italics. See *supra*, at 270–271. *Wholesale* market operators administer the entire program, receiving every demand response bid made. Those operators accept such a bid at the mandated price when (and only when) the bid provides value to the *wholesale* market by balancing supply and demand more "cost-effective[ly]"—*i. e.*, at a lower cost to *wholesale* purchasers—than a bid to generate power. 76 Fed. Reg. 16659, 16666, ¶¶2, 48. The compensation paid for a successful bid (LMP) is whatever the operator's auction has determined is the marginal price of *wholesale* electricity at a particular location and time. See *id.*, at 16659, ¶2. And those footing the bill are the same *wholesale* purchasers that have benefited from the lower *wholesale* price demand response participation has produced. See *id.*, at 16674, ¶¶99–100. In sum, whatever the effects at the retail level, every aspect of the regulatory plan happens exclusively on the wholesale market and governs exclusively that market's rules.

What is more, the Commission's justifications for regulating demand response are all about, and only about, improving the wholesale market. Cf. *Oneok*, 575 U. S., at 385 (considering "the *target* at which [a] law *aims*" in determining whether a State is properly regulating retail or, instead, improperly regulating wholesale sales). In Order No. 719, FERC explained that demand response participation could help create a "well-functioning competitive wholesale electric energy market" with "reduce[d] wholesale power prices" and "enhance[d] reliability." 73 Fed. Reg. 64103, ¶16. And in the Rule under review, FERC expanded on that theme. It listed the several ways in which "demand response in or-

ganized wholesale energy markets can help improve the functioning and competitiveness of those markets": by replacing high-priced, inefficient generation; exerting "downward pressure" on "generator bidding strategies"; and "support[ing] system reliability." 76 *id.*, at 16660, ¶10; see Notice of Proposed Rulemaking for Order No. 745, 75 *id.*, at 15363–15364, ¶4 (2010) (noting similar aims); *supra*, at 270–271. FERC, that is, focused wholly on the benefits that demand response participation (in the wholesale market) could bring to the wholesale market. The retail market figures no more in the Rule's goals than in the mechanism through which the Rule operates.

EPSA's primary argument that FERC has usurped state power (echoed in the dissent) maintains that the Rule "effectively," even though not "nominal[ly]," regulates retail prices. See, *e. g.*, Brief for Respondents 1, 10, 23–27, 35–39; Tr. of Oral Arg. 26, 30; *post*, at 299–301. The argument begins on universally accepted ground: Under § 824(b), only the States, not FERC, can set retail rates. See, *e. g.*, *FPC* v. *Conway Corp.*, 426 U. S. 271, 276 (1976). But as EPSA concedes, that tenet alone cannot make its case, because FERC's Rule does not set actual rates: States continue to make or approve all retail rates, and in doing so may insulate them from price fluctuations in the wholesale market. See Brief for Respondents 39. Still, EPSA contends, rudimentary economic analysis shows that the Rule does the "functional equivalen[t]" of setting—more particularly, of raising—retail rates. *Id.*, at 36. That is because the opportunity to make demand response bids in the wholesale market changes consumers' calculations. In deciding whether to buy electricity at retail, economically-minded consumers now consider *both* the cost of making such a purchase *and* the cost of forgoing a possible demand response payment. So, EPSA explains, if a factory can buy electricity for $10/unit, but can earn $5/unit for *not* buying power at peak times, then the effective retail rate at those times is $15/unit: the $10 the factory paid

at retail plus the $5 it passed up. See *id.*, at 10. And by thus increasing effective retail rates, EPSA concludes, FERC trespasses on the States' ground.

The modifier "effective" is doing quite a lot of work in that argument—more work than any conventional understanding of rate-setting allows. The standard dictionary definition of the term "rate" (as used with reference to prices) is "[a]n amount paid or charged for a good or service." Black's Law Dictionary 1452 (10th ed. 2014); see, *e. g.*, 13 Oxford English Dictionary 208–209 (2d ed. 1989) ("rate" means "price," "cost," or "sum paid or asked for a . . . thing"). To set a retail electricity rate is thus to establish the amount of money a consumer will hand over in exchange for power. Nothing in § 824(b) or any other part of the FPA suggests a more expansive notion, in which FERC sets a rate for electricity merely by altering consumers' incentives to purchase that product.[8] And neither does anything in this Court's caselaw. Our decisions uniformly speak about rates, for electricity and all else, in only their most prosaic, garden-variety sense. As the Solicitor General summarized that view, "the rate is what it is." Tr. of Oral Arg. 7. It is the price paid, not the price paid *plus* the cost of a forgone economic opportunity.

Consider a familiar scenario to see what is odd about EPSA's theory. Imagine that a flight is overbooked. The airline offers passengers $300 to move to a later plane that has extra seats. On EPSA's view, that offer adds $300—the

[8] The dissent offers, alternatively, a definition of "price," but that only further proves our point. "Price," says the dissent, is "[t]he amount of money or other consideration asked for or given in exchange for something else." *Post*, at 300 (quoting Black's Law Dictionary 1380). But the "effective" rates posited by EPSA and the dissent do not meet that test. If $10 is the actual rate for a unit of retail electricity, that is the only amount either "asked for" or "given" in exchange for power. A retail customer is asked to pay $10 by its LSE, and if it buys that electricity, it gives the LSE that same $10. By contrast, the $15 "effective" rate is neither asked for nor given by anyone.

cost of not accepting the airline's proffered payment—to the price of every continuing passenger's ticket. So a person who originally spent $400 for his ticket, and decides to reject the airline's proposal, paid an "effective" price of $700. But would any passenger getting off the plane say he had paid $700 to fly? That is highly unlikely. And airline lawyers and regulators (including many, we are sure, with economics Ph. D.'s) appear to share that common-sensical view. It is in fact illegal to "increase the price" of "air transportation . . . after [such] air transportation has been purchased by the consumer." 14 CFR § 399.88(a) (2015). But it is a safe bet that no airline has ever gotten into trouble by offering a payment not to fly.[9]

And EPSA's "effective price increase" claim fares even worse when it comes to payments not to use electricity. In EPSA's universe, a wholesale demand response program raises retail rates by compelling consumers to "pay" the price of forgoing demand response compensation. But such a consumer would be even more surprised than our air traveler to learn of that price hike, because the natural consequence of wholesale demand response programs is to bring *down* retail rates. Once again, wholesale market operators accept demand response bids only if those offers lower the wholesale price. See *supra*, at 270–271. And when whole-

[9] The dissent replaces our simple, real-world example with a convoluted, fictitious one—but once again merely confirms our point. Suppose, the dissent says, that an airline cancels a passenger's $400 ticket; gives him a refund plus an extra $300; and then tells him that if he wants to repurchase the ticket, he must pay $700. Aha!, says the dissent—isn't the price now $700? See *post*, at 300–301. Well, yes it is, because that is now the *actual* amount the passenger will have to hand over to the airline to receive a ticket in exchange (or in the dissent's definition of price, the amount "asked for" and "given," see n. 8, *supra*). In other words, in search of an intuitive way to explain its "effective rate" theory, the dissent must rely on an "actual rate" hypothetical. But all that does is highlight the distance, captured in the law, between real prices (reflecting amounts paid) and effective ones (reflecting opportunity costs).

sale prices go down, retail prices tend to follow, because state regulators can, and mostly do, insist that wholesale buyers eventually pass on their savings to consumers. EPSA's theoretical construct thus runs headlong into the real world of electricity sales—where the Rule does anything but increase retail prices.

EPSA's second argument that FERC intruded into the States' sphere is more historical and purposive in nature. According to EPSA, FERC deliberately "lured [retail customers] into the[ ] wholesale markets"—and, more, FERC did so "only because [it was] dissatisfied with the States' exercise of their undoubted authority" under § 824(b) to regulate retail sales. Brief for Respondents 23; see *id.*, at 2–3, 31, 34. In particular, EPSA asserts, FERC disapproved of "many States' continued preference" for stable pricing—that is, for insulating retail rates from short-term fluctuations in wholesale costs. *Id.*, at 28. In promoting demand response programs—or, in EPSA's somewhat less neutral language, in "forc[ing] retail customers to respond to wholesale price signals"—FERC acted "for the express purpose of overriding" that state policy. *Id.*, at 29, 49.

That claim initially founders on the true facts of how wholesale demand response came about. Contra EPSA, the Commission did not invent the practice. Rather, and as described earlier, the impetus came from wholesale market operators. See *supra,* at 271. In designing their newly organized markets, those operators recognized almost at once that demand response would lower wholesale electricity prices and improve the grid's reliability. So they quickly sought, and obtained, FERC's approval to institute such programs. Demand response, then, emerged not as a Commission power grab, but instead as a market-generated innovation for more optimally balancing wholesale electricity supply and demand.

And when, years later (after Congress, too, endorsed the practice), FERC began to play a more proactive role, it did

so for the identical reason: to enhance the wholesale, not retail, electricity market. Like the market operators, FERC saw that sky-high demand in peak periods threatened network breakdowns, compelled purchases from inefficient generators, and consequently drove up wholesale prices. See, *e. g.*, 73 Fed. Reg. 64103, ¶16; 76 *id.*, at 16660, ¶10; see *supra*, at 269–270. Addressing those problems—which demand response does—falls within the sweet spot of FERC's statutory charge. So FERC took action promoting the practice. No doubt FERC recognized connections, running in both directions, between the States' policies and its own. The Commission understood that by insulating consumers from price fluctuations, States contributed to the wholesale market's difficulties in optimally balancing supply and demand. See 76 Fed. Reg. 16667–16668, ¶¶57, 59; *supra*, at 269–270. And FERC realized that increased use of demand response in that market would (by definition) inhibit retail sales otherwise subject to State control. See 73 Fed. Reg. 64167. But nothing supports EPSA's more feverish idea that the Commission's interest in wholesale demand response emerged from a yen to usurp State authority over, or impose its own regulatory agenda on, retail sales. In promoting demand response, FERC did no more than follow the dictates of its regulatory mission to improve the competitiveness, efficiency, and reliability of the wholesale market.

Indeed, the finishing blow to both of EPSA's arguments comes from FERC's notable solicitude toward the States. As explained earlier, the Rule allows any State regulator to prohibit its consumers from making demand response bids in the wholesale market. See 76 *id.*, at 16676, ¶114; 73 *id.*, at 64119, ¶154; *supra*, at 275. Although claiming the ability to negate such state decisions, the Commission chose not to do so in recognition of the linkage between wholesale and retail markets and the States' role in overseeing retail sales. See 76 Fed. Reg. 16676, ¶¶112–114. The veto power thus granted to the States belies EPSA's view that FERC aimed

to "obliterate[ ]" their regulatory authority or "override" their pricing policies. Brief for Respondents 29, 33. And that veto gives States the means to block whatever "effective" increases in retail rates demand response programs might be thought to produce. Wholesale demand response as implemented in the Rule is a program of cooperative federalism, in which the States retain the last word. That feature of the Rule removes any conceivable doubt as to its compliance with § 824(b)'s allocation of federal and state authority.

C

One last point, about how EPSA's position would subvert the FPA.

EPSA's jurisdictional claim, as may be clear by now, stretches very far. Its point is not that this single Rule, relating to compensation levels, exceeds FERC's power. Instead, EPSA's arguments—that rewarding energy conservation raises effective retail rates and that "luring" consumers onto wholesale markets aims to disrupt state policies—suggest that the entire practice of wholesale demand response falls outside what FERC can regulate. EPSA proudly embraces that point: FERC, it declares, "has no business regulating 'demand response' at all." *Id.*, at 24. Under EPSA's theory, FERC's earlier Order No. 719, although never challenged, would also be ultra vires because it requires operators to open their markets to demand response bids. And more: FERC could not even approve an operator's voluntary plan to administer a demand response program. See Tr. of Oral Arg. 44. That too would improperly allow a retail customer to participate in a wholesale market.

Yet state commissions could not regulate demand response bids either. EPSA essentially concedes this point. See Brief for Respondents 46 ("That may well be true"). And so it must. The FPA "leaves no room either for direct state regulation of the prices of interstate wholesales" or for regulation that "would indirectly achieve the same result." *Northern Natural Gas Co.* v. *State Corporation Comm'n of*

Kan., 372 U. S. 84, 91 (1963). A State could not oversee offers, made in a wholesale market operator's auction, that help to set wholesale prices. Any effort of that kind would be preempted.

And all of that creates a problem. If neither FERC nor the States can regulate wholesale demand response, then by definition no one can. But under the Act, no electricity transaction can proceed unless it is regulable by someone. As earlier described, Congress passed the FPA precisely to eliminate vacuums of authority over the electricity markets. See *supra*, at 265–266. The Act makes federal and state powers "complementary" and "comprehensive," so that "there [will] be no 'gaps' for private interests to subvert the public welfare." *Louisiana Power & Light Co.*, 406 U. S., at 631. Or said otherwise, the statute prevents the creation of any regulatory "no man's land." *FPC* v. *Transcontinental Gas Pipe Line Corp.*, 365 U. S. 1, 19 (1961); see *id.*, at 28. Some entity must have jurisdiction to regulate each and every practice that takes place in the electricity markets, demand response no less than any other.[10]

For that reason, the upshot of EPSA's view would be to extinguish the wholesale demand response program in its entirety. Under the FPA, each market operator must submit

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[10] The dissent contests this point (complaining that our decades' worth of precedents affirming it partly rely on legislative history), but the example the dissent offers in response misses the mark. See *post*, at 301–303. The dissent hypothesizes a rule enabling generators to sell directly to consumers and fixing all generation, transmission, and retail rates. But of course neither FERC nor the States could issue such a rule: If FERC did so, it would interfere with the States' authority over retail sales and rates as well as (most) generation; if a State did so, it would interfere with FERC's power over transmission. Thus, to implement such a scheme, the States would need to do some things and FERC to do others. And if the one or the other declined to cooperate, then the full scheme could not proceed. But that just goes to show that the FPA divides regulatory power over electricity matters between FERC and the States. The example does nothing to demonstrate that some electricity transactions can proceed outside any regulator's authority.

to FERC all its proposed rules and procedures. See 16 U. S. C. §§ 824d(c)–(d); 18 CFR §§ 35.28(c)(4), 35.3(a)(1). Assume that, as EPSA argues, FERC could not authorize any demand response program as part of that package. Nor could FERC simply allow such plans to go into effect without its consideration and approval. There are no "off the books" programs in the wholesale electricity markets—because, once again, there is no regulatory "no man's land." *Transcontinental*, 365 U. S., at 19. The FPA mandates that FERC review, and ensure the reasonableness of, every wholesale rule and practice. See 16 U. S. C. §§ 824d(a), 824e(a); *supra*, at 266, 277. If FERC could not carry out that duty for demand response, then those programs could not go forward.

And that outcome would flout the FPA's core objects. The statute aims to protect "against excessive prices" and ensure effective transmission of electric power. *Pennsylvania Water & Power Co.* v. *FPC*, 343 U. S. 414, 418 (1952); see *Gulf States Util. Co.* v. *FPC*, 411 U. S. 747, 758 (1973). As shown above, FERC has amply explained how wholesale demand response helps to achieve those ends, by bringing down costs and preventing service interruptions in peak periods. See *supra*, at 282. No one taking part in the rulemaking process—not even EPSA—seriously challenged that account. Even as he objected to FERC's compensation formula, Commissioner Moeller noted the unanimity of opinion as to demand response's value: "[N]owhere did I review any comment or hear any testimony that questioned the benefit of having demand response resources participate in the organized wholesale energy markets. On this point, there is no debate." 76 Fed. Reg. 16679; see also App. 82, EPSA, Comments on Proposed Rule (avowing "full[ ] support" for demand response participation in wholesale markets because of its "economic and operational" benefits).[11] Congress itself

[11] EPSA now contends that wholesale demand response is unnecessary because state regulators can adopt programs to reduce demand at the retail level. See Brief for Respondents 46–47. For example, States can

agreed, "encourag[ing]" greater use of demand response participation at the wholesale level. EPAct § 1252(f), 119 Stat. 966. That undisputed judgment extinguishes any last flicker of life in EPSA's argument. We will not read the FPA, against its clear terms, to halt a practice that so evidently enables the Commission to fulfill its statutory duties of holding down prices and enhancing reliability in the wholesale energy market.

III

These cases present a second, narrower question: Is FERC's decision to compensate demand response providers at LMP—the same price paid to generators—arbitrary and capricious? Recall here the basic issue. See *supra*, at 272–275. Wholesale market operators pay a single price—LMP—for all successful bids to supply electricity at a given time and place. The Rule orders operators to pay the identical price for a successful bid to conserve electricity so long as that bid can satisfy a "net benefits test"—meaning that it is sure to bring down costs for wholesale purchasers. In mandating that payment, FERC rejected an alternative proposal under which demand response providers would receive LMP minus G (LMP–G), where G is the retail rate for electricity. According to EPSA and others favoring that ap-

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insist that utilities give rebates to customers for not using energy at certain times. See n. 2, *supra*. But according to both the Commission and market participants, state-level programs cannot offer nearly the same benefits as wholesale demand response because individual utilities lack the regional scope and real-time information needed to identify when demand response will lower prices and ensure reliability system-wide. See 73 Fed. Reg. 64103, ¶18; Energy Primer 45–46; Brief for NRG Energy, Inc., as *Amicus Curiae* 20–22. Similarly, FERC addressed and rejected the dissent's suggestion that wholesale market operators could pay LSEs to reduce their electricity purchases: Because LSEs lose revenues whenever demand goes down, any demand response programs targeting those actors would be highly inefficient. See FERC, Assessment of Demand Response and Advanced Metering 72 (2006); Tr. of Oral Arg. 56 (Solicitor General noting that LSEs engaged in demand response would be "cannibaliz[ing] their own profits").

proach, demand response providers get a windfall—a kind of "double-payment"—unless market operators subtract the savings associated with conserving electricity from the ordinary compensation level. 76 Fed. Reg. 16663, ¶24. EPSA now claims that FERC failed to adequately justify its choice of LMP rather than LMP–G.

In reviewing that decision, we may not substitute our own judgment for that of the Commission. The "scope of review under the 'arbitrary and capricious' standard is narrow." *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983). A court is not to ask whether a regulatory decision is the best one possible or even whether it is better than the alternatives. Rather, the court must uphold a rule if the agency has "examine[d] the relevant [considerations] and articulate[d] a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made." *Ibid.* (internal quotation marks omitted). And nowhere is that more true than in a technical area like electricity rate design: "[W]e afford great deference to the Commission in its rate decisions." *Morgan Stanley*, 554 U. S., at 532.

Here, the Commission gave a detailed explanation of its choice of LMP. See 76 Fed. Reg. 16661–16669, ¶¶18–67. Relying on an eminent regulatory economist's views, FERC chiefly reasoned that demand response bids should get the same compensation as generators' bids because both provide the same value to a wholesale market. See *id.*, at 16662–16664, 16667–16668, ¶¶20, 31, 57, 61; see also App. 829–851, Reply Affidavit of Dr. Alfred E. Kahn (Aug. 30, 2010) (Kahn Affidavit). FERC noted that a market operator needs to constantly balance supply and demand, and that either kind of bid can perform that service cost-effectively—*i. e.*, in a way that lowers costs for wholesale purchasers. See 76 Fed. Reg. 16667–16668, ¶¶56, 61. A compensation system, FERC concluded, therefore should place the two kinds of bids "on

a competitive par." *Id.*, at 16668, ¶61 (quoting Kahn Affidavit); see also App. 830, Kahn Affidavit (stating that "economic efficiency requires" compensating the two equally given their equivalent function in a "competitive power market[ ]"). With both supply and demand response available on equal terms, the operator will select whichever bids, of whichever kind, provide the needed electricity at the lowest possible cost. See Rehearing Order, 137 FERC, at 62,301–62,302, ¶68 ("By ensuring that both . . . receive the same compensation for the same service, we expect the Final Rule to enhance the competitiveness" of wholesale markets and "result in just and reasonable rates").

That rationale received added support from FERC's adoption of the net benefits test. The Commission realized during its rulemaking that in some circumstances a demand response bid—despite reducing the wholesale rate—does *not* provide the same value as generation. See 76 Fed. Reg. 16664–16665, ¶38. As described earlier, that happens when the distinctive costs associated with compensating a demand response bid exceed the savings from a lower wholesale rate: The purchaser then winds up paying more than if the operator had accepted the best (even though higher priced) supply bid available. See *supra*, at 273–274. And so FERC developed the net benefits test to filter out such cases. See 76 Fed. Reg. 16666–16667, ¶¶50–53. With that standard in place, LMP is paid only to demand response bids that benefit wholesale purchasers—in other words, to those that function as "cost-effective alternative[s] to the next highest-bid generation." *Id.*, at 16667, ¶54. Thus, under the Commission's approach, a demand response provider will receive the same compensation as a generator only when it is in fact providing the same service to the wholesale market. See *ibid.*, ¶53.

The Commission responded at length to EPSA's contrary view that paying LMP, even in that situation, will overcompensate demand response providers because they are also "effectively receiv[ing] 'G,' the retail rate that they do not

need to pay." *Id.*, at 16668, ¶60. FERC explained that compensation ordinarily reflects only the value of the service an entity provides—not the costs it incurs, or benefits it obtains, in the process. So when a generator presents a bid, "the Commission does not inquire into the costs or benefits of production." *Ibid.*, ¶62. Different power plants have different cost structures. And, indeed, some plants receive tax credits and similar incentive payments for their activities, while others do not. See Rehearing Order, 137 FERC, at 62,301, ¶65, and n. 122. But the Commission had long since decided that such matters are irrelevant: Paying LMP to all generators—although some then walk away with more profit and some with less—"encourages more efficient supply and demand decisions." 76 Fed. Reg. 16668, ¶62 (internal quotation marks omitted). And the Commission could see no economic reason to treat demand response providers any differently. Like generators, they too experience a range of benefits and costs—both the benefits of not paying for electricity and the costs of not using it at a certain time. But, FERC again concluded, that is immaterial: To increase competition and optimally balance supply and demand, market operators should compensate demand response providers, like generators, based on their contribution to the wholesale system. See *ibid.*; 137 FERC, at 62,300, ¶60.

Moreover, FERC found, paying LMP will help demand response providers overcome certain barriers to participation in the wholesale market. See 76 Fed. Reg. 16667–16668, ¶¶57–59. Commenters had detailed significant start-up expenses associated with demand response, including the cost of installing necessary metering technology and energy management systems. See *id.*, at 16661, ¶18, 16667–16668, ¶57; see also, *e. g.*, App. 356, Viridity Energy, Inc., Comments on Proposed Rule on Demand Response Compensation in Organized Wholesale Energy Markets (May 13, 2010) (noting the "capital investments and operational changes needed" for demand response participation). The Commission agreed that

such factors inhibit potential demand responders from competing with generators in the wholesale markets. See 76 Fed. Reg. 16668, ¶59. It concluded that rewarding demand response at LMP (which is, in any event, the price reflecting its value to the market) will encourage that competition and, in turn, bring down wholesale prices. See *ibid.*

Finally, the Commission noted that determining the "G" in the formula LMP–G is easier proposed than accomplished. See *ibid.*, ¶63. Retail rates vary across and even within States, and change over time as well. Accordingly, FERC concluded, requiring market operators to incorporate G into their prices, "even though perhaps feasible," would "create practical difficulties." *Ibid.* Better, then, not to impose that administrative burden.

All of that together is enough. The Commission, not this or any other court, regulates electricity rates. The disputed question here involves both technical understanding and policy judgment. The Commission addressed that issue seriously and carefully, providing reasons in support of its position and responding to the principal alternative advanced. In upholding that action, we do not discount the cogency of EPSA's arguments in favor of LMP–G. Nor do we say that in opting for LMP instead, FERC made the better call. It is not our job to render that judgment, on which reasonable minds can differ. Our important but limited role is to ensure that the Commission engaged in reasoned decision-making—that it weighed competing views, selected a compensation formula with adequate support in the record, and intelligibly explained the reasons for making that choice. FERC satisfied that standard.

IV

FERC's statutory authority extends to the Rule at issue here addressing wholesale demand response. The Rule governs a practice directly affecting wholesale electricity rates. And although (inevitably) influencing the retail market too,

the Rule does not intrude on the States' power to regulate retail sales. FERC set the terms of transactions occurring in the organized wholesale markets, so as to ensure the reasonableness of wholesale prices and the reliability of the interstate grid—just as the FPA contemplates. And in choosing a compensation formula, the Commission met its duty of reasoned judgment. FERC took full account of the alternative policies proposed, and adequately supported and explained its decision. Accordingly, we reverse the judgment of the Court of Appeals for the District of Columbia Circuit and remand the cases for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of these cases.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

I believe the Federal Power Act (FPA or Act), 16 U. S. C. § 791a *et seq.*, prohibits the Federal Energy Regulatory Commission (FERC) from regulating the demand response of retail purchasers of power. I respectfully dissent from the Court's holding to the contrary.

I

A

I agree with the majority that FERC has the authority to regulate practices "affecting" wholesale rates. §§ 824d(a), 824e(a); *Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U. S. 354, 371 (1988). I also agree that this so-called "affecting" jurisdiction cannot be limitless. And I suppose I could even live with the Court's "direct effect" test as a reasonable limit. *Ante*, at 278. But as the majority recognizes, *ante*, at 279–280, that extratextual limit on the "affecting" jurisdiction merely supplements, not supplants,

limits that are already contained in the statutory text and structure. I believe the Court misconstrues the primary statutory limit. (Like the majority, I think that deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), is unwarranted because the statute is clear.)

The Act grants FERC authority to regulate the "generation . . . [and] transmission of electric energy in interstate commerce and the sale of such energy at wholesale." § 824(a). Yet the majority frames the issue thusly: "[T]o uphold the [r]ule, we also must determine that it does not regulate *retail* electricity sales." *Ante*, at 279. That formulation inverts the proper inquiry. The pertinent question under the Act is whether the rule regulates sales "*at wholesale*." If so, it falls within FERC's regulatory authority. If not, the rule is unauthorized whether or not it happens to regulate "*retail* electricity sales"; for, with exceptions not material here, the FPA prohibits FERC from regulating "*any other* sale of electric energy" that is *not* at wholesale. § 824(b)(1) (emphasis added). (The majority wisely ignores FERC's specious argument that the demand-response rule does not regulate any sale, wholesale or retail. See Brief for Petitioner in No. 14–840, p. 39. Paying someone *not* to conclude a transaction that otherwise would without a doubt have been concluded is most assuredly a regulation of that transaction. Cf. *Gonzales* v. *Raich*, 545 U. S. 1, 39–40 (2005) (SCALIA, J., concurring in judgment).)

Properly framing the inquiry matters not because I think there exists "some undefined category of . . . electricity sales" that is "non-retail [and] non-wholesale," *ante*, at 280, n. 7,*

*Although the majority dismisses this possibility, in fact it appears to think that demand response is in that category: It rejects the conclusion that the demand-response rule regulates retail sales, *ante*, at 279–286, yet also implicitly rejects the conclusion that it regulates wholesale sales—otherwise why rely on FERC's "affecting" jurisdiction to rescue the rule's legitimacy?

but because a proper framing of the inquiry is important to establish the default presumption regarding the scope of FERC's authority. While the majority would find every sale of electric energy to be *within* FERC's authority to regulate *unless* the transaction is demonstrably a retail sale, the statute actually *excludes* from FERC's jurisdiction all sales of electric energy *except* those that are demonstrably sales at wholesale.

So what, exactly, is a "sale of electric energy at wholesale"? We need not guess, for the Act provides a definition: "a sale of electric energy to any person *for resale*." § 824(d) (emphasis added). No matter how many times the majority incants and italicizes the word "wholesale," *ante*, at 282–283, nothing can change the fact that the vast majority of (and likely all) demand-response participants—"[a]ggregators of multiple users of electricity, as well as large-scale individual users like factories or big-box stores," *ante*, at 270—*do not resell electric energy*; they consume it themselves. FERC's own definition of demand response is aimed at energy *consumers*, not resellers. 18 CFR § 35.28(b)(4) (2015).

It is therefore quite beside the point that the challenged "[r]ule addresses—and addresses only—transactions occurring on the wholesale market," *ante*, at 282. For FERC's regulatory authority over electric-energy sales depends not on which "market" the "transactions occu[r] on" (whatever that means), but rather on the *identity of the putative purchaser*. If the purchaser is one who resells electric energy to other customers, the transaction is one "at wholesale" and thus within FERC's authority. If not, then not. Or so, at least, says the statute. As we long ago said of the parallel provision in the Natural Gas Act, 15 U. S. C. § 717, "[t]he line of the statute [i]s thus clear and complete. It cut[s] sharply and cleanly between sales for resale and direct sales for consumptive uses. No exceptions [a]re made in either category for particular uses, quantities, or otherwise." *Panhandle Eastern Pipe Line Co.* v. *Public Serv. Comm'n of Ind.*, 332

U. S. 507, 517 (1947). The majority makes no textual response to this plain reading of the statute.

The demand-response bidders here indisputably do not resell energy to other customers. It follows that the rule does not regulate electric-energy sales "at wholesale," and 16 U. S. C. § 824(b)(1) therefore forbids FERC to regulate these demand-response transactions. See *New York* v. *FERC*, 535 U. S. 1, 17 (2002). That is so whether or not those transactions "directly affect" wholesale rates; as we recently said in another context, we will not adopt a construction that "needlessly produces a contradiction in the statutory text." *Shapiro* v. *McManus*, *ante*, at 43. A faithful application of that principle would compel the conclusion that FERC may not "do under [§§ 824d(a) and 824e(a)] what [it] is forbidden to do under [§ 824(b)(1)]." *Ante*, at 44.

B

The analysis could stop there. But the majority is wrong even on its own terms, for the rule at issue here does in fact regulate "*retail* electricity sales," which are indisputably "matters . . . subject to regulation by the States" and therefore off-limits to FERC. § 824(a); see *FPC* v. *Conway Corp.*, 426 U. S. 271, 276 (1976); *Panhandle Eastern Pipe Line Co.*, *supra*, at 517–518. The demand-response participants are retail customers—they purchase electric energy solely for their own consumption. And FERC's demand-response scheme is intentionally "designed to induce lower consumption of electric energy"—in other words, to induce a reduction in "*retail* electricity sales"—by offering "incentive payments" to those customers. 18 CFR § 35.28(b)(4). The incentive payments effectively increase the retail price of electric energy for participating customers because they must now account for the opportunity cost of using, as opposed to abstaining from using, more energy. In other words, it literally *costs them more* to buy energy on the retail market. In the court below, FERC conceded that offer-

ing *credits* to retail customers to reduce their electricity consumption "would be an impermissible intrusion into the retail market" because it would in effect regulate retail rates. 753 F. 3d 216, 223 (CADC 2014). Demand-response incentive payments are identical in substance.

The majority resists this elementary economic conclusion (notwithstanding its own exhortation to "think back to Econ 101," *ante*, at 268). Why? Because its self-proclaimed "common-sensical" view dictates otherwise. *Ante*, at 285. Maybe the easiest way to see the majority's error is to take its own example: an airline passenger who rejects a $300 voucher for taking a later flight. Consider the following formulation of that example, indistinguishable in substance from the majority's formulation. (Indistinguishable because the hypothetical passenger has exactly the same options and outcomes available to him.) Suppose the airline said to the passenger: "We have proactively canceled your ticket and refunded $400 to your account; and because we have inconvenienced you, we have also deposited an extra $300. The money is yours to use as you like. But if you insist on repurchasing a ticket on the same flight, you must not only pay us $400, but return the $300 too." *Now* what is the effective price of the ticket? Sometimes an allegedly commonsensical intuition is just that—an intuition, often mistaken.

Moving closer to home, recall that demand-response participants must choose either to purchase a unit of energy at the prevailing retail price (say $10) or to withhold from purchasing that unit and receive instead an incentive payment (of say $5). The two options thus present a choice between having a unit of energy, on the one hand, and having $15 more in the bank, on the other. To repeat: take the energy, be $15 poorer; forgo the energy, be $15 richer. Is that not the very definition of price? See Black's Law Dictionary 1380 (10th ed. 2014) ("[t]he amount of money or other consideration asked for or given in exchange for something else"). In fact, is that not *the majority's* definition of price? *Ante*,

at 284 ("the amount of money a consumer will hand over in exchange for power").

In any event, the majority appears to recognize that the effective price is indeed $15—just as the effective price of the airline ticket in the hypothetical is $700. *Ante*, at 285, n. 9. That recognition gives away the game. For FERC is prohibited not just from directly setting or modifying retail *prices*; it is prohibited from regulating retail *sales*, no matter the means. *Panhandle Eastern Pipe Line Co.*, *supra*, at 517. Whether FERC sets the "real" retail price (to use the majority's idiosyncratic terminology, *ante*, at 285, n. 9) or the "effective" retail price is immaterial; either way, the rule—*by design*—induces demand-response participants to forgo retail electric-energy purchases they otherwise would have made. As noted, even FERC conceded that offering credits to retail customers would impermissibly regulate retail sales. The majority blithely overlooks this concession in favor of its own myopic view of retail pricing—all the while evading the inconvenient fact that fiddling with the effective retail price of electric energy, be it through incentive payments or hypothetical credits, *regulates retail sales* of electric energy no less than does direct ratesetting.

C

The majority cites dicta in several of our opinions expressing the assumption that state jurisdiction and federal jurisdiction under FERC cover the field, so that there is no regulatory "gap"; one entity or the other "must have jurisdiction to regulate each and every practice that takes place in the electricity markets." *Ante*, at 289. The cases that express such a principle, with respect to the Federal Power Act and its companion the Natural Gas Act, base it (no surprise) on legislative history. See, *e. g.*, *FPC* v. *Louisiana Power & Light Co.*, 406 U. S. 621, 631 (1972); *FPC* v. *Transcontinental Gas Pipe Line Corp.*, 365 U. S. 1, 19 (1961); *Panhandle Eastern Pipe Line Co.*, 332 U. S., at 517–518, and

n. 13. One would *expect* the congressional proponents of legislation to assert that it is "comprehensive" and leaves no stone unturned. But even if one is a fan of legislative history, surely one cannot rely upon such generalities in determining what a statute actually *does*. Whether it is "comprehensive" and leaves not even the most minor regulatory "gap" surely depends on what it says and not on what its proponents hoped to achieve. I cannot imagine a more irrational interpretive principle than the following, upon which the majority evidently relies:

> "[W]hen a dispute arises over whether a given transaction is within the scope of federal or state regulatory authority, we are not inclined to approach the problem negatively, thus raising the possibility that a 'no man's land' will be created. That is to say, in a borderline case where congressional authority is not explicit we must ask whether state authority can practicably regulate a given area and, if we find that it cannot, then we are impelled to decide that federal authority governs." *Transcontinental Gas Pipe Line Corp.*, *supra*, at 19–20 (citation omitted).

That extravagant and otherwise-unheard-of method of establishing regulatory jurisdiction was not necessary to the judgments that invoked it, and should disappear in the Court's memory hole.

Suppose FERC decides that eliminating the middleman would benefit the public, and therefore promulgates a rule allowing electric-energy generators to sell directly to retail consumers across state lines and fixing generation, transmission, and retail rates for such sales. I think it obvious this hypothetical scheme would be forbidden to FERC. Yet just as surely the States could not enact it either, for only FERC has authority to regulate "the transmission of electric energy in interstate commerce." 16 U. S. C. § 824(b)(1); see also *New York*, 535 U. S., at 19–20. Is this a regulatory

"gap"? Has the generator-to-consumer sales scheme fallen into a regulatory "no man's land"? *Must* FERC therefore be allowed to implement this scheme on its own? Applying the majority's *logic* would yield nothing but "yesses." Yet the majority acknowledges that neither FERC nor the States have regulatory jurisdiction over this scheme. *Ante*, at 289, n. 10. Such sales transactions, involving a mix of retail and wholesale players—*as the demand-response scheme does*—can be regulated (if at all) only by joint action. I would not call that a "problem," *ante*, at 289; I would call it an inevitable consequence of the federal-state division created by the FPA.

The majority is evidently distraught that affirming the decision below "would . . . extinguish the wholesale demand response program in its entirety." *Ibid.* Alarmist hyperbole. Excluding FERC jurisdiction would at most eliminate *this particular flavor* of FERC-regulated demand response. Nothing prevents FERC from tweaking its demand-response scheme by requiring incentive payments to be offered to *wholesale* customers, rather than retail ones. Brief for Respondent Electric Power Supply Assn. (EPSA) et al. 47–48; Brief for Respondents Midwest Load-Serving Entities 10–11. And retail-level demand-response programs, run by the States, do and would continue to exist. See Brief for Respondent EPSA et al. 46–47; Brief for Respondents Midwest Load-Serving Entities 6–11. In fact Congress seemed to presuppose that *States*, not FERC, would run such programs: The relevant provisions of the Energy Policy Act of 2005, 119 Stat. 594 *et seq.*, are intended "to encourage *States* to coordinate, on a regional basis, *State* energy policies to provide reliable and affordable demand response services." § 1252(e)(1), *id.*, at 965, codified at 16 U. S. C. § 2642 note (emphasis added). That statute also imposes several duties on the Secretary of Energy to assist States in implementing demand-response programs. §§ 1252(e)(2), (e)(3), 119 Stat. 965–966. In context, § 1252(f)

of the 2005 Act is therefore best read as directing the Secretary to eliminate "unnecessary barriers" to *States*' adopting and implementing demand-response systems—and not, as the majority contends, as "praising *wholesale* demand response" systems to be deployed and regulated by FERC, *ante*, at 271 (emphasis added).

Moreover, the rule itself allows States to forbid their retail customers to participate in the existing demand-response scheme. 18 CFR § 35.28(g)(1)(i)(A); see Brief for Petitioner in No. 14–840, at 43. The majority accepts FERC's argument that this is merely a matter of grace, and claims that it puts the "finishing blow" to respondents' argument that 16 U. S. C. § 824(b)(1) prohibits the scheme. *Ante*, at 287. Quite the contrary. Remember that the majority believes FERC's authority derives from 16 U. S. C. §§ 824d(a) and 824e(a), the grants of "affecting" jurisdiction. Yet those provisions impose a *duty* on FERC to ensure that "all rules and regulations affecting or pertaining to [wholesale] rates or charges *shall be just and reasonable*." § 824d(a) (emphasis added); see § 824e(a) (similar); *Conway Corp.*, 426 U. S., at 277–279. If inducing retail customers to participate in wholesale demand-response transactions is necessary to render wholesale rates "just and reasonable," how can FERC, consistent with its statutory mandate, permit States to thwart such participation? See Brief for United States as *Amicus Curiae* 20–21, in *Hughes* v. *Talen Energy Marketing, LLC*, No. 14–614 etc., now pending before the Court (making an argument similar to ours); cf. *New England Power Co.* v. *New Hampshire*, 455 U. S. 331, 339–341 (1982). Although not legally relevant, the fact that FERC—ordinarily so jealous of its regulatory authority, see Brief for United States as *Amicus Curiae* in No. 14–614 etc.—is willing to let States opt out of its demand-response scheme serves to highlight just how far the rule intrudes into the retail electricity market.

II

Having found the rule to be within FERC's authority, the Court goes on to hold that FERC's choice of compensating demand-response bidders with the "locational marginal price" is not arbitrary and capricious. There are strong arguments that it is. Brief for Robert L. Borlick et al. as *Amici Curiae* 5–34. Since, however, I believe FERC's rule is ultra vires I have neither need nor desire to analyze whether, if it were not ultra vires, it would be reasonable.

* * *

For the foregoing reasons, I respectfully dissent.

Per Curiam

JAMES *v.* CITY OF BOISE, IDAHO, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IDAHO

No. 15–493. Decided January 25, 2016

In *Hughes* v. *Rowe*, 449 U. S. 5, this Court determined that 42 U. S. C. § 1988 permits a prevailing defendant in a civil rights lawsuit filed under § 1983 to recover fees only if "the plaintiff's action was frivolous, unreasonable, or without foundation," 449 U. S., at 14. The Idaho Supreme Court concluded that it was not bound by *Hughes* and awarded attorney's fees under § 1988 to a prevailing defendant without first making the determination required by *Hughes*.

Held: The Idaho Supreme Court is bound by this Court's interpretation of federal law and erred in concluding otherwise. "'It is this Court's responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law.'" *Nitro-Lift Technologies, L. L. C.* v. *Howard*, 568 U. S. 17, 21.

Certiorari granted; 158 Idaho 713, 351 P. 3d 1171, reversed and remanded.

PER CURIAM.

Under federal law, a court has discretion to "allow the prevailing party, other than the United States, a reasonable attorney's fee" in a civil rights lawsuit filed under 42 U. S. C. § 1983. 42 U. S. C. § 1988(b). In *Hughes* v. *Rowe*, 449 U. S. 5 (1980) (*per curiam*), this Court interpreted § 1988 to permit a prevailing defendant in such a suit to recover fees only if "the plaintiff's action was frivolous, unreasonable, or without foundation." *Id.*, at 14 (quoting *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412, 421 (1978) (internal quotation marks omitted)).

In the decision below, the Idaho Supreme Court concluded that it was not bound by this Court's interpretation of § 1988 in *Hughes*. According to that court, "[a]lthough the Supreme Court may have the authority to limit the discretion of lower federal courts, it does not have the authority to limit the discretion of state courts where such limitation is not

contained in the statute." 158 Idaho 713, 734, 351 P. 3d 1171, 1192 (2015). The court then proceeded to award attorney's fees under § 1988 to a prevailing defendant without first determining that "the plaintiff's action was frivolous, unreasonable, or without foundation." The court's fee award rested solely on its interpretation of federal law; the court explicitly refused to award fees under state law. *Id.*, at 734–735, 351 P. 3d, at 1192–1193. We grant certiorari, and now reverse.

Section 1988 is a federal statute. "It is this Court's responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law." *Nitro-Lift Technologies, L. L. C.* v. *Howard*, 568 U. S. 17, 21 (2012) (*per curiam*) (quoting *Rivers* v. *Roadway Express, Inc.*, 511 U. S. 298, 312 (1994); internal quotation marks omitted). And for good reason. As Justice Story explained 200 years ago, if state courts were permitted to disregard this Court's rulings on federal law, "the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable." *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 348 (1816).

The Idaho Supreme Court, like any other state or federal court, is bound by this Court's interpretation of federal law. The state court erred in concluding otherwise. The judgment of the Idaho Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

AMGEN INC. ET AL. *v.* HARRIS ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15–278. Decided January 25, 2016

Respondent stockholders are former Amgen employees who participated in plans that qualified under the Employee Retirement Income Security Act of 1974 (ERISA) as eligible individual account plans and that, like employee stock ownership plans (ESOPs), offered employer stock as an option. They filed a class action alleging that petitioner fiduciaries had breached their fiduciary duties, including the duty of prudence. The District Court granted petitioners' motion to dismiss, but the Ninth Circuit reversed. This Court vacated that judgment and remanded the case in light of *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U. S. 409, where the Court held that ERISA fiduciaries who administer ESOPs are not entitled to a presumption of prudence but are "subject to the same duty of prudence that applies to ERISA fiduciaries in general, except that they need not diversify the fund's assets," *id.*, at 412, and instructed lower courts faced with such claims to determine whether the complaint itself "has plausibly alleged" facts sufficient to satisfy the liability standard, *id.*, at 429. On remand, the Ninth Circuit again reversed.

Held: The Ninth Circuit failed to properly evaluate the stockholders' complaint by failing to assess whether the complaint in its current form "plausibly allege[s]" a claim for breach of the duty of prudence. This Court's examination of that complaint has not found sufficient facts and allegations to state such a claim. On remand, the District Court should determine in the first instance whether the stockholders may amend their complaint in order to adequately plead a claim for breach of the duty of prudence guided by the standards provided in *Fifth Third.*

Certiorari granted; 788 F. 3d 916, reversed and remanded.

PER CURIAM.

The Court considers for the second time the Ninth Circuit's determination that respondent stockholders' complaint states a claim against petitioner fiduciaries for breach of the duty of prudence. The first time, the Court vacated and remanded in light of *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U. S. 409 (2014), a case which set forth the standards for stat-

ing a claim for breach of the duty of prudence against fiduciaries who manage employee stock ownership plans (ESOPs). On remand, the Ninth Circuit reiterated its conclusion that the complaint states such a claim. The Court now reverses and remands.

The stockholders are former employees of Amgen Inc. and its subsidiary Amgen Manufacturing, Limited, who participated in plans that qualified under 29 U. S. C. § 1107(d)(3)(A) as eligible individual account plans. Like ESOPs, these plans offer ownership in employer stock as an option to employees. The parties agree that the decision in *Fifth Third* is fully applicable to the plans at issue here. See 788 F. 3d 916, 935 (2014).

All of the plans had holdings in the Amgen Common Stock Fund (composed, unsurprisingly, of Amgen common stock) during the relevant period. The value of Amgen stock fell, and in 2007, the stockholders filed a class action against petitioner fiduciaries alleging that they had breached their fiduciary duties, including the duty of prudence, under the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U. S. C. § 1001 *et seq.* The District Court granted the fiduciaries' motion to dismiss, and the Ninth Circuit reversed, *Harris* v. *Amgen, Inc.*, 738 F. 3d 1026 (2013). The fiduciaries sought certiorari.

While that petition was pending, this Court issued a decision that concerned the duty of prudence owed by ERISA fiduciaries who administer ESOPs. That decision, *Fifth Third*, held that such ERISA fiduciaries are not entitled to a presumption of prudence but are "subject to the same duty of prudence that applies to ERISA fiduciaries in general, except that they need not diversify the fund's assets." 573 U. S., at 412.

Notwithstanding the lack of a presumption of prudence, *Fifth Third* noted that "Congress sought to encourage the creation of" ESOPs, *id.*, at 424, a purpose that the decision recognized may come into tension with ERISA's general

duty of prudence. Moreover, ESOP fiduciaries confront unique challenges given "the potential for conflict" that arises when fiduciaries are alleged to have imprudently "fail[ed] to act on inside information they had about the value of the employer's stock." *Id.*, at 423. *Fifth Third* therefore laid out standards to help "divide the plausible sheep from the meritless goats," *id.*, at 425:

> "To state a claim for breach of the duty of prudence on the basis of inside information, a plaintiff must plausibly allege an alternative action that the defendant could have taken that would have been consistent with the securities laws and that a prudent fiduciary in the same circumstances would not have viewed as more likely to harm the fund than to help it." *Id.*, at 428.

It further clarified that courts should determine whether the complaint itself states a claim satisfying that liability standard:

> "[L]ower courts faced with such claims should also consider *whether the complaint has plausibly alleged* that a prudent fiduciary in the defendant's position could not have concluded that stopping purchases—which the market might take as a sign that insider fiduciaries viewed the employer's stock as a bad investment—or publicly disclosing negative information would do more harm than good to the fund by causing a drop in the stock price and a concomitant drop in the value of the stock already held by the fund." *Id.*, at 429–430 (emphasis added).

In the matter that is once again before the Court here, following the issuance of *Fifth Third*, the Court granted the fiduciaries' first petition for a writ of certiorari, vacated the judgment, and remanded for further proceedings consistent with that decision. *Amgen Inc.* v. *Harris*, 573 U. S. 942 (2014). On remand, the Ninth Circuit reversed again the dismissal of the complaint and denied the fiduciaries' petition

for rehearing en banc. See 788 F. 3d 916. The fiduciaries once more sought certiorari.

The Court now holds that the Ninth Circuit failed to properly evaluate the complaint. That court explained that its previous opinion (that is, the one it issued before *Fifth Third* was decided) "had already assumed" the standards for ERISA fiduciary liability laid out by this Court in *Fifth Third*. 788 F. 3d, at 940. And it reasoned that the complaint at issue here satisfies those standards because when "the federal securities laws require disclosure of material information," it is "quite plausible" that removing the Amgen Common Stock Fund "from the list of investment options" would not "caus[e] undue harm to plan participants." *Id.*, at 937–938. The Ninth Circuit, however, failed to assess whether the complaint in its current form "has plausibly alleged" that a prudent fiduciary in the same position "could not have concluded" that the alternative action "would do more harm than good." *Fifth Third*, *supra*, at 429–430.

The Ninth Circuit's proposition that removing the Amgen Common Stock Fund from the list of investment options was an alternative action that could plausibly have satisfied *Fifth Third*'s standards may be true. If so, the facts and allegations supporting that proposition should appear in the stockholders' complaint. Having examined the complaint, the Court has not found sufficient facts and allegations to state a claim for breach of the duty of prudence.

Although the Ninth Circuit did not correctly apply *Fifth Third*, the stockholders are the masters of their complaint. The Court leaves to the District Court in the first instance whether the stockholders may amend it in order to adequately plead a claim for breach of the duty of prudence guided by the standards provided in *Fifth Third*.

The petition for certiorari is granted. The judgment of the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

GOBEILLE, CHAIR OF THE VERMONT GREEN MOUNTAIN CARE BOARD *v.* LIBERTY MUTUAL INSURANCE CO.

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

No. 14–181. Argued December 2, 2015—Decided March 1, 2016

Vermont law requires certain entities, including health insurers, to report payments relating to health care claims and other information relating to health care services to a state agency for compilation in an all-inclusive health care database. Respondent Liberty Mutual Insurance Company's health plan (Plan), which provides benefits in all 50 States, is an "employee welfare benefit plan" under the Employee Retirement Income Security Act of 1974 (ERISA). The Plan's third-party administrator, Blue Cross Blue Shield of Massachusetts, Inc. (Blue Cross), which is subject to Vermont's disclosure statute, was ordered to transmit its files on eligibility, medical claims, and pharmacy claims for the Plan's Vermont members. Respondent, concerned that the disclosure of such confidential information might violate its fiduciary duties, instructed Blue Cross not to comply and filed suit, seeking a declaration that ERISA pre-empts application of Vermont's statute and regulation to the Plan and an injunction prohibiting Vermont from trying to acquire data about the Plan or its members. The District Court granted summary judgment to Vermont, but the Second Circuit reversed, concluding that Vermont's reporting scheme is pre-empted by ERISA.

Held: ERISA pre-empts Vermont's statute as applied to ERISA plans. Pp. 319–327.

(a) ERISA expressly pre-empts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U. S. C. § 1144(a). As relevant here, the clause pre-empts a state law that has an impermissible "connection with" ERISA plans, *i. e.*, a law that governs, or interferes with the uniformity of, plan administration. *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 148. Pp. 319–320.

(b) The considerations relevant to the determination whether an impermissible connection exists—ERISA's objectives "as a guide to the scope of the state law that Congress understood would survive," *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 656, and "the nature of" the state law's "effect . . . on ERISA plans," *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N. A., Inc.*, 519 U. S. 316, 325—lead to the conclu-

sion that Vermont's regime, as applied to ERISA plans, is pre-empted. Pp. 320–326.

(1) ERISA seeks to make the benefits promised by an employer more secure by mandating certain oversight systems and other standard procedures, *Travelers*, 514 U. S., at 651, and those systems and procedures are intended to be uniform, *id.*, at 656. ERISA's extensive reporting, disclosure, and recordkeeping requirements are central to, and an essential part of, this uniform plan administration system. Vermont's law and regulation, however, also govern plan reporting, disclosure, and recordkeeping. Pre-emption is necessary in order to prevent multiple jurisdictions from imposing differing, or even parallel, regulations, creating wasteful administrative costs and threatening to subject plans to wide-ranging liability. ERISA's uniform rule design also makes clear that it is the Secretary of Labor, not the separate States, that is authorized to decide whether to exempt plans from ERISA reporting requirements or to require ERISA plans to report data such as that sought by Vermont. Pp. 320–324.

(2) Vermont's counterarguments are unpersuasive. Vermont argues that respondent has not shown that the state scheme has caused it to suffer economic costs, but respondent need not wait to bring its pre-emption claim until confronted with numerous inconsistent obligations and encumbered with any ensuing costs. In addition, the fact that ERISA and the state reporting scheme have different objectives does not transform Vermont's direct regulation of a fundamental ERISA function into an innocuous and peripheral set of additional rules. Vermont's regime also cannot be saved by invoking the State's traditional power to regulate in the area of public health. Pp. 324–326.

(c) ERISA's pre-existing reporting, disclosure, and recordkeeping provisions maintain their pre-emptive force regardless of whether the new Patient Protection and Affordable Care Act's reporting obligations also pre-empt state law. P. 326.

746 F. 3d 497, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, BREYER, ALITO, and KAGAN, JJ., joined. THOMAS, J., *post*, p. 327, and BREYER, J., *post*, p. 330, filed concurring opinions. GINSBURG, J., filed a dissenting opinion, in which SOTOMAYOR, J., joined, *post*, p. 332.

Bridget C. Asay, Solicitor General of Vermont, argued the cause for petitioner. With her on the briefs were *William H. Sorrell*, Attorney General, *Benjamin D. Battles*, Assist-

ant Attorney General, *David C. Frederick*, *Scott H. Angstreich*, *Peter K. Stris*, and *Brendan S. Maher*.

John F. Bash argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Verrilli*, *Deputy Solicitor General Kneedler*, *M. Patricia Smith*, and *Elizabeth Hopkins*.

Seth P. Waxman argued the cause for respondent. With him on the brief were *Paul R. Q. Wolfson*, *Matthew J. Thome*, *Jonathan A. Bressler*, *Andrew C. Liazos*, *M. Miller Baker*, and *Nancy L. Keating*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of New Hampshire by *Joseph A. Foster*, Attorney General, *Laura E. B. Lombardi*, Senior Assistant Attorney General, and *Jennifer J. Patterson*; for the State of New York et al. by *Eric T. Schneiderman*, Attorney General of New York, *Barbara D. Underwood*, Solicitor General, *Anisha S. Dasgupta*, Deputy Solicitor General, and *Matthew W. Grieco*, Assistant Solicitor General, and by the Attorneys General for their respective jurisdictions as follows: *Cynthia Coffman* of Colorado, *George Jepsen* of Connecticut, *Karl A. Racine* of the District of Columbia, *Douglas S. Chin* of Hawaii, *Lisa Madigan* of Illinois, *Derek Schmidt* of Kansas, *Janet T. Mills* of Maine, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Lori Swanson* of Minnesota, *Douglas J. Peterson* of Nebraska, *Ellen F. Rosenblum* of Oregon, *Peter F. Kilmartin* of Rhode Island, *Herbert H. Slatery III* of Tennessee, *Ken Paxton* of Texas, *Sean D. Reyes* of Utah, and *Robert W. Ferguson* of Washington; for AARP et al. by *Mary Ellen Signorille* and *Iris Y. Gonzalez*; for the American Hospital Association et al. by *Beth Heifetz* and *Frank Trinity*; for the American Medical Association et al. by *Mark E. Rust* and *Brian E. Casey*; for the Connecticut Health Insurance Exchange d/b/a Access Health CT by *Patrick M. Fahey*; for the Harvard Law School Center for Health Law and Policy Innovation et al. by *Carmel Shachar*; for the National Association of Health Data Organizations et al. by *Stephen P. Nash*; and for the National Governors Association et al. by *Lisa Soronen*, *Gail Sciacchetano*, and *Jennifer McAdam*.

Briefs of *amici curiae* urging affirmance were filed for the American Benefits Council et al. by *Nancy G. Ross*, *Brian D. Netter*, *Kathryn Wilber*, *Thomas Wilder*, *Annette Guarisco Fildes*, *Kathryn Comerford Todd*, and *Warren Postman*; for the Blue Cross and Blue Shield Association by *Anthony F. Shelley*, *Theresa S. Gee*, and *Dawn E. Murphy-Johnson*; for the National Coordinating Committee for Multiemployer Plans by *Sally*

JUSTICE KENNEDY delivered the opinion of the Court.

This case presents a challenge to the applicability of a state law requiring disclosure of payments relating to health care claims and other information relating to health care services. Vermont enacted the statute so it could maintain an all-inclusive health care database. Vt. Stat. Ann., Tit. 18, § 9410(a)(1) (2015 Cum. Supp.) (V. S. A.). The state law, by its terms, applies to health plans established by employers and regulated by the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U. S. C. § 1001 *et seq.* The question before the Court is whether ERISA pre-empts the Vermont statute as it applies to ERISA plans.

I

A

Vermont requires certain public and private entities that provide and pay for health care services to report information to a state agency. The reported information is compiled into a database reflecting "all health care utilization, costs, and resources in [Vermont], and health care utilization and costs for services provided to Vermont residents in another state." 18 V. S. A. § 9410(b). A database of this kind is sometimes called an all-payer claims database, for it requires submission of data from all health insurers and other entities that pay for health care services. Almost 20 States have or are implementing similar databases. See Brief for State of New York et al. as *Amici Curiae* 1, and n. 1.

Vermont's law requires health insurers, health care providers, health care facilities, and governmental agencies to report any "information relating to health care costs, prices,

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M. Tedrow and *Jennifer R. Simon*; and for the New England Legal Foundation by *John Pagliaro* and *Martin J. Newhouse.*

Briefs of *amici curiae* were filed for the Association of American Physicians and Surgeons, Inc., et al. by *Andrew L. Schlafly*; and for Edward A. Zelinsky, by *Mr. Zelinsky*, *pro se.*

quality, utilization, or resources required" by the state agency, including data relating to health insurance claims and enrollment. § 9410(c)(3). Health insurers must submit claims data on members, subscribers, and policyholders. § 9410(h). The Vermont law defines health insurer to include a "self-insured . . . health care benefit plan," § 9402(8), as well as "any third party administrator" and any "similar entity with claims data, eligibility data, provider files, and other information relating to health care provided to a Vermont resident," § 9410(j)(1)(B). The database must be made "available as a resource for insurers, employers, providers, purchasers of health care, and state agencies to continuously review health care utilization, expenditures, and performance in Vermont." § 9410(h)(3)(B).

Vermont law leaves to a state agency the responsibility to "establish the types of information to be filed under this section, and the time and place and the manner in which such information shall be filed." § 9410(d). The law has been implemented by a regulation creating the Vermont Healthcare Claims Uniform Reporting and Evaluation System. The regulation requires the submission of "medical claims data, pharmacy claims data, member eligibility data, provider data, and other information," Reg. H–2008–01, Code of Vt. Rules 21–040–021, § 4(D) (2016) (CVR), in accordance with specific formatting, coding, and other requirements, § 5. Under the regulation, health insurers must report data about the health care services provided to Vermonters regardless of whether they are treated in Vermont or out of State and about non-Vermonters who are treated in Vermont. § 4(D); see also § 1. The agency at present does not collect data on denied claims, § 5(A)(8), but the statute would allow it to do so.

Covered entities (reporters) must register with the State and must submit data monthly, quarterly, or annually, depending on the number of individuals that an entity serves. The more people served, the more frequently the reports

must be filed. §§ 4, 6(I). Entities with fewer than 200 members need not report at all, *ibid.*, and are termed "voluntary" reporters as distinct from "mandated" reporters, § 3. Reporters can be fined for not complying with the statute or the regulation. § 10; 18 V. S. A. § 9410(g).

B

Respondent Liberty Mutual Insurance Company maintains a health plan (Plan) that provides benefits in all 50 States to over 80,000 individuals, comprising respondent's employees, their families, and former employees. The Plan is self-insured and self-funded, which means that Plan benefits are paid by respondent. The Plan, which qualifies as an "employee welfare benefit plan" under ERISA, 29 U. S. C. § 1002(1), is subject to "ERISA's comprehensive regulation," *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 650 (1995). Respondent, as the Plan sponsor, is both a fiduciary and plan administrator.

The Plan uses Blue Cross Blue Shield of Massachusetts, Inc. (Blue Cross), as a third-party administrator. Blue Cross manages the "processing, review, and payment" of claims for respondent. *Liberty Mut. Ins. Co.* v. *Donegan*, 746 F. 3d 497, 502 (CA2 2014) (case below). In its contract with Blue Cross, respondent agreed to "hold [Blue Cross] harmless for any charges, including legal fees, judgments, administrative expenses and benefit payment requirements, . . . arising from or in connection with [the Plan] or due to [respondent's] failure to comply with any laws or regulations." App. 82. The Plan is a voluntary reporter under the Vermont regulation because it covers some 137 Vermonters, which is fewer than the 200-person cutoff for mandated reporting. Blue Cross, however, serves several thousand Vermonters, and so it is a mandated reporter. Blue Cross, therefore, must report the information it possesses about the Plan's members in Vermont.

In August 2011, Vermont issued a subpoena ordering Blue Cross to transmit to a state-appointed contractor all the files it possessed on member eligibility, medical claims, and pharmacy claims for Vermont members. *Id.*, at 33. (For clarity, the Court uses "Vermont" to refer not only to the State but also to state officials acting in their official capacity.) The penalty for noncompliance, Vermont threatened, would be a fine of up to $2,000 a day and a suspension of Blue Cross' authorization to operate in Vermont for as long as six months. *Id.*, at 31. Respondent, concerned in part that the disclosure of confidential information regarding its members might violate its fiduciary duties under the Plan, instructed Blue Cross not to comply. Respondent then filed this action in the United States District Court for the District of Vermont. It sought a declaration that ERISA pre-empts application of Vermont's statute and regulation to the Plan and an injunction prohibiting Vermont from trying to acquire data about the Plan or its members.

Vermont filed a motion to dismiss, which the District Court treated as one for summary judgment, see Fed. Rule Civ. Proc. 12(d), and respondent filed a cross-motion for summary judgment. The District Court granted summary judgment to Vermont. It first held that respondent, despite being a mere voluntary reporter, had standing to sue because it was faced with either allegedly violating its "fiduciary and administrative responsibilities to the Plan" or assuming liability for Blue Cross' withholding of the data from Vermont. *Liberty Mut. Ins. Co.* v. *Kimbell*, No. 2:11–cv–204 (D Vt., Nov. 9, 2012), p. 12. The District Court then concluded that the State's reporting scheme was not preempted. Although that scheme "may have some indirect effect on health benefit plans," the court reasoned that the "effect is so peripheral that the regulation cannot be considered an attempt to interfere with the administration or structure of a welfare benefit plan." *Id.*, at 31–32.

The Court of Appeals for the Second Circuit reversed. The panel was unanimous in concluding that respondent had standing, but it divided on the merits of the pre-emption challenge. The panel majority explained that "one of ERISA's core functions—reporting—[cannot] be laden with burdens, subject to incompatible, multiple and variable demands, and freighted with risk of fines, breach of duty, and legal expense." 746 F. 3d, at 510. The Vermont regime, the court held, does just that. *Id.*, at 508–510.

This Court granted certiorari to address the important issue of ERISA pre-emption. 576 U. S. 1053 (2015).

II

The text of ERISA's express pre-emption clause is the necessary starting point. It is terse but comprehensive. ERISA pre-empts

> "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U. S. C. § 1144(a).

The Court has addressed the potential reach of this clause before. In *Travelers*, the Court observed that "[i]f 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course." 514 U. S., at 655. That is a result "no sensible person could have intended." *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N. A., Inc.*, 519 U. S. 316, 336 (1997) (Scalia, J., concurring). So the need for workable standards has led the Court to reject "uncritical literalism" in applying the clause. *Travelers*, 514 U. S., at 656.

Implementing these principles, the Court's case law to date has described two categories of state laws that ERISA pre-empts. First, ERISA pre-empts a state law if it has a "'reference to'" ERISA plans. *Ibid.* To be more precise, "[w]here a State's law acts immediately and exclusively upon

ERISA plans . . . or where the existence of ERISA plans is essential to the law's operation . . . , that 'reference' will result in pre-emption." *Dillingham*, *supra*, at 325. Second, ERISA pre-empts a state law that has an impermissible "connection with" ERISA plans, meaning a state law that "governs . . . a central matter of plan administration" or "interferes with nationally uniform plan administration." *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 148 (2001). A state law also might have an impermissible connection with ERISA plans if "acute, albeit indirect, economic effects" of the state law "force an ERISA plan to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers." *Travelers*, *supra*, at 668. When considered together, these formulations ensure that ERISA's express pre-emption clause receives the broad scope Congress intended while avoiding the clause's susceptibility to limitless application.

III

Respondent contends that Vermont's law falls in the second category of state laws that are pre-empted by ERISA: laws that govern, or interfere with the uniformity of, plan administration and so have an impermissible "'connection with'" ERISA plans. *Egelhoff*, *supra*, at 148; *Travelers*, 514 U. S., at 656. When presented with these contentions in earlier cases, the Court has considered "the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive," *ibid.*, and "the nature of the effect of the state law on ERISA plans," *Dillingham*, *supra*, at 325. Here, those considerations lead the Court to conclude that Vermont's regime, as applied to ERISA plans, is pre-empted.

A

ERISA does not guarantee substantive benefits. The statute, instead, seeks to make the benefits promised by an

employer more secure by mandating certain oversight systems and other standard procedures. *Travelers*, 514 U. S., at 651. Those systems and procedures are intended to be uniform. *Id.*, at 656 (ERISA's pre-emption clause "indicates Congress's intent to establish the regulation of employee welfare benefit plans 'as exclusively a federal concern'" (quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U. S. 504, 523 (1981))). "Requiring ERISA administrators to master the relevant laws of 50 States and to contend with litigation would undermine the congressional goal of 'minimiz[ing] the administrative and financial burden[s]' on plan administrators—burdens ultimately borne by the beneficiaries." *Egelhoff*, *supra*, at 149–150 (quoting *Ingersoll-Rand Co.* v. *McClendon*, 498 U. S. 133, 142 (1990)); see also *Fort Halifax Packing Co.* v. *Coyne*, 482 U. S. 1, 9 (1987).

ERISA's reporting, disclosure, and recordkeeping requirements for welfare benefit plans are extensive. ERISA plans must present participants with a plan description explaining, among other things, the plan's eligibility requirements and claims-processing procedures. §§ 1021(a)(1), 1022, 1024(b)(1). Plans must notify participants when a claim is denied and state the basis for the denial. § 1133(1). Most important for the pre-emption question presented here, welfare benefit plans governed by ERISA must file an annual report with the Secretary of Labor. The report must include a financial statement listing assets and liabilities for the previous year and, further, receipts and disbursements of funds. §§ 1021(b), 1023(b)(1), 1023(b)(3)(A)–(B), 1024(a). The information on assets and liabilities as well as receipts and disbursements must be provided to plan participants on an annual basis as well. §§ 1021(a)(2), 1023(b)(3)(A)–(B), 1024(b)(3). Because welfare benefit plans are in the business of providing benefits to plan participants, a plan's reporting of data on disbursements by definition incorporates paid claims. See Dept. of Labor, Schedule H (Form 5500)

Financial Information (2015) (requiring reporting of "[b]enefit claims payable" and "[b]enefit payment and payments to provide benefits"), online at http://www.dol.gov/ebsa/pdf/2015-5500-Schedule-H.pdf (as last visited Feb. 26, 2016).

The Secretary of Labor has authority to establish additional reporting and disclosure requirements for ERISA plans. ERISA permits the Secretary to use the data disclosed by plans "for statistical and research purposes, and [to] compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate." § 1026(a). The Secretary also may, "in connection" with any research, "collect, compile, analyze, and publish data, information, and statistics relating to" plans. § 1143(a)(1); see also § 1143(a)(3) (approving "other studies relating to employee benefit plans, the matters regulated by this subchapter, and the enforcement procedures provided for under this subchapter").

ERISA further permits the Secretary of Labor to "requir[e] any information or data from any [plan] where he finds such data or information is necessary to carry out the purposes of" the statute, § 1024(a)(2)(B), and, when investigating a possible statutory violation, "to require the submission of reports, books, and records, and the filing of data" related to other requisite filings, § 1134(a)(1). The Secretary has the general power to promulgate regulations "necessary or appropriate" to administer the statute, § 1135, and to provide exemptions from any reporting obligations, § 1024(a)(3).

It should come as no surprise, then, that plans must keep detailed records so compliance with ERISA's reporting and disclosure requirements may be "verified, explained, or clarified, and checked for accuracy and completeness." § 1027. The records to be retained must "include vouchers, worksheets, receipts, and applicable resolutions." *Ibid.*; see also § 1135 (allowing the Secretary to "provide for the keeping of books and records, and for the inspection of such books and records").

These various requirements are not mere formalities. Violation of any one of them may result in both civil and criminal liability. See §§ 1131–1132.

As all this makes plain, reporting, disclosure, and recordkeeping are central to, and an essential part of, the uniform system of plan administration contemplated by ERISA. The Court, in fact, has noted often that these requirements are integral aspects of ERISA. See, *e. g.*, *Dillingham*, 519 U. S., at 327; *Travelers*, *supra*, at 651; *Ingersoll-Rand*, *supra*, at 137; *Massachusetts* v. *Morash*, 490 U. S. 107, 113, 115 (1989); *Fort Halifax*, *supra*, at 9; *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U. S. 724, 732 (1985).

Vermont's reporting regime, which compels plans to report detailed information about claims and plan members, both intrudes upon "a central matter of plan administration" and "interferes with nationally uniform plan administration." *Egelhoff*, 532 U. S., at 148. The State's law and regulation govern plan reporting, disclosure, and—by necessary implication—recordkeeping. These matters are fundamental components of ERISA's regulation of plan administration. Differing, or even parallel, regulations from multiple jurisdictions could create wasteful administrative costs and threaten to subject plans to wide-ranging liability. See, *e. g.*, 18 V. S. A. § 9410(g) (supplying penalties for violation of Vermont's reporting rules); CVR § 10 (same). Pre-emption is necessary to prevent the States from imposing novel, inconsistent, and burdensome reporting requirements on plans.

The Secretary of Labor, not the States, is authorized to administer the reporting requirements of plans governed by ERISA. He may exempt plans from ERISA reporting requirements altogether. See § 1024(a)(3); 29 CFR § 2520.104–44 (2005) (exempting self-insured health plans from the annual financial reporting requirement). And, he may be authorized to require ERISA plans to report data similar to that which Vermont seeks, though that question is not presented here. Either way, the uniform rule design of

ERISA makes it clear that these decisions are for federal authorities, not for the separate States.

B

Vermont disputes the pre-emption of its reporting regime on several fronts. The State argues that respondent has not demonstrated that the reporting regime in fact has caused it to suffer economic costs. Brief for Petitioner 52–54. But respondent's challenge is not based on the theory that the State's law must be pre-empted solely because of economic burdens caused by the state law. See *Travelers*, 514 U. S., at 668. Respondent argues, rather, that Vermont's scheme regulates a central aspect of plan administration and, if the scheme is not pre-empted, plans will face the possibility of a body of disuniform state reporting laws and, even if uniform, the necessity to accommodate multiple governmental agencies. A plan need not wait to bring a pre-emption claim until confronted with numerous inconsistent obligations and encumbered with any ensuing costs.

Vermont contends, furthermore, that ERISA does not pre-empt the state statute and regulation because the state reporting scheme has different objectives. This Court has recognized that "[t]he principal object of [ERISA] is to protect plan participants and beneficiaries," *Boggs* v. *Boggs*, 520 U. S. 833, 845 (1997). And "[i]n enacting ERISA, Congress' primary concern was with the mismanagement of funds accumulated to finance employee benefits and the failure to pay employees benefits from accumulated funds." *Morash*, *supra*, at 115. The State maintains that its program has nothing to do with the financial solvency of plans or the prudent behavior of fiduciaries. See Brief for Petitioner 29. This does not suffice to avoid federal pre-emption.

"[P]re-emption claims turn on Congress's intent." *Travelers*, 514 U. S., at 655. The purpose of a state law, then, is relevant only as it may relate to the "scope of the state law that Congress understood would survive," *id.*, at 656, or "the

nature of the effect of the state law on ERISA plans," *Dillingham*, *supra*, at 325. In *Travelers*, for example, the Court noted that "[b]oth the purpose and the effects of" the state law at issue "distinguish[ed] it from" laws that "function as a regulation of an ERISA plan itself." 514 U. S., at 658–659. The perceived difference here in the objectives of the Vermont law and ERISA does not shield Vermont's reporting regime from pre-emption. Vermont orders health insurers, including ERISA plans, to report detailed information about the administration of benefits in a systematic manner. This is a direct regulation of a fundamental ERISA function. Any difference in purpose does not transform this direct regulation of "a central matter of plan administration," *Egelhoff*, *supra*, at 148, into an innocuous and peripheral set of additional rules.

The Vermont regime cannot be saved by invoking the State's traditional power to regulate in the area of public health. The Court in the past has "addressed claims of preemption with the starting presumption that Congress does not intend to supplant state law," in particular state laws regulating a subject of traditional state power. *Travelers*, *supra*, at 654–655. ERISA, however, "certainly contemplated the pre-emption of substantial areas of traditional state regulation." *Dillingham*, *supra*, at 330. ERISA preempts a state law that regulates a key facet of plan administration even if the state law exercises a traditional state power. See *Egelhoff*, *supra*, at 151–152. The fact that reporting is a principal and essential feature of ERISA demonstrates that Congress intended to pre-empt state reporting laws like Vermont's, including those that operate with the purpose of furthering public health. The analysis may be different when applied to a state law, such as a tax on hospitals, see *De Buono* v. *NYSA–ILA Medical and Clinical Services Fund*, 520 U. S. 806 (1997), the enforcement of which necessitates incidental reporting by ERISA plans; but that is not the law before the Court. Any presumption

against pre-emption, whatever its force in other instances, cannot validate a state law that enters a fundamental area of ERISA regulation and thereby counters the federal purpose in the way this state law does.

IV

Respondent suggests that the Patient Protection and Affordable Care Act (ACA), which created new reporting obligations for employer-sponsored health plans and incorporated those requirements into the body of ERISA, further demonstrates that ERISA pre-empts Vermont's reporting regime. See 29 U. S. C. § 1185d; 42 U. S. C. §§ 300gg–15a, 17; § 18031(e)(3). The ACA, however, specified that it shall not "be construed to preempt any State law that does not prevent the application of the provisions" of the ACA. 42 U. S. C. § 18041(d). This anti-pre-emption provision might prevent any new ACA-created reporting obligations from pre-empting state reporting regimes like Vermont's, notwithstanding the incorporation of these requirements in the heart of ERISA. But see 29 U. S. C. § 1191(a)(2) (providing that the new ACA provisions shall not be construed to affect or modify the ERISA pre-emption clause as applied to group health plans); 42 U. S. C. § 300gg–23(a)(2) (same).

The Court has no need to resolve this issue. ERISA's pre-existing reporting, disclosure, and recordkeeping provisions—upon which the Court's conclusion rests—maintain their pre-emptive force whether or not the new ACA reporting obligations also pre-empt state law.

* * *

ERISA's express pre-emption clause requires invalidation of the Vermont reporting statute as applied to ERISA plans. The state statute imposes duties that are inconsistent with the central design of ERISA, which is to provide a single uniform national scheme for the administration of ERISA plans without interference from laws of the several States

even when those laws, to a large extent, impose parallel requirements. The judgment of the Court of Appeals for the Second Circuit is

Affirmed.

JUSTICE THOMAS, concurring.

I join the Court's opinion because it faithfully applies our precedents interpreting 29 U. S. C. § 1144, the express pre-emption provision of the Employee Retirement Income Security Act of 1974 (ERISA). I write separately because I have come to doubt whether § 1144 is a valid exercise of congressional power and whether our approach to ERISA pre-emption is consistent with our broader pre-emption jurisprudence.

I

Section 1144 contains what may be the most expansive express pre-emption provision in any federal statute. Section 1144(a) states: "Except as provided" in § 1144(b) ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." Under the ordinary meaning of the phrase "relate to," § 1144(a) pre-empts all state laws that "'stand in some relation'" to, "'have bearing or concern'" on, "'pertain'" to, "'refer'" to, or "'bring into association with or connection with'" an ERISA plan. *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85, 97, n. 16 (1983) (quoting Black's Law Dictionary 1158 (5th ed. 1979)). And § 1144(b) seemingly acknowledges how broadly § 1144(a) extends by excepting "generally applicable criminal law[s]" and state laws "regulat[ing] insurance, banking, or securities"—but not generally applicable civil laws—from pre-emption. §§ 1144(b)(2)(A), (b)(4). Section 1144, in sum, "is clearly expansive"—so much so that "one might be excused for wondering, at first blush, whether the words of limitation ('insofar as they . . . relate') do much limiting." *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 655 (1995).

Read according to its plain terms, § 1144 raises constitutional concerns. "[T]he Supremacy Clause gives 'supreme' status only to those [federal laws] that are 'made in Pursuance'" of the Constitution. *Wyeth* v. *Levine*, 555 U. S. 555, 585 (2009) (THOMAS, J., concurring in judgment) (quoting Art. VI, cl. 2). But I question whether any provision of Article I authorizes Congress to prohibit States from applying a host of generally applicable civil laws to ERISA plans. "The Constitution requires a distinction between what is truly national and what is truly local." *United States* v. *Morrison*, 529 U. S. 598, 617–618 (2000). If the Federal Government were "to take over the regulation of entire areas of traditional state concern," including "areas having nothing to do with the regulation of commercial activities," then "the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory." *United States* v. *Lopez*, 514 U. S. 549, 577 (1995) (KENNEDY, J., concurring). Just because Congress can regulate some aspects of ERISA plans pursuant to the Commerce Clause does not mean that Congress can exempt ERISA plans from state regulations that have nothing to do with interstate commerce. See *Gonzales* v. *Raich*, 545 U. S. 1, 59–60 (2005) (THOMAS, J., dissenting).

II

This Court used to interpret § 1144 according to its text. But we became uncomfortable with how much state law § 1144 would pre-empt if read literally. "If 'relate to' were taken to extend to the furthest stretch of its indeterminacy," we explained, "then for all practical purposes pre-emption would never run its course." *Travelers*, *supra*, at 655.

Rather than addressing the constitutionality of § 1144, we abandoned efforts to give its text its ordinary meaning. In *Travelers*, we adopted atextual but what we thought to be "workable" standards to construe § 1144. *Ante*, at 319. Thus, to determine whether a state law impermissibly "re-

lates to" an ERISA plan due to some "connection with" that plan, we now "look both to the objectives of the ERISA statute . . . as well as to the nature of the effect of the state law on ERISA plans." *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 147 (2001) (citing *Travelers*; internal quotation marks omitted).

We decided *Travelers* in 1995. I joined that opinion and have joined others applying the approach we adopted in *Travelers*. But our interpretation of ERISA's express pre-emption provision has become increasingly difficult to reconcile with our pre-emption jurisprudence. *Travelers* departed from the statutory text, deeming it "unhelpful." 514 U. S., at 656. But, in other cases involving express pre-emption provisions, the text has been the beginning and often the end of our analysis. *E. g.*, *Chamber of Commerce of United States of America* v. *Whiting*, 563 U. S. 582, 594 (2011) ("'focus[ing] on the plain wording'" to define the scope of the Immigration Reform and Control Act's express pre-emption clause); see also *National Meat Assn.* v. *Harris*, 565 U. S. 452, 458, 460–464 (2012) (parsing the text to determine the scope of the Federal Meat Inspection Act's express pre-emption clause). We have likewise refused to look to policy limits that are not "remotely discernible in the statutory text." *Whiting*, *supra*, at 599. We have not given a sound basis for departing from these principles and treating § 1144 differently from other express pre-emption provisions.

Travelers' approach to ERISA pre-emption also does not avoid constitutional concerns. We have continued to interpret § 1144 as pre-empting "substantial areas of traditional state regulation" and "pre-empt[ing] a state law . . . even if the state law exercises a traditional state power." *Ante*, at 325 (internal quotation marks omitted). Until we confront whether Congress had the constitutional authority to pre-empt such a wide array of state laws in the first place, the Court—and lower courts—will continue to struggle to apply § 1144. It behooves us to address whether Article I gives

Congress such power and whether § 1144 may permissibly be read to avoid unconstitutional results.

JUSTICE BREYER, concurring.

I write separately to emphasize that a failure to find pre-emption here would subject self-insured health plans under the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U. S. C. § 1001 *et seq.*, to 50 or more potentially conflicting information reporting requirements. Doing so is likely to create serious administrative problems. The Court points out that the respondent's plan provides benefits to over 80,000 individuals living in 50 different States. See *ante*, at 317. In addition, *amici curiae* tell us that self-insured, ERISA-based health plans provide benefits to 93 million Americans. Brief for American Benefits Council et al. 8. If each State is free to go its own way, each independently determining what information each plan must provide about benefits, the result could well be unnecessary, duplicative, and conflicting reporting requirements, any of which can mean increased confusion and increased cost. Private standard setting can of course help alleviate these problems, but given the large number of different possible regulations, I do not believe that is sufficient. Cf. A. Costello & M. Taylor, APCD Council & NAHDO, Standardization of Data Collection in All-Payer Claims Databases 3–4 (Jan. 2011), online at https://www.apcdcouncil.org/publication/standardization-data-collection-all-payer-claims-databases (as last visited Feb. 26, 2016).

I would also emphasize that pre-emption does not necessarily prevent Vermont or other States from obtaining the self-insured, ERISA-based health-plan information that they need. States wishing to obtain information can ask the Federal Government for appropriate approval. As the majority points out, the "Secretary of Labor has authority to establish additional reporting and disclosure requirements for ERISA plans." *Ante*, at 322; see 29 U. S. C. § 1135. Moreover, the

Secretary "is authorized to undertake research and surveys and in connection therewith to collect, compile, analyze and publish data, information, and statistics relating to employee benefit plans, including retirement, deferred compensation, and welfare plans." § 1143(a)(1). At least one other important statute provides the Secretary of Health and Human Services with similar authority. See 42 U. S. C. § 300gg–17(a) (part of the Patient Protection and Affordable Care Act that is applicable to group health insurance plans including ERISA plans); Brief for United States as *Amicus Curiae* 4 (the Department of Labor, the Department of Health and Human Services, and the Department of Treasury are "currently considering a rulemaking to require health plans to report more detailed information about various aspects of plan administration, such as enrollment, claims processing, and benefit offerings").

I see no reason why the Secretary of Labor could not develop reporting requirements that satisfy the States' needs, including some state-specific requirements, as appropriate. Nor do I see why the Department could not delegate to a particular State the authority to obtain data related to that State, while also providing the data to the Federal Secretary for use by other States or at the federal level.

Although the need for federal approval or authorization limits to some degree the States' power to obtain information, requiring that approval has considerable advantages. The federal agencies are more likely to be informed about, and to understand, ERISA-related consequences and health-care needs from a national perspective. Their involvement may consequently secure for the States necessary information without unnecessarily creating costly conflicts—particularly when compared with such alternatives as giving each State free rein to go its own way or asking nonexpert federal courts to try to iron out, regulation by regulation, such conflicts. Cf. *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 506 (1996) (BREYER, J., concurring in part and concurring in judgment)

(reading a complex, ambiguous regulatory statute to permit "informed agency involvement" is more likely to achieve Congress' general objectives).

For these reasons, and others that the majority sets forth, I agree that Vermont's statute is pre-empted because it "interferes with nationally uniform plan administration." *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 148 (2001).

JUSTICE GINSBURG, with whom JUSTICE SOTOMAYOR joins, dissenting.

To better control health care outcomes and costs, Vermont requires all public and private entities that pay for health care services provided to Vermont residents to supply data to the State's all-payer claims database. Many States have similar databases in place or in development. The question presented in this case is whether Vermont's health care data-collection law is preempted by the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 832, 29 U. S. C. § 1001 *et seq.*, the federal law regulating employee benefit plans. I would hold that Vermont's effort to track health care services provided to its residents and the cost of those services does not impermissibly intrude on ERISA's dominion over employee benefit plans.

I

In 2005, the Vermont Legislature established the Vermont Health Care Uniform Reporting and Evaluation System, a database populated by information on health care claims paid by insurers and other coverage providers. See Vt. Stat. Ann., Tit. 18, § 9410 (2015 Cum. Supp.); Reg. H–2008–01, Code Vt. Rules 21–040–021, § 4(D) (2016) (directing insurers and other coverage providers to "submit medical claims data, pharmacy claims data, member eligibility data, provider data, and other information related to health care provided to Vermont residents and health care provided by Vermont

health care providers and facilities"). Health insurers and other coverage providers must report the required data if they cover at least 200 Vermont residents. § 3(Ab).

Seventeen other States have enacted similar database systems, called "all-payer claims databases."[1] These States, like Vermont, collect health-claims data to serve compelling interests, including identification of reforms effective to drive down health care costs, evaluation of relative utility of different treatment options, and detection of instances of discrimination in the provision of care. See Brief for National Governors Association et al. as *Amici Curiae* 11–14; Brief for Harvard Law School Center for Health Law and Policy Innovation et al. as *Amici Curiae* 11–18; Brief for State of New York et al. as *Amici Curiae* 12–20. See also Vt. Stat. Ann., Tit. 18, § 9410(a)(1) (Vermont's data-collection law is designed to help "identif[y] health care needs and infor[m] health care policy," "evaluat[e] the effectiveness of intervention programs on improving patient outcomes," "compar[e] costs between various treatment settings and approaches," "determin[e] the capacity and distribution of existing resources," and "provid[e] information to . . . purchasers of health care").[2]

Respondent Liberty Mutual Insurance Company (Liberty), in common with legions of employers, provides health care to its employees through a self-insured plan, adminis-

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[1] States, in addition to Vermont, so far maintaining all-payer claims databases are: Arkansas, Colorado, Connecticut, Kansas, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Oregon, Rhode Island, Tennessee, Utah, Virginia, Washington, and West Virginia. Brief for National Governors Association et al. as *Amici Curiae* 8, and n. 9.

[2] Illustrative of the utility of all-payer claims databases, Minnesota evaluated data on emergency-room visits and concluded that the condition causing two of every three visits could have been treated more efficiently, and as effectively, in a nonhospital setting. Brief for State of New York et al. as *Amici Curiae* 12–13.

tered by Blue Cross/Blue Shield (Blue Cross).[3] Because Blue Cross administers thousands of health care policies in Vermont, the State requires it to report data for all of the plans it administers, and Blue Cross has complied with this mandate. In 2010, for example, Blue Cross reported data on over 7,000 Vermont health care-plan beneficiaries. Roughly half of the beneficiaries received coverage through self-insured employer policies. App. 205. In 2011, at Liberty's request, Blue Cross did not submit data on Vermont residents who received coverage through Liberty's plan. *Id.*, at 21–23. Vermont ordered Blue Cross to provide the claims data. *Id.*, at 23, 31–33. Liberty instructed Blue Cross not to comply and, shortly thereafter, filed the instant suit, seeking to block Vermont from obtaining the data.

In defense of its resistance to Vermont's data-collection law, Liberty relies on its plan's status as an ERISA-covered "employee welfare benefit plan," defined as "any plan, fund, or program . . . established or maintained by an employer . . . for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, . . . medical, surgical, or hospital care or benefits, or benefits in the event of sickness." 29 U. S. C. § 1002(1). Because ERISA directs plan fiduciaries to conserve plan assets for the purpose of "providing benefits to participants," § 1104(a)(1)(A)(i), Liberty maintains that ERISA preempts diverse state health-claims reporting laws. If there is to be mandatory health-claims reporting by ERISA plans, Liberty urges, the source of the mandate should be a uniform national reporting regime. See Brief for Respondent 26–29; Tr. of Oral Arg. 32–33.

Opposing ERISA-grounded preemption of its data-collection law, Vermont points out that the efficacy of the

[3] Liberty's plan would not, on its own, trigger Vermont's reporting requirements. As of 2011, only 137 plan participants resided in the State, out of the total 84,711 individuals covered by Liberty's plan. App. to Pet. for Cert. 50.

State's law depends on comprehensive reporting, *i. e.*, collecting data on numerous beneficiaries from each of several major segments of the health care market. See Brief for Petitioner 12; Brief for Harvard Law School Center for Health Law and Policy Innovation et al. as *Amici Curiae* 18–19.[4] About half of Americans with health insurance receive coverage from their employers, Dept. of Commerce, Bureau of Census, J. Smith & C. Medalia, Health Insurance Coverage in the United States: 2013, p. 2 (2014), and 61% of such persons are covered by an employer's self-insured plan. Brief for Harvard Law School Center for Health Law and Policy Innovation et al. as *Amici Curiae* 20. In Vermont, about 20% of the database's total content originates from employer self-insured plans. Brief for Petitioner 12, and n. 10. Stopping States from collecting claims data from self-insured employer health care plans would thus hugely undermine the reporting regimes on which Vermont and other States depend to maintain and improve the quality, and hold down the cost, of health care services.

The United States District Court for the District of Vermont rejected Liberty's plea for preemption. Vermont's data-collection law, that court determined, served the State's undoubted interest in regulating health care markets, and did not substantially interfere with the operation of Liberty's ERISA plans. See App. to Pet. for Cert. 64–66, 78–79. The Court of Appeals for the Second Circuit reversed, two to one. *Liberty Mut. Ins. Co.* v. *Donegan*, 746 F. 3d 497 (2014). The majority acknowledged that the Supreme Court's ERISA-preemption decisions of the 1990's "marked something of a pivot" in starting with a presumption " 'that

[4] The Federal Government supplies Medicare claims data to Vermont and other States that maintain similar databases. See 42 U. S. C. § 1395kk(e) (requiring the Department of Health and Human Services (HHS) to make Medicare data available to state health-claims databases). And HHS has authorized the States to include Medicaid claims data in their databases. See Brief for United States as *Amicus Curiae* 7.

Congress does not intend to supplant state law,' especially if the 'state action [occurs] in fields of traditional state regulation,' like health care." *Id.*, at 506 (quoting *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 654–655 (1995)). Nonetheless, the majority concluded that ERISA preempted the application of Vermont's data-collection law to Liberty's plan. 746 F. 3d, at 506, 508. The reporting of information about plan benefits, the majority reasoned, qualifies as a "core ERISA functio[n]" and, therefore, must be "subject to a uniform federal standard." *Id.*, at 505, 508. Judge Straub dissented, offering a concise critique of the majority's opinion:

> "The majority finds that the burden imposed by the Vermont reporting requirement warrants preemption of the [data-collection] statute. This conclusion falters for two primary reasons. First, the reporting requirement imposed by the Vermont statute differs in kind from the 'reporting' that is required by ERISA and therefore was not the kind of state law Congress intended to preempt. Second, Liberty Mutual has failed to show any actual burden, much less a burden that triggers ERISA preemption. Rather, the Vermont statute . . . does not interfere with an ERISA plan's administration of benefits." *Id.*, at 511.

II

Essentially for the reasons Judge Straub identified, I would hold that ERISA does not preempt Vermont's data-collection statute. That law and ERISA serve different purposes. ERISA's domain is the design and administration of employee benefit plans: notably, prescriptions on the vesting of benefits, claims processing, and the designation of beneficiaries. See *Travelers*, 514 U. S., at 656 ("Congress intended to ensure that plans and plan sponsors would be subject to a uniform body of benefits law . . . ." (internal quotation marks omitted)). Its reporting requirements,

geared to those functions, ensure that the plans in fact provide covered benefits. Vermont's data-collection statute, in contrast, aims to improve the quality and utilization, and reduce the cost, of health care in Vermont by providing consumers, government officials, and researchers with comprehensive data about the health care delivery system. Nor does Vermont's law impose burdens on ERISA plans of the kind this Court has found sufficient to warrant preemption.

ERISA's preemption clause provides that the Act "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U. S. C. § 1144(a). Lacking clear direction from the clause's "opaque" text, *De Buono* v. *NYSA–ILA Medical and Clinical Services Fund*, 520 U. S. 806, 809 (1997), the Court has sought to honor Congress' evident call for an expansive preemption principle without invalidating state regulations falling outside ERISA's domain. See *Travelers*, 514 U. S., at 655–656 ("The governing text of [the] ERISA [preemption clause] is clearly expansive. . . . [But] [i]f 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course, for really, universally, relations stop nowhere." (some internal quotation marks omitted)).[5]

Seeking to bring some measure of determinacy to ERISA preemption, the Court has stated: "[A] law 'relates to' an employee benefit plan . . . if it has a connection with or reference to such a plan." *Id.*, at 656 (some internal quotation

[5] I have joined opinions proposing that the Court acknowledge that the "'relate to' clause of the pre-emption provision is meant, not to set forth a *test* for pre-emption, but rather to identify the field in which ordinary *field pre-emption* applies—namely, the field of laws regulating" employee benefit plans. *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N. A., Inc.*, 519 U. S. 316, 336 (1997) (Scalia, J., concurring); *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 153 (2001) (Scalia, J., concurring). Whether measured against ordinary preemption principles or this Court's ERISA-specific precedent, Vermont's data-collection law should survive inspection.

marks omitted). In this case, the Court of Appeals found, and the parties do not here contest, that Vermont's data-collection law lacks "reference to" ERISA plans because the law applies to all health care payers and does not home in on ERISA plans. See 746 F. 3d, at 508, n. 9. The question, therefore, is whether the law has an impermissible "connection with" ERISA plans. Because the term "'connection with' is scarcely more restrictive than 'relate to,'" the Court has "cautioned against . . . uncritical literalism," *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 147 (2001) (internal quotation marks omitted), and has set out this further formulation: "[T]o determine whether a state law has the forbidden connection, we look both to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive, as well as to the nature of the effect of the state law on ERISA plans," *ibid.* (internal quotation marks omitted).

In framing preemption doctrine, the Court does not "assum[e] lightly that Congress has derogated state regulation, but instead . . . addresse[s] claims of pre-emption with the starting presumption that Congress does not intend to supplant state law," *Travelers*, 514 U. S., at 654, especially where the State's regulation deals with "matters of health and safety," *De Buono*, 520 U. S., at 814 (internal quotation marks omitted). In *Travelers* and subsequent decisions upholding state laws against preemption challenges, this Court made clear that this presumption plays an important role in ERISA cases. *Travelers*, 514 U. S., at 654, 661; *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N. A., Inc.*, 519 U. S. 316, 325, 330–331 (1997); *De Buono*, 520 U. S., at 814. Vermont's data-collection law is a vital part of the State's control of its own health care market. See *supra*, at 332–333, 334–335; 746 F. 3d, at 513 (Straub, J., dissenting). The presumption against preemption should thus apply full strength, and Liberty has not rebutted it, *i. e.*, it has not shown that ERISA demands the preemption of Vermont's data-collection law. To the contrary, the Court's ERISA preemption precedent points *against* preemption in this case.

A

To determine whether Vermont's data-collection law, as applied to Liberty's plan, has an impermissible "connection with" ERISA plans, I look first to the "objectives of the ERISA statute as a guide." *Egelhoff*, 532 U. S., at 147; *Oneok, Inc.* v. *Learjet, Inc.*, 575 U. S. 373, 385 (2015) (emphasizing "the importance of considering the *target* at which the state law *aims*" in applying ordinary field-preemption principles). Because ERISA's reporting requirements and the Vermont law elicit different information and serve distinct purposes, there is no sensible reason to find the Vermont data-collection law preempted.

ERISA-covered benefit plans must, absent exemption, file annual reports containing financial and actuarial data to enable the Secretary of Labor to evaluate plans' management and solvency. See 29 U. S. C. §§ 1023, 1024(a)(2)(B); *Dillingham*, 519 U. S., at 326–327 (Congress "established extensive reporting . . . requirements" to protect against "the mismanagement of funds accumulated to finance employee benefits and the failure to pay employees' benefits from accumulated funds." (internal quotation marks omitted)).[6]

Beyond debate, Vermont's data-collection law does not seek to regulate the management and solvency of ERISA-

[6] The Court suggests that the Department of Labor collects, pursuant to ERISA's reporting rules, similar information to the data that Vermont's regime elicits. See *ante*, at 321–322. But these reporting obligations are not remotely similar. As one of Liberty's *amici curiae* explains, the Department of Labor reporting form cited by the Court requires reporting of the "total amount of claims paid annually by the plan," not the "granular claim-by-claim" information (including data about the "location of services rendered") that Vermont collects. Brief for National Coordinating Committee for Multiemployer Plans as *Amicus Curiae* 15, n. 4. See also Reply Brief 13, and n. 6. The data entries cited by the Court require a plan to enter, in merely a handful of boxes on a four-page form, the aggregate sums of all claims paid annually. See Dept. of Labor, Schedule H (Form 5500) Financial Information (2015), online at http://www.dol.gov/ebsa/pdf/2015-5500-Schedule-H.pdf (all Internet materials as last visited Feb. 24, 2016).

covered welfare plans. See *supra*, at 333 (reciting objectives of the Vermont data-collection law). Vermont requests no information on plan finances. See Reg. H–2008–01, Code of Vt. Rules 21–040–021, § 4(D); *supra*, at 332–333 (detailing the types of data collected by Vermont). The State collects data on paid health care claims, not denied claims. See § 5(A)(8). Vermont seeks a better understanding of how its residents obtain health care and how effective that care is. Unlike ERISA superintendence, Vermont's interest does not lie in reviewing whether a self-insured provider is keeping its bargain to covered employees. Nor does Vermont's statute even arguably regulate relationships among the prime ERISA entities: beneficiaries, participants, administrators, employees, trustees and other fiduciaries, and the plan itself.

Despite these significant differences between ERISA's reporting requirements and Vermont's data-collection regime, Liberty contends that Congress intended to spare ERISA plans from benefit-related reporting requirements unless those requirements are nationally uniform. In support of this contention, Liberty points to dicta from this Court's opinions and selections from ERISA's legislative history. See, *e. g.*, *Travelers*, 514 U. S., at 661 ("'[S]ubject matters covered by ERISA [include] reporting, disclosure, fiduciary responsibility, and the like.'" (quoting *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85, 98 (1983))); *Ingersoll-Rand Co.* v. *McClendon*, 498 U. S. 133, 137 (1990) (ERISA "sets various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility, for both pension and welfare plans."); 120 Cong. Rec. 29942 (1974) (remarks of Sen. Javits) ("State laws compelling disclosure from . . . plans . . . will be superseded."). Far from unambiguously endorsing Liberty's sweeping view of ERISA's preemptive scope, these statements can be read at least as reasonably for the unremarkable principle that ERISA preempts state reporting rules designed to serve the same purposes as ERISA's reporting requirements. This more limited understanding

is consistent with the Court's admonition to pay close attention to the "objectives of the ERISA statute as a guide." *Egelhoff*, 532 U. S., at 147.

B

Satisfied that ERISA's objectives do not require preemption of Vermont's data-collection law, I turn to the "nature of the effect of the state law on ERISA plans." *Ibid.* The imposition of some burdens on the administration of ERISA plans, the Court has held, does not suffice to require preemption. See *De Buono*, 520 U. S., at 815. While a law imposing costs so acute as to effectively dictate how a plan is designed or administered could trigger preemption, see *id.*, at 816, n. 16, no such extreme effects are present here. Moreover, no "central matter of plan administration," *Egelhoff*, 532 U. S., at 148, is touched by Vermont's data-collection law. That law prescribes no vesting requirements, benefit levels, beneficiary designations, or rules on how claims should be processed or paid. Indeed, Vermont's law does not require Liberty to do anything. The burden of compliance falls on Blue Cross, which apparently provides the data without protest on behalf of other self-funded plans. See *supra*, at 334.

Reporting and disclosure are no doubt required of ERISA plans, but those requirements are ancillary to the areas ERISA governs. Reporting and recordkeeping incident to state laws of general applicability have been upheld as they bear on ERISA plans. In *De Buono*, 520 U. S., at 809–810, 816, for example, the Court held that a gross-receipts tax on patient services provided by a hospital operated by an ERISA plan was not preempted, even though administration of the tax required filing quarterly reports. And in *Dillingham*, 519 U. S., at 319, the Court held that California's prevailing-wage law was not preempted as applied to apprenticeship programs established by ERISA plans. Prevailing-wage laws typically require employees to keep records of the wages paid to employees and make them available for review by state authorities. See, *e. g.*, Cal. Lab.

Code Ann. § 1776 (West 1989) (prevailing-wage law in *Dillingham*). The Second Circuit erred, then, in holding that ERISA preempts any state-law reporting obligation that is more than "slight." See 746 F. 3d, at 508–509.

The Vermont data-collection statute keeps company with the laws considered in *De Buono* and *Dillingham*: It is generally applicable and does not involve "a central matter of plan administration." *Egelhoff*, 532 U. S., at 148. And, as Judge Straub emphasized in his dissent, Liberty "failed to provide any details or showing of the alleged burden," instead "arguing only that 'all regulations have their costs.'" 746 F. 3d, at 515 (quoting Liberty's appellate brief).

As the United States explains, the supposition indulged by the Second Circuit that Vermont's law imposed a substantial burden "is not obvious, or even particularly plausible, without any factual support." Brief for United States as *Amicus Curiae* 28. The data-collection law "essentially requires Blue Cross [Liberty's third-party administrator] to take information generated in the ordinary course of its claims-payment operations and report that information in a prescribed format to the [State]." *Ibid.* The Court of Appeals majority accentuated the sheer number of data entries that must be reported to Vermont. See 746 F. 3d, at 509–510, and n. 13. Accord *ante*, at 330 (opinion of BREYER, J.) Entirely overlooked in that enumeration is the technological capacity for efficient computer-based data storage, formatting, and submission. See Brief for National Association of Health Data Organizations et al. as *Amici Curiae* 7–9, 13 (describing three-step electronic path data take from health provider, to insurer or health care plan, and ultimately to the State's database).[7] Where regulatory compliance depends

[7] *Amici* supporting Liberty point to several allegedly burdensome features of compliance with Vermont's law, but they appear to be no more than everyday facets of modern regulatory compliance: installing and maintaining a software system to collect and remit data to the State, seeking variances from state regulators when health providers do not submit required information to the plan or its administrator, and reformatting

upon the use of evolving technologies, it should be incumbent on the objector to show concretely what the alleged regulatory burden in fact entails.[8]

Because data-collection laws like Vermont's are not uniform from State to State, compliance is inevitably burdensome, Liberty successfully argued in the Court of Appeals. The Court replays this reasoning in today's opinion. See *ante*, at 321, 323. But state-law diversity is a hallmark of our political system and has been lauded in this Court's opinions. See, *e. g.*, *Arizona State Legislature* v. *Arizona Independent Redistricting Comm'n*, 576 U. S. 787, 817 (2015) ("This Court has long recognized the role of States as laboratories for devising solutions to difficult legal problems." (citing *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 311 (1932) (Brandeis, J., dissenting); internal quotation marks omitted)). Something more than an inherent characteristic of our federal system, therefore, must underpin the ERISA-grounded preemption Liberty urges.[9]

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data to comply with state-database formatting and encryption standards. See Brief for Blue Cross and Blue Shield Association as *Amicus Curiae* 30–32, and nn. 7–8; Brief for National Coordinating Committee for Multiemployer Plans as *Amicus Curiae* 11–13, 16–18.

[8] Liberty contends that it need not quantify the precise cost of compliance with Vermont's law to prove that the law is burdensome. But Liberty should at least introduce concrete evidence of the alleged burdens. A finder of fact would reasonably ask, for example: Do Blue Cross's existing technologies for data storage already have capacity to store and report the data sought by Vermont? And is compliance with Vermont's reporting rules any more burdensome than compliance with other state reporting laws with which the plan already complies?

[9] Concurring in the Court's opinion, Justice Breyer worries that "[i]f each State is free to go its own way, . . . the result could well be unnecessary, duplicative, and conflicting reporting requirements." *Ante*, at 330. In support, Justice Breyer cites a 2011 report. A. Costello & M. Taylor, APCD Council & NAHDO, Standardization of Data Collection in All-Payer Claims Databases 1 (Jan. 2011), online at https://www.apcdcouncil.org/publication/standardization-data-collection-all-payer-claims-databases. In fact, the organizations that published this report inform us, in a brief supporting Vermont, that "submitting claims data to [all-payer claims databases] . . . is a routine, straightforward process" and that States and

Liberty points to *Egelhoff* as exemplary. In *Egelhoff*, 532 U. S., at 143–144, a deceased ERISA-plan participant's ex-spouse challenged a state law that revoked her beneficiary status automatically upon her divorce, even though the ERISA plan's terms did not. The Court held that ERISA preempted the law because it "binds ERISA plan administrators to a particular choice of rules for determining beneficiary status." *Id.*, at 147. In that context, the Court said: "Requiring ERISA administrators to master the relevant laws of 50 States . . . would undermine the congressional goal of minimizing the administrative and financial burdens on plan administrators—burdens ultimately borne by the beneficiaries." *Id.*, at 149–150 (internal quotation marks and brackets omitted).

The Court took care, however, to confine *Egelhoff* to issues implicating "a central matter of plan administration," in other words, "a core ERISA concern." *Id.*, at 147–148. What does that category comprise? As earlier described, see *supra*, at 336, 341, prescriptions on benefit levels, beneficiary designations, vesting requirements, and rules on processing and payment of claims would rank under the central or core ERISA subject-matter rubric.[10] So, too, would re-

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private organizations have worked in recent years to standardize data-reporting requirements. Brief for National Association of Health Data Organizations et al. as *Amici Curiae* 13.

[10] The "core ERISA concern" (or "central matter of plan administration") inquiry is not meaningfully different from the examination whether a state law is inconsistent with the "objectives of the ERISA statute." *Egelhoff*, 532 U. S., at 147; see *supra*, at 339–341. The Court appears to disagree, stating that "[a]ny difference in purpose" between ERISA and Vermont's reporting requirements "does not transform [Vermont's] direct regulation of a 'central matter of plan administration' into an innocuous and peripheral set of additional rules." *Ante*, at 325 (quoting *Egelhoff*, 532 U. S., at 148). In other words, the Court assumes that a state law that is not inconsistent with ERISA's purposes can nonetheless burden a "central matter of plan administration" or implicate a "core ERISA concern." Missing from the Court's opinion is any definition of these terms. What meaning can "central matter of plan administration" and "core ERISA concern" have if they are divorced from ERISA's purposes?

porting and disclosure obligations, but of what kind? Those that further regulation of the design and administration of employee benefit plans, *i. e.*, reporting and disclosures tied to the areas ERISA governs. ERISA's reporting and disclosure requirements are thus concerned with mismanagement of funds, failure to pay employee benefits, plan assets or allocations, all information bearing on the financial integrity of the plan. See *supra*, at 339. Vermont's data-collection law, eliciting information on medical claims, services provided to beneficiaries, charges and payment for those services, and demographic makeup of those receiving benefits, does not fit the bill any more than reporting relating to a plan's taxes or wage payments does.

Numerous States have informed the Court of their urgent need for information yielded by their health care data-collection laws. See Brief for National Governors Association et al. as *Amici Curiae*; Brief for State of New York et al. as *Amici Curiae*; Brief for Connecticut Health Insurance Exchange as *Amicus Curiae*; Brief for State of New Hampshire as *Amicus Curiae*. Wait until the Federal Government acts is the Court's response. The Department of Labor's capacious grant of statutory authority, the Court observes, might allow it to collect the same data Vermont and other States seek about ERISA-plan health-benefit payments. See *ante*, at 323–324; *ante*, at 330–331 (opinion of BREYER, J.). Once the information is collected, the Court conjectures, the Department could pass the data on to the States. Cf. *ante*, at 331 (opinion of BREYER, J.) (suggesting that States could seek the Department's permission to enforce reporting requirements like Vermont's). It is unsettling, however, to leave the States dependent on a federal agency's grace, *i. e.*, the Department of Labor's willingness to take on a chore divorced from ERISA's objectives.[11]

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[11] The Court's analysis may hamper States' abilities to require reporting, not just of plan benefits, but of plan assets as well. For example, the Department of Labor collects information about real property held in trust by a pension plan so that it can assess the plan's financial well-being. See

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Declaring "reporting," unmodified, a central or core ERISA function, as the Second Circuit did, 746 F. 3d, at 508, passes the line this Court drew in *Travelers*, *De Buono*, and *Dillingham* when it reined in § 1144(a) so that it would no longer operate as a "super-preemption" provision. Bogan, Protecting Patient Rights Despite ERISA, 74 Tulane L. Rev. 951, 959 (2000); see *supra*, at 338. I dissent from the Court's retrieval of preemption doctrine that belongs in the discard bin.

Tr. of Oral Arg. 19. States may need to collect the same information for a very different purpose, such as assessing a property tax.

Syllabus

LOCKHART *v.* UNITED STATES

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

No. 14–8358. Argued November 3, 2015—Decided March 1, 2016

Petitioner Avondale Lockhart pleaded guilty to possessing child pornography in violation of 18 U. S. C. § 2252(a)(4). Because Lockhart had a prior state-court conviction for first-degree sexual abuse involving his adult girlfriend, his presentence report concluded that he was subject to the 10-year mandatory minimum sentence enhancement provided in § 2252(b)(2), which is triggered by, *inter alia*, prior state convictions for crimes "relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward." Lockhart argued that the limiting phrase "involving a minor or ward" applied to all three state crimes, so his prior conviction did not trigger the enhancement. Disagreeing, the District Court applied the mandatory minimum. The Second Circuit affirmed.

Held: Lockhart's prior conviction is encompassed by § 2252(b)(2). Pp. 350–361.

(a) A natural reading of the text supports that conclusion. The "rule of the last antecedent," a canon of statutory interpretation stating that "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows," *Barnhart* v. *Thomas*, 540 U. S. 20, 26, clarifies that the phrase "involving a minor or ward" modifies only the immediately preceding noun phrase "abusive sexual conduct" and that the phrases "aggravated sexual abuse" and "sexual abuse" are not so restricted. The rule "can . . . be overcome by other indicia of meaning," *ibid.*, but § 2252(b)(2)'s context reinforces its application in this case. Pp. 351–352.

(b) Section 2252(b)(2)'s enhancement can also be triggered by, *inter alia*, a prior federal sexual-abuse offense enumerated in Chapter 109A of the Federal Criminal Code. Interpreting § 2252(b)(2) using the "rule of the last antecedent," the headings in Chapter 109A mirror precisely the order, precisely the divisions, and nearly precisely the words used to describe the state sexual-abuse predicates. Applying the modifier "involving a minor or ward" to all three items in § 2252(b)(2)'s list, by contrast, would require this Court to interpret the state predicates in a way that departs from the federal template. If Congress had intended that result, it is doubtful that Congress would have followed so closely the structure and language of Chapter 109A. Pp. 352–354.

(c) Lockhart's counterarguments are rejected. Pp. 354–361.

(1) *Porto Rico Railway, Light & Power Co.* v. *Mor*, 253 U. S. 345, *United States* v. *Bass*, 404 U. S. 336, and *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, do not require this Court to apply Lockhart's countervailing series-qualifier principle. In those cases, the Court simply observed that the last antecedent rule may be overcome by contextual indicia of meaning. Lockhart's attempts to identify such indicia are unavailing. He claims that the state predicates are so similar that a limiting phrase could apply equally to all three. But by transforming a list of separate predicates into a set of near-synonyms, Lockhart's reading results in too much redundancy and risks running headlong into the rule against superfluity. Pp. 354–357.

(2) Lockhart contends that the existence of other disparities between § 2252(b)(2)'s state and federal sexual-abuse predicates indicate that parity was not Congress' concern. However, this Court's construction relies on contextual cues particular to the sexual-abuse predicates, not on a general assumption that Congress sought full parity between all state and federal predicates. Pp. 357–358.

(3) The provision's legislative history "hardly speaks with [a] clarity of purpose," *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474, 483, and does nothing to explain *why* Congress would have wanted to structure § 2252(b)(2) to treat state and federal predicates differently. Pp. 358–361.

(4) Finally, Lockhart suggests the rule of lenity is triggered here, where applying his series-qualifier principle would lead to an alternative construction of § 2252(b)(2). The rule of lenity is used to resolve ambiguity only when the ordinary canons have revealed no satisfactory construction. Here, however, the rule of the last antecedent is well supported by context, and Lockhart's alternative is not. P. 361.

749 F. 3d 148, affirmed.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, and ALITO, JJ., joined. KAGAN, J., filed a dissenting opinion, in which BREYER, J., joined, *post*, p. 362.

Edward S. Zas argued the cause for petitioner. With him on the briefs were *Barry D. Leiwant*, *Darrell B. Fields*, and *David A. Lewis.*

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 *Elizabeth D. Collery.*

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Defendants convicted of possessing child pornography in violation of 18 U. S. C. § 2252(a)(4) are subject to a 10-year mandatory minimum sentence and an increased maximum sentence if they have "a prior conviction . . . under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward." § 2252(b)(2).

The question before us is whether the phrase "involving a minor or ward" modifies all items in the list of predicate crimes ("aggravated sexual abuse," "sexual abuse," and "abusive sexual conduct") or only the one item that immediately precedes it ("abusive sexual conduct"). Below, the Court of Appeals for the Second Circuit joined several other Courts of Appeals in holding that it modifies only "abusive sexual conduct." The Eighth Circuit has reached the contrary result. We granted certiorari to resolve that split. 575 U. S. 1025 (2015). We affirm the Second Circuit's holding that the phrase "involving a minor or ward" in § 2252(b)(2) modifies only "abusive sexual conduct."

I

In April 2000, Avondale Lockhart was convicted of sexual abuse in the first degree under N. Y. Penal Law Ann. § 130.65(1) (West Cum. Supp. 2015). The crime involved his then-53-year-old girlfriend. Presentence Investigation Report (PSR), in No. 11–CR–231–01, p. 13, ¶¶47–48. Eleven years later, Lockhart was indicted in the Eastern District of New York for attempting to receive child pornography in violation of 18 U. S. C. § 2252(a)(2) and for possessing child pornography in violation of § 2252(a)(4)(B). Lockhart pleaded guilty to the possession offense and the Government dismissed the receipt offense.

Lockhart's presentence report calculated a guidelines range of 78 to 97 months for the possession offense. But the report also concluded that Lockhart was subject to

§ 2252(b)(2)'s mandatory minimum because his prior New York abuse conviction related "to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward." PSR ¶¶87–88.

Lockhart objected, arguing that the statutory phrase "involving a minor or ward" applies to all three listed crimes: "aggravated sexual abuse," "sexual abuse," *and* "abusive sexual conduct." He therefore contended that his prior conviction for sexual abuse involving an *adult* fell outside the enhancement's ambit. The District Court rejected Lockhart's argument and applied the mandatory minimum. The Second Circuit affirmed his sentence. 749 F. 3d 148 (2014).

II

Section 2252(b)(2) reads in full:

> "Whoever violates, or attempts or conspires to violate [18 U. S. C. § 2252(a)(4)] shall be fined under this title or imprisoned not more than 10 years, or both, but . . . if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years."

This case concerns that provision's list of state sexual-abuse offenses. The issue before us is whether the limiting phrase that appears at the end of that list—"involving a minor or ward"—applies to all three predicate crimes preceding it in the list or only the final predicate crime. We hold that "involving a minor or ward" modifies only "abusive sexual conduct," the antecedent immediately preceding it.

Although § 2252(b)(2)'s list of state predicates is awkwardly phrased (to put it charitably), the provision's text and context together reveal a straightforward reading. A time-worn textual canon is confirmed by the structure and internal logic of the statutory scheme.

A

Consider the text. When this Court has interpreted statutes that include a list of terms or phrases followed by a limiting clause, we have typically applied an interpretive strategy called the "rule of the last antecedent." See *Barnhart* v. *Thomas*, 540 U. S. 20, 26 (2003). The rule provides that "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Ibid.*; see also Black's Law Dictionary 1532–1533 (10th ed. 2014) ("[Q]ualifying words or phrases modify the words or phrases immediately preceding them and not words or phrases more remote, unless the extension is necessary from the context or the spirit of the entire writing"); A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 144 (2012).

This Court has applied the rule from our earliest decisions to our more recent. See, *e. g.*, *Sims Lessee* v. *Irvine*, 3 Dall. 425, 444, n. (1799); *FTC* v. *Mandel Brothers, Inc.*, 359 U. S. 385, 389, n. 4 (1959); *Barnhart*, 540 U. S., at 26. The rule reflects the basic intuition that when a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it. That is particularly true where it takes more than a little mental energy to process the individual entries in the list, making it a heavy lift to carry the modifier across them all. For example, imagine you are the general manager of the Yankees and you are rounding out your 2016 roster. You tell your scouts to find a defensive catcher, a quick-footed shortstop, or a pitcher from last year's World Champion Kansas City Royals. It would be natural for your scouts to confine their search for a pitcher

to last year's championship team, but to look more broadly for catchers and shortstops.

Applied here, the last antecedent principle suggests that the phrase "involving a minor or ward" modifies only the phrase that it immediately follows: "abusive sexual conduct." As a corollary, it also suggests that the phrases "aggravated sexual abuse" and "sexual abuse" are not so constrained.

Of course, as with any canon of statutory interpretation, the rule of the last antecedent "is not an absolute and can assuredly be overcome by other indicia of meaning." *Barnhart*, 540 U. S., at 26; see also *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme"). For instance, take "'the laws, the treaties, and the constitution of the United States.'" *Post*, at 367, n. 2 (KAGAN, J., dissenting). A reader intuitively applies "of the United States" to "the laws," "the treaties," and "the constitution" because (among other things) laws, treaties, and the Constitution are often cited together, because readers are used to seeing "of the United States" modify each of them, and because the listed items are simple and parallel without unexpected internal modifiers or structure. Section 2252(b)(2), by contrast, does not contain items that readers are used to seeing listed together or a concluding modifier that readers are accustomed to applying to each of them. And the varied syntax of each item in the list makes it hard for the reader to carry the final modifying clause across all three.

More importantly, here the interpretation urged by the rule of the last antecedent is not overcome by other indicia of meaning. To the contrary, § 2252(b)(2)'s context fortifies the meaning that principle commands.

B

Our inquiry into § 2252(b)(2)'s context begins with the internal logic of that provision. Section 2252(b)(2) establishes

sentencing minimums and maximums for three categories of offenders. The first third of the section imposes a 10-year maximum sentence on offenders with no prior convictions. The second third imposes a 10-year minimum and 20-year maximum on offenders who have previously violated a federal offense listed within various chapters of the Federal Criminal Code. And the last third imposes the same minimum and maximum on offenders who have previously committed state "sexual abuse, aggravated sexual abuse, or abusive sexual conduct involving a minor or ward" as well as a number of state crimes related to the possession and distribution of child pornography.

Among the chapters of the Federal Criminal Code that can trigger § 2252(b)(2)'s recidivist enhancement are crimes "under . . . chapter 109A." Chapter 109A criminalizes a range of sexual-abuse offenses involving adults *or* minors and wards.[1] And it places those federal sexual-abuse crimes under headings that use language nearly identical to the language § 2252(b)(2) uses to enumerate the three categories of state sexual-abuse predicates. The first section in Chapter 109A is titled "Aggravated sexual abuse." 18 U. S. C. § 2241. The second is titled "Sexual abuse." § 2242. And the third is titled "Sexual abuse of a minor or ward." § 2243. Applying the rule of the last antecedent, those sections mirror precisely the order, precisely the divisions, and nearly precisely the words used to describe the three state sexual-abuse predicate crimes in § 2252(b)(2): "aggravated sexual abuse," "sexual abuse," and "abusive sexual conduct involving a minor or ward."

This similarity appears to be more than a coincidence. We cannot state with certainty that Congress used Chapter

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[1] For example, § 2241(a) of Chapter 109A prohibits forced sexual acts against "another person"—not just a person under a certain age. Section 2241(c) specially criminalizes sexual acts "with another person who has not attained the age of 12 years," and § 2243(b) does the same for sexual acts with wards who are "in official detention" or "under the custodial, supervisory, or disciplinary authority of the person so engaging."

109A as a template for the list of state predicates set out in § 2252(b)(2), but we cannot ignore the parallel, particularly because the headings in Chapter 109A were in place when Congress amended the statute to add § 2252(b)(2)'s state sexual-abuse predicates.[2]

If Congress had intended to limit each of the state predicates to conduct "involving a minor or ward," we doubt it would have followed, or thought it needed to follow, so closely the structure and language of Chapter 109A.[3] The conclusion that Congress followed the federal template is supported by the fact that Congress did nothing to indicate that offenders with prior federal sexual-abuse convictions are more culpable, harmful, or worthy of enhanced punishment than offenders with nearly identical state priors. We therefore see no reason to interpret § 2252(b)(2) so that "[s]exual abuse" that occurs in the Second Circuit courthouse triggers the sentence enhancement, but "sexual abuse" that occurs next door in the Manhattan municipal building does not.

III

A

Lockhart argues, to the contrary, that the phrase "involving a minor or ward" should be interpreted to modify all

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[2] See 18 U. S. C. § 2241 (1994 ed.) ("Aggravated sexual abuse"); § 2242 ("Sexual abuse"); § 2243 ("Sexual abuse of a minor or ward").

[3] The dissent points out that § 2252(b)(2) (2012 ed.) did not also borrow from the heading of the fourth section in Chapter 109A (or, we note, from the fifth, sixth, seventh, or eighth sections) in defining its categories of state sexual-abuse predicates. *Post*, at 374–375 (KAGAN, J. dissenting). But the significance of the similarity between the three state predicates in § 2252(b)(2) and the wording, structure, and order of the first three sections of Chapter 109A is not diminished by the fact that Congress stopped there (especially when the remaining sections largely set out derivations from, definitions of, and penalties for the first three). See, *e. g.*, § 2244 (listing offenses derived from §§ 2241, 2242, and 2243); § 2245 (creating an enhancement for offenses under Chapter 109A resulting in death); § 2246 (listing definitions).

three state sexual-abuse predicates. He first contends, as does our dissenting colleague, that the so-called series-qualifier principle supports his reading. This principle, Lockhart says, requires a modifier to apply to all items in a series when such an application would represent a natural construction. Brief for Petitioner 12; *post*, at 365.

This Court has long acknowledged that structural or contextual evidence may "rebut the last antecedent inference." *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, 344, n. 4 (2005). For instance, in *Porto Rico Railway, Light & Power Co.* v. *Mor*, 253 U. S. 345 (1920), on which Lockhart relies, this Court declined to apply the rule of the last antecedent where "[n]o reason appears why" a modifying clause is not "applicable as much to the first and other words as to the last" and where "special reasons exist for so construing the clause in question." *Id.*, at 348. In *United States* v. *Bass*, 404 U. S. 336 (1971), this Court declined to apply the rule of the last antecedent where "there is no reason consistent with any discernable purpose of the statute to apply" the limiting phrase to the last antecedent alone. *Id.*, at 341. Likewise, in *Jama*, the Court suggested that the rule would not be appropriate where the "modifying clause appear[s] . . . at the end of a single, integrated list." 543 U. S., at 344, n. 4. And, most recently, in *Paroline* v. *United States*, 572 U. S. 434 (2014), the Court noted that the rule need not be applied "in a mechanical way where it would require accepting 'unlikely premises.' " *Id.*, at 447.

But in none of those cases did the Court describe, much less apply, a countervailing grammatical mandate that could bear the weight that either Lockhart or the dissent places on the series-qualifier principle. Instead, the Court simply observed that sometimes context weighs against the application of the rule of the last antecedent. *Barnhart*, 540 U. S., at 26. Whether a modifier is "applicable as much to the first . . . as to the last" words in a list, whether a set of items form a "single, integrated list," and whether the application

of the rule would require acceptance of an "unlikely premise" are fundamentally contextual questions.

Lockhart attempts to identify contextual indicia that he says rebut the rule of the last antecedent, but those indicia hurt rather than help his prospects. He points out that the final two state predicates, "sexual abuse" and "abusive sexual conduct," are "nearly synonymous as a matter of everyday speech." Brief for Petitioner 17. And, of course, anyone who commits "aggravated sexual abuse" has also necessarily committed "sexual abuse." So, he posits, the items in the list are sufficiently similar that a limiting phrase could apply equally to all three of them.

But Lockhart's effort to demonstrate some similarity among the items in the list of state predicates reveals far too much similarity. The three state predicate crimes are not just related on Lockhart's reading; they are hopelessly redundant. Any conduct that would qualify as "aggravated sexual abuse . . . involving a minor or ward" or "sexual abuse . . . involving a minor or ward" would also qualify as "abusive sexual conduct involving a minor or ward." We take no position today on the meaning of the terms "aggravated sexual abuse," "sexual abuse," and "abusive sexual conduct," including their similarities and differences. But it is clear that applying the limiting phrase to all three items would risk running headlong into the rule against superfluity by transforming a list of separate predicates into a set of synonyms describing the same predicate. See *Bailey* v. *United States*, 516 U. S. 137, 146 (1995) ("We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning").

Applying the limiting phrase "involving a minor or ward" more sparingly, by contrast, preserves some distinction between the categories of state predicates by limiting only the third category to conduct "involving a minor or ward." We recognize that this interpretation does not eliminate all superfluity between "aggravated sexual abuse" and "sexual

abuse." See *United States* v. *Atlantic Research Corp.*, 551 U. S. 128, 137 (2007) ("[O]ur hesitancy to construe statutes to render language superfluous does not require us to avoid surplusage at all costs. It is appropriate to tolerate a degree of surplusage"). But there is a ready explanation for the redundancy that remains: It follows the categories in Chapter 109A's federal template. See *supra*, at 354. We see no similar explanation for Lockhart's complete collapse of the list.

The dissent offers a suggestion rooted in its impressions about how people ordinarily speak and write. *Post*, at 362–365. The problem is that, as even the dissent acknowledges, § 2252(b)(2)'s list of state predicates is hardly intuitive. No one would mistake its odd repetition and inelegant phrasing for a reflection of the accumulated wisdom of everyday speech patterns. It would be as if a friend asked you to get her tart lemons, sour lemons, or sour fruit from Mexico. If you brought back lemons from California, but your friend insisted that she was using customary speech and obviously asked for Mexican fruit only, you would be forgiven for disagreeing on both counts.

Faced with § 2252(b)(2)'s inartful drafting, then, do we interpret the provision by viewing it as a clear, commonsense list best construed as if conversational English? Or do we look around to see if there might be some provenance to its peculiarity? With Chapter 109A so readily at hand, we are unpersuaded by our dissenting colleague's invocation of basic examples from day-to-day life. Whatever the validity of the dissent's broader point, this simply is not a case in which colloquial practice is of much use. Section 2252(b)(2)'s list is hardly the way an average person, or even an average lawyer, would set about to describe the relevant conduct if they had started from scratch.

B

Lockhart next takes aim at our construction of § 2252(b)(2) to avoid disparity between the state and federal sexual-

abuse predicates. He contends that other disparities between state and federal predicates in § 2252(b)(2) indicate that parity was not Congress' concern. For example, § 2252(b)(2) imposes the recidivist enhancement on offenders with prior federal convictions under Chapter 71 of Title 18, which governs obscenity. See §§ 1461–1470. Yet § 2252(b)(2) does not impose a similar enhancement for offenses under state obscenity laws. Similarly, § 2252(b)(2)'s neighbor provision, § 2252(b)(1), creates a mandatory minimum for sex trafficking involving children, but not sex trafficking involving adults.

However, our construction of § 2252(b)(2)'s sexual-abuse predicates does not rely on a general assumption that Congress sought full parity between all of the federal and state predicates in § 2252(b)(2). It relies instead on contextual cues particular to the sexual-abuse predicates. To enumerate the state sexual-abuse predicates, Congress used language similar to that in Chapter 109A of the Federal Criminal Code, which describes crimes involving both adults and children. See *supra*, at 354. We therefore assume that the same language used to describe the state sexual-abuse predicates also describes conduct involving both adults and children.

C

Lockhart, joined by the dissent, see *post*, at 369–371, next says that the provision's legislative history supports the view that Congress deliberately structured § 2252(b)(2) to treat state and federal predicates differently. They rely on two sources. The first is a reference in a Report from the Senate Judiciary Committee on the Child Pornography Prevention Act of 1996, 110 Stat. 3009–26. That Act was the first to add the language at issue here—"aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward"—to the U. S. Code. (It was initially added to § 2252(b)(1), then added two years later to § 2252(b)(2).)

The Report noted that the enhancement applies to persons with prior convictions "under any State child abuse law or law relating to the production, receipt or distribution of child pornography." See S. Rep. No. 104–358, p. 9 (1996). But that reference incompletely describes the state pornography production and distribution predicates, which cover not only "production, receipt, or distributing of child pornography," as the Report indicates, but also "production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography," § 2252(b)(2). For the reasons discussed, we have no trouble concluding that the Report also incompletely describes the state sexual-abuse predicates.

Lockhart and the dissent also rely on a letter sent from the Department of Justice (DOJ) to the House of Representative's Committee on the Judiciary commenting on the proposed "Child Protection and Sexual Predator Punishment Act of 1998." H. R. Rep. No. 105–557, pp. 26–34 (1998). In the letter, DOJ provides commentary on the then-present state of §§ 2252(b)(1) and 2252(b)(2), noting that although there is a "5-year mandatory minimum sentence for individuals charged with receipt or distribution of child pornography and who have prior state convictions for child molestation" pursuant to § 2252(b)(1), there is "no enhanced provision for those individuals charged with possession of child pornography who have prior convictions for child abuse" pursuant to § 2252(b)(2). *Id.*, at 31. That letter, they say, demonstrates that DOJ understood the language at issue here to impose a sentencing enhancement only for prior state convictions involving children.

We doubt that DOJ was trying to describe the full reach of the language in § 2252(b)(1), as the dissent suggests. To the contrary, there are several clues that the letter was relying on just one of the provision's many salient features. For instance, the letter's references to "child molestation" and "child abuse" do not encompass a large number of state crimes that are unambiguously covered by "abusive sexual

conduct involving a minor or ward"—namely, crimes involving "wards." Wards can be minors, but they can also be adults. See, *e. g.*, § 2243(b) (defining "wards" as persons who are "in official detention" and "under . . . custodial, supervisory, or disciplinary authority"). Moreover, we doubt that DOJ intended to express a belief that the potentially broad scope of serious crimes encompassed by "aggravated sexual abuse, sexual abuse, and abusive sexual conduct" reaches no further than state crimes that would traditionally be characterized as "child molestation" or "child abuse."

Thus, Congress' amendment to the provision did give "DOJ just what it wanted," *post*, at 370. But the amendment also did more than that. We therefore think it unnecessary to restrict our interpretation of the provision to the parts of it that DOJ chose to highlight in its letter. Just as importantly, the terse descriptions of the provision in the Senate Report and DOJ letter do nothing to explain *why* Congress would have wanted to apply the mandatory minimum to individuals convicted in federal court of sexual abuse or aggravated sexual abuse involving an adult, but not to individuals convicted in state court of the same. The legislative history, in short, "hardly speaks with [a] clarity of purpose" through which we can discern Congress' statutory objective. *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474, 483 (1951).

The best explanation Lockhart can muster is a basic administrability concern: Congress "knew what conduct it was capturing under federal law and could be confident that all covered federal offenses were proper predicates. But Congress did not have the same familiarity with the varied and mutable sexual-abuse laws of all fifty states." Brief for Petitioner 27. Perhaps Congress worried that state laws punishing relatively minor offenses like public lewdness or indecent exposure involving an adult would be swept into § 2252(b)(2). *Id.*, at 28. But the risk Lockhart identifies is minimal. Whether the terms in § 2252(b)(2) are given their "generic" meaning, see *Descamps* v. *United States*, 570 U. S.

254 (2013); *Taylor* v. *United States*, 495 U. S. 575 (1990), or are defined in light of their federal counterparts—which we do not decide—they are unlikely to sweep in the bizarre or unexpected state offenses that worry Lockhart.

D

Finally, Lockhart asks us to apply the rule of lenity. We have used the lenity principle to resolve ambiguity in favor of the defendant only "at the end of the process of construing what Congress has expressed" when the ordinary canons of statutory construction have revealed no satisfactory construction. *Callanan* v. *United States*, 364 U. S. 587, 596 (1961). That is not the case here. To be sure, Lockhart contends that if we applied a different principle of statutory construction—namely, his "series-qualifier principle"—we would arrive at an alternative construction of § 2252(b)(2). But the arguable availability of multiple, divergent principles of statutory construction cannot automatically trigger the rule of lenity. Cf. Llewellyn, Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are To Be Construed, 3 Vand. L. Rev. 395, 401 (1950) ("[T]here are two opposing canons on almost every point"). Here, the rule of the last antecedent is well supported by context and Lockhart's alternative is not. We will not apply the rule of lenity to override a sensible grammatical principle buttressed by the statute's text and structure.

* * *

We conclude that the text and structure of § 2252(b)(2) confirm that the provision applies to prior state convictions for "sexual abuse" and "aggravated sexual abuse," whether or not the convictions involved a minor or ward. We therefore hold that Lockhart's prior conviction for sexual abuse of an adult is encompassed by § 2252(b)(2). The judgment of the Court of Appeals, accordingly, is affirmed.

So ordered.

JUSTICE KAGAN, with whom JUSTICE BREYER joins, dissenting.

Imagine a friend told you that she hoped to meet "an actor, director, or producer involved with the new Star Wars movie." You would know immediately that she wanted to meet an actor from the Star Wars cast—not an actor in, for example, the latest Zoolander. Suppose a real estate agent promised to find a client "a house, condo, or apartment in New York." Wouldn't the potential buyer be annoyed if the agent sent him information about condos in Maryland or California? And consider a law imposing a penalty for the "violation of any statute, rule, or regulation relating to insider trading." Surely a person would have cause to protest if punished under that provision for violating a traffic statute. The reason in all three cases is the same: Everyone understands that the modifying phrase—"involved with the new Star Wars movie," "in New York," "relating to insider trading"—applies to each term in the preceding list, not just the last.

That ordinary understanding of how English works, in speech and writing alike, should decide this case. Avondale Lockhart is subject to a 10-year mandatory minimum sentence for possessing child pornography if, but only if, he has a prior state-law conviction for "aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward." 18 U. S. C. § 2252(b)(2). The Court today, relying on what is called the "rule of the last antecedent," reads the phrase "involving a minor or ward" as modifying only the final term in that three-item list. But properly read, the modifier applies to each of the terms—just as in the examples above. That normal construction finds support in uncommonly clear-cut legislative history, which states in so many words that the three predicate crimes all involve abuse of children. And if any doubt remained, the rule of lenity would command the same result: Lockhart's prior conviction for sexual abuse *of an adult* does not trigger

§ 2252(b)(2)'s mandatory minimum penalty. I respectfully dissent.

I

Begin where the majority does—with the rule of the last antecedent. See *ante*, at 351. This Court most fully discussed that principle in *Barnhart* v. *Thomas*, 540 U. S. 20 (2003), which considered a statute providing that an individual qualifies as disabled if "he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work *which exists in the national economy*." *Id.*, at 21–22 (quoting 42 U. S. C. § 423(d)(2)(A)) (emphasis added). The Court held, invoking the last-antecedent rule, that the italicized phrase modifies only the term "substantial gainful work," and not the term "previous work" occurring earlier in the sentence. Two points are of especial note. First, *Barnhart* contained a significant caveat: The last-antecedent rule "can assuredly be overcome by other indicia of meaning." 540 U. S., at 26; see, *e. g.*, *Nobelman* v. *American Savings Bank*, 508 U. S. 324, 330–331 (1993) (refusing to apply the rule when a contrary interpretation was "the more reasonable one"). Second, the grammatical structure of the provision in *Barnhart* is nothing like that of the statute in this case: The modifying phrase does not, as here, immediately follow a list of multiple, parallel terms. That is true as well in the other instances in which this Court has followed the rule. See, *e. g.*, *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335 (2005); *Batchelor* v. *United States*, 156 U. S. 426 (1895); *Sims Lessee* v. *Irvine*, 3 Dall. 425 (1799).

Indeed, this Court has made clear that the last-antecedent rule does not generally apply to the grammatical construction present here: when "[t]he modifying clause appear[s] . . . at the end of a single, integrated list." *Jama*, 543 U. S., at 344, n. 4. Then, the exact opposite is usually true: As in the examples beginning this opinion, the modifying phrase refers

alike to each of the list's terms. A leading treatise puts the point as follows: "When there is a straightforward, parallel construction that involves all nouns or verbs in a series," a modifier at the end of the list "normally applies to the entire series." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 147 (2012); compare *id.*, at 152 ("When the syntax involves something other than [such] a parallel series of nouns or verbs," the modifier "normally applies only to the nearest reasonable referent"). That interpretive practice of applying the modifier to the whole list boasts a fancy name—the "series-qualifier canon," see Black's Law Dictionary 1574 (10th ed. 2014)—but, as my opening examples show, it reflects the completely ordinary way that people speak and listen, write and read.[1]

Even the exception to the series-qualifier principle is intuitive, emphasizing both its common-sensical basis and its customary usage. When the nouns in a list are so disparate that the modifying clause does not make sense when applied to them all, then the last-antecedent rule takes over. Suppose your friend told you not that she wants to meet "an actor, director, or producer involved with Star Wars," but instead that she hopes someday to meet "a President, Supreme Court Justice, or actor involved with Star Wars." Presumably, you would know that she wants to meet a President or Justice even if that person has no connection to the

[1] The majority's baseball example, see *ante*, at 351–352, reads the other way only because its three terms are *not* parallel. The words "catcher" and "shortstop," but not "pitcher," are qualified separate and apart from the modifying clause at the end of the sentence: "Pitcher" thus calls for a modifier of its own, and the phrase "from the Kansas City Royals" answers that call. Imagine the sentence is slightly reworded to refer to a "defensive catcher, quick-footed shortstop, or hard-throwing pitcher from the Kansas City Royals." Or, alternatively, suppose the sentence referred simply to a "catcher, shortstop, or pitcher from the Kansas City Royals." Either way, all three players must come from the Royals—because the three terms (unlike in the majority's sentence) are a parallel series with a modifying clause at the end.

famed film franchise. But so long as the modifying clause "is applicable as much to the first and other words as to the last," this Court has stated, "the natural construction of the language demands that the clause be read as applicable to all." *Paroline* v. *United States*, 572 U. S. 434, 447 (2014) (quoting *Porto Rico Railway, Light & Power Co.* v. *Mor*, 253 U. S. 345, 348 (1920)). In other words, the modifier then qualifies not just the last antecedent but the whole series.

As the majority itself must acknowledge, see *ante*, at 354–355, this Court has repeatedly applied the series-qualifier rule in just that manner. In *Paroline*, for example, this Court considered a statute requiring possessors of child pornography to pay restitution to the individuals whose abuse is recorded in those materials. The law defines such a victim's losses to include "medical services relating to physical, psychiatric, or psychological care; physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; attorneys' fees, as well as other costs incurred; and any other losses suffered by the victim as a proximate result of the offense." 18 U. S. C. §§ 2259(b)(3)(A)–(F) (lettering omitted). The victim bringing the lawsuit invoked the last-antecedent rule to argue that the modifier at the end of the provision—"as a proximate result of the offense"—pertained only to the last item in the preceding list, and not to any of the others. See 572 U. S., at 447. But the Court rejected that view: It recited the "canon[ ] of statutory construction," derived from the "natural" use of language, that "[w]hen several words are followed by a clause" that can sensibly modify them all, it should be understood to do so. *Ibid.* Thus, the Court read the proximate-cause requirement to cover each and every term in the list.

United States v. *Bass*, 404 U. S. 336 (1971), to take just one other example, followed the same rule. There, the Court confronted a statute making it a crime for a convicted felon to "receive[ ], possess[ ], or transport[ ] in commerce or affect-

ing commerce . . . any firearm." 18 U. S. C. App. § 1202(a) (1970 ed.) (current version at 18 U. S. C. § 922(g)). The Government contended that the modifying clause—"in commerce or affecting commerce"—applied only to "transport" and not to "receive" or "possess." But the Court rebuffed that argument. "[T]he natural construction of the language," the Court recognized, "suggests that the clause 'in commerce or affecting commerce' qualifies all three antecedents in the list." 404 U. S., at 339 (some internal quotation marks omitted). Relying on longstanding precedents endorsing such a construction, the Court explained: "Since 'in commerce or affecting commerce' undeniably applies to at least one antecedent, and since it makes sense with all three, the more plausible construction here is that it in fact applies to all three." *Id.*, at 339–340 (citing *United States* v. *Standard Brewery, Inc.*, 251 U. S. 210, 218 (1920); *Porto Rico Railway*, 253 U. S., at 348); see also, *e. g.*, *Jones* v. *United States*, 529 U. S. 848, 853 (2000) (similarly treating the interstate commerce element in the phrase "any building, vehicle, or other real or personal property used in interstate or foreign commerce" as applying to buildings and vehicles).

That analysis holds equally for § 2252(b)(2), the sentencing provision at issue here. The relevant language—"aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward"—contains a "single, integrated list" of parallel terms (*i. e.*, sex crimes) followed by a modifying clause. *Jama*, 543 U. S., at 344, n. 4. Given the close relation among the terms in the series, the modifier makes sense "as much to the first and other words as to the last." *Paroline*, 572 U. S., at 447. In other words, the reference to a minor or ward applies as well to sexual abuse and aggravated sexual abuse as to abusive sexual conduct. (The case would be different if, for example, the statute established a mandatory minimum for any person previously convicted of "arson, receipt of stolen property, or abusive sexual conduct involving a minor or ward.") So interpreting the modifier

"as applicable to all" the preceding terms is what "the natural construction of the language" requires. *Ibid.*; *Bass*, 404 U. S., at 339.

The majority responds to all this by claiming that the "inelegant phrasing" of § 2252(b)(2) renders it somehow exempt from a grammatical rule reflecting "how people ordinarily" use the English language. *Ante*, at 357. But to begin with, the majority is wrong to suggest that the series-qualifier canon is only about "colloquial" or "conversational" English. *Ibid.* In fact, it applies to both speech and writing, in both their informal and their formal varieties. Here is a way to test my point: Pick up a journal, or a book, or for that matter a Supreme Court opinion—most of which keep "everyday" colloquialisms at a far distance. *Ibid.* You'll come across many sentences having the structure of the statutory provision at issue here: a few nouns followed by a modifying clause. And you'll discover, again and yet again, that the clause modifies every noun in the series, not just the last—in other words, that even (especially?) in formal writing, the series-qualifier principle works.[2] And the majority is wrong

[2] Too busy to carry out this homework assignment? Consider some examples (there are many more) from just the last few months of this Court's work. In *OBB Personenverkehr AG* v. *Sachs*, *ante*, at 33, this Court described a lawsuit as alleging "wrongful arrest, imprisonment, and torture *by Saudi police*." In *James* v. *Boise*, *ante*, at 307 (*per curiam*) (quoting *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 348 (1816)), this Court affirmed that state courts must follow its interpretations of "the laws, the treaties, and the constitution *of the United States*." In *Musacchio* v. *United States*, *ante*, at 246 (quoting *Reed Elsevier, Inc.* v. *Muchnick*, 559 U. S. 154, 166 (2010)), this Court noted that in interpreting statutes it looks to the "text, context, and relevant historical treatment *of the provision at issue*." In *FERC* v. *Electric Power Supply Assn.*, *ante*, at 277, this Court applied a statute addressing "any rule, regulation, practice, or contract *affecting [a wholesale] rate [or] charge*." And in *Montanile* v. *Board of Trustees of Nat. Elevator Industry Health Benefit Plan*, *ante*, at 139, this Court interpreted an employee benefits plan requiring reimbursement "for attorneys' fees, costs, expenses or damages *claimed by the covered person*." In each case, of course, the italicized modifying clause refers to

too in suggesting that the "odd repetition" in § 2252(b)(2)'s list of state predicates causes the series-qualifier principle to lose its force. *Ibid.* The majority's own made-up sentence proves that much. If a friend asked you "to get her tart lemons, sour lemons, or sour fruit from Mexico," you might well think her list of terms perplexing: You might puzzle over the difference between tart and sour lemons, and wonder why she had specifically mentioned lemons when she apparently would be happy with sour fruit of any kind. But of one thing, you would have no doubt: Your friend wants some produce *from Mexico*; it would not do to get her, say, sour lemons from Vietnam. However weird the way she listed fruits—or the way § 2252(b)(2) lists offenses—the modifying clause still refers to them all.

The majority as well seeks refuge in the idea that applying the series-qualifier canon to § 2252(b)(2) would violate the rule against superfluity. See *ante*, at 356–357. Says the majority: "Any conduct that would qualify as 'aggravated sexual abuse . . . involving a minor or ward' or 'sexual abuse . . . involving a minor or ward' would also qualify as 'abusive sexual conduct involving a minor or ward.' " *Ante*, at 356. But that rejoinder doesn't work. "[T]he canon against superfluity," this Court has often stated, "assists only where a competing interpretation gives effect to every clause and word of a statute." *Microsoft Corp.* v. *i4i L. P.*, 564 U. S. 91, 106 (2011) (internal quotation marks omitted); see, *e. g.*, *Bruesewitz* v. *Wyeth LLC*, 562 U. S. 223, 236 (2011). And the majority's approach (as it admits, see *ante*, at 356) produces superfluity too—and in equal measure. Now (to rearrange the majority's sentence) any conduct that would qualify as "abusive sexual conduct involving a minor or ward" or "aggravated sexual abuse" would also qualify as "sexual abuse." In other words, on the majority's reading as well, two listed

every item in the preceding list. That is because the series-qualifier rule reflects how all of us use language, in writing and in speech, in formal and informal contexts, all the time.

crimes become subsets of a third, so that the three could have been written as one. And indeed, the majority's superfluity has an especially odd quality, because it relates to the modifying clause itself: The majority, that is, makes the term "involving a minor or ward" wholly unnecessary. Remember the old adage about the pot and the kettle? That is why the rule against superfluity cannot excuse the majority from reading § 2252(b)(2)'s modifier, as ordinary usage demands, to pertain to all the terms in the preceding series.[3]

II

Legislative history confirms what the natural construction of language shows: Each of the three predicate offenses at issue here must involve a minor. The list of those crimes appears in two places in § 2252(b)—both in § 2252(b)(1), which contains a sentencing enhancement for those convicted of distributing or receiving child pornography, and in § 2252(b)(2), which includes a similar enhancement for those (like Lockhart) convicted of possessing such material. Descriptions of that list of offenses, made at the time Congress added it to those provisions, belie the majority's position.

The relevant language—again, providing for a mandatory minimum sentence if a person has a prior state-law conviction for "aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward"—first made its appearance in 1996, when Congress inserted it into § 2252(b)(1). See Child Pornography Prevention Act of 1996, § 121(5), 110 Stat. 3009–30, 18 U. S. C. § 2251 note. At that time, the Senate Report on the legislation explained what the new language meant: The mandatory minimum would apply to an "offender with a prior conviction under . . . any *State child abuse law*." S. Rep. No. 104–358, p. 9

[3] The majority asserts that it has found, concealed within § 2252(b)(2)'s structure, an "explanation" for its own superfluity, *ante*, at 357, but that claim, as I'll soon show, collapses on further examination. See *infra*, at 373–376.

(1996) (emphasis added). It is hard to imagine saying any more directly that the just-added state sexual-abuse predicates all involve minors, and minors only.[4]

Two years later, in urging Congress to include the same predicate offenses in § 2252(b)(2), the Department of Justice (DOJ) itself read the list that way. In a formal bill comment, DOJ noted that proposed legislation on child pornography failed to fix a statutory oddity: Only § 2252(b)(1), and not § 2252(b)(2), then contained the state predicates at issue here. DOJ described that discrepancy as follows: Whereas § 2252(b)(1) provided a penalty enhancement for "individuals charged with receipt or distribution of child pornography *and who have prior state convictions for child molestation*," the adjacent § 2252(b)(2) contained no such enhancement for those "charged with possession of child pornography *who have prior convictions for child abuse*." H. R. Rep. No. 105–557, p. 31 (1998) (emphasis added). That should change, DOJ wrote: A possessor of child pornography should also be subject to a 2-year mandatory minimum if he had "a *prior conviction for sexual abuse of a minor*." *Ibid.* (emphasis added). DOJ thus made clear that the predicate offenses it recommended adding to § 2252(b)(2)—like those already in § 2252(b)(1)—related not to all sexual abuse but only to sexual abuse of children. And Congress gave DOJ just what it wanted: Soon after receiving the letter, Congress added the language at issue to § 2252(b)(2), resulting in the requested 2-year minimum sentence. See Protection of Children From Sexual Predators Act of 1998, § 202(a)(2), 112 Stat. 2977, 18 U. S. C. § 1 note. So every indication, in 1998 no less than in 1996, was that all the predicate crimes relate to children alone.

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[4] And it makes no difference that the Senate Report accompanied § 2252(b)(1)'s, rather than § 2252(b)(2)'s, amendment. No one can possibly think (and the majority therefore does not try to argue) that the disputed language means something different in § 2252(b)(2) than in its neighbor and model, § 2252(b)(1).

The majority's response to this history fails to blunt its force. According to the majority, the reference to "any state child abuse law" in the Senate Report is simply an "incomplete[ ] descri[ption]" of "the state sexual-abuse predicates." *Ante*, at 359. And similarly, the majority ventures, the DOJ letter was merely noting "one of the provision's many salient features." *Ibid.* But suppose that you (like the Senate Report's or DOJ letter's authors) had to paraphrase or condense the statutory language at issue here, and that you (like the majority) thought it captured *all* sexual-abuse crimes. Would you then use the phrase "any state child abuse law" as a descriptor (as the Senate Report did)? And would you refer to the whole list of state predicates as involving "sexual abuse of a minor" (as the DOJ letter did)? Of course not. But you might well use such shorthand if, alternatively, you understood the statutory language (as I do) to cover only sexual offenses against children. And so the authors of the Report and letter did here. Such documents of necessity abridge statutory language; but they do not do so by conveying an utterly false impression of what that language is most centrally about—as by describing a provision that (supposedly) covers all sexual abuse as one that reaches only child molestation.[5]

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[5] The majority tries to bolster its "incomplete description" claim by highlighting another summary statement in the Senate Report, but that reference merely illustrates my point. In amending § 2252(b)(1) (and later § 2252(b)(2)), Congress added not only the child sexual-abuse predicates at issue here, but also a set of predicate state offenses relating to child pornography. Specifically, Congress provided a mandatory minimum sentence for individuals previously convicted of the "production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography." Child Pornography Prevention Act, § 121(5), 110 Stat. 3009–30. The Senate Report described those predicate crimes in an abbreviated fashion as "relating to the production, receipt or distribution of child pornography." S. Rep. No. 104–358, p. 9 (1996). That synopsis doubtless leaves some things out, as any synopsis does; but no reader of the Report would be terribly surprised to see the fuller statutory list. The same cannot be said of the phrase "any state child abuse law" if that

Further, the majority objects that the Senate Report's (and DOJ letter's) drafters did "nothing to explain *why*" Congress would have limited § 2252(b)'s state sexual-abuse predicates to those involving children when the provision's federal sexual-abuse predicates (as all agree) are not so confined. *Ante*, at 360 (emphasis in original). But Congress is under no obligation to this Court to justify its choices. (Nor is DOJ obliged to explain them to Congress itself.) Rather, the duty is on this Court to carry out those decisions, regardless of whether it understands all that lay behind them. The Senate Report (and DOJ letter too) says what it says about § 2252(b)'s meaning, confirming in no uncertain terms the most natural reading of the statutory language. Explanation or no, that is more than sufficient.

And the majority (as it concedes) cannot claim that Congress simply must have wanted § 2252(b)(2)'s federal and state predicates to be the same. See *ante*, at 358 ("[O]ur construction of § 2252(b)(2)'s sexual-abuse predicates does not rely on a general assumption that Congress sought full parity between all of the federal and state predicates"). That is because both § 2252(b)(1) and § 2252(b)(2) contain many federal predicates lacking state matches. Under

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in fact refers to laws prohibiting *all* rape, sexual assault, and similar behavior.

The majority makes the identical mistake in asserting that the DOJ letter merely "highlight[s]" one of § 2252(b)(1)'s many features. *Ante*, at 360. To support that claim, the majority notes that the letter omits any discussion of sexual crimes against adult wards, even though the statute covers those offenses on any theory. But that elision is perfectly natural. The number of sex crimes against adult wards pales in comparison to those against children: In discussing the latter, DOJ was focused on the mine-run offense. (For the same reason, this opinion's descriptions of § 2252(b) often skip any reference to wards. See *supra*, at 369–371; *infra*, at 373. Count that as a writer's choice to avoid extraneous detail.) The majority cannot offer any similar, simple explanation of why DOJ would have repeatedly referred only to sex crimes against children if the statutory language it was explicating—and proposing to add to another provision—also covered sex crimes against all adults.

§ 2252(b)(1), for example, a person is subject to a mandatory minimum if he previously violated 18 U. S. C. § 1591, which prohibits "[s]ex trafficking of children or [sex trafficking] by force, fraud, or coercion." But if the prior conviction is under state law, only sex trafficking of children will trigger that minimum; trafficking of adults, even if by force, fraud, or coercion, will not. That mismatch—trafficking of both adults and children on the federal side, trafficking of children alone on the state side—precisely parallels my view of the sexual-abuse predicates at issue here. More generally, ten federal obscenity crimes trigger both § 2252(b)(1)'s and § 2252(b)(2)'s enhanced punishments; but equivalent state crimes do not do so. And five federal prostitution offenses prompt mandatory minimums under those provisions; but no such state offenses do. Noting those disparities, the Government concedes: "[W]hen Congress adds state-law offenses to the lists of predicate offenses triggering child-pornography recidivist enhancements, it sometimes adds state offenses corresponding to only a subset of the federal offenses" previously included. Brief for United States 43. Just so. And this Court ought to enforce that choice.

III

As against the most natural construction of § 2252(b)(2)'s language, plus unusually limpid legislative history, the majority relies on a structural argument. See *ante*, at 352–353. The federal sexual-abuse predicates in § 2252(b)(2), the majority begins, are described as crimes "under . . . Chapter 109A," and that chapter "criminalizes a range of sexual-abuse offenses involving adults *or* minors." *Ante*, at 353 (emphasis in original). Once again, the majority cannot say that this fact alone resolves the question presented, given the many times (just discussed) that Congress opted to make federal crimes, but not equivalent state crimes, predicates for § 2252(b)(2)'s mandatory minimums. But the majority claims to see more than that here: The headings of the sec-

tions in Chapter 109A, it contends, "mirror precisely the order . . . and nearly precisely the words used to describe" the state predicate crimes at issue. *Ante*, at 353. The majority "cannot state with certainty," but hazards a guess that Congress thus used Chapter 109A "as a template for the list of state predicates"—or, otherwise said, that Congress "followed" the "structure and language of Chapter 109A" in defining those state-law offenses. *Ante*, at 353–354.

But § 2252(b)(2)'s state predicates are not nearly as similar to the federal crimes in Chapter 109A as the majority claims. That chapter includes the following offenses: "Aggravated sexual abuse," § 2241, "Sexual abuse," § 2242, "Sexual abuse of a minor or ward," § 2243, and "Abusive sexual contact," § 2244. The chapter thus contains *four* crimes—one more than found in § 2252(b)(2)'s list of state offenses. If the drafters of § 2252(b)(2) meant merely to copy Chapter 109A, why would they have left out one of its crimes? The majority has no explanation.[6] And there is more. Suppose Congress, for whatever hard-to-fathom reason, wanted to replicate only Chapter 109A's first three offenses. It would then have used the same language, referring to "the laws of any State relating to aggravated sexual abuse, sexual abuse, or sexual abuse of a minor or ward." (And had Congress used that language, the phrase "of a minor or ward" would clearly have applied only to the third term, to differentiate it from the otherwise identical second.) But contra the majority, see *ante*, at 353, 356–357, that is not what § 2252(b)(2)'s draft-

[6] In a footnote, the majority intimates that Chapter 109A contains only three crimes—but that reading is unambiguously wrong. Unlike the fifth through eighth sections of that chapter (which the majority invokes to no purpose), the fourth—again, entitled "[a]busive sexual contact"—sets out an independent substantive offense, criminalizing acts not made illegal in the first three sections. §§ 2244(a)–(c); see also 42 U. S. C. § 16911 (separately listing this offense in identifying who must register as a sex offender). The majority, as noted above, gives no reason why Congress would have ignored that fourth crime had it been using Chapter 109A as a template.

ers did. Rather than repeating the phrase "sexual abuse," they used the phrase "abusive sexual conduct" in the list's last term—which echoes, if anything, the separate crime of "abusive sexual contact" (included in Chapter 109A's *fourth* offense, as well as in other places in the federal code, see, *e. g.*, 10 U. S. C. § 920(d)). The choice of those different words indicates, yet again, that Congress did not mean, as the majority imagines, to duplicate Chapter 109A's set of offenses.

Indeed, even the Government has refused to accept the notion that the federal and state sexual-abuse predicates mirror each other. The Government, to be sure, has argued that it would be "anomalous" if federal, but not state, convictions for sexually abusing adults trigger § 2252(b)(2)'s enhanced penalty. Brief for United States 23. (I have discussed that more modest point above: Anomalous or not, such differences between federal and state predicates are a recurring feature of the statute. See *supra*, at 372–373.) But the Government, in both briefing and argument, rejected the idea that Congress wanted the list of state predicates in § 2252(b)(2) to mimic the crimes in Chapter 109A; in other words, it denied that Congress meant for the state and federal offenses to bear the same meaning. See Brief for United States 22, n. 8; Tr. of Oral Arg. 26. Even in the face of sustained questioning from Members of this Court, the Government held fast to that position. See, *e. g.*, Tr. of Oral Arg. 25–26 (JUSTICE ALITO: "[W]hy do you resist the argument that what Congress was doing was picking up basically the definitions of the Federal offenses [in Chapter 109A] that are worded almost identically?" Assistant to the Solicitor General: "[W]e don't think that Congress was trying" to do that). The listed state and federal offenses, the Government made clear, are not intended to be copies.

The majority seems to think that view somehow consistent with its own hypothesis that Chapter 109A served as a "template" for § 2252(b)(2)'s state predicates, *ante*, at 354; in responding to one of Lockhart's arguments, the majority re-

marks that the state predicates might have a "generic" meaning, distinct from Chapter 109A's, *ante*, at 360. But if that is so, the majority's supposed template is not much of a template after all. The predicate state offenses would "follow" or "parallel" Chapter 109A in a single respect, but not in any other—that is, in including sexual abuse of adults, but not in otherwise defining wrongful sexual conduct (whether concerning adults or children). *Ante*, at 354. The template, one might say, is good for this case and this case only. And the majority has no theory for why that should be so: It offers not the slimmest explanation of how Chapter 109A can resolve today's question but not the many issues courts will face in the future involving the meaning of § 2252(b)(2)'s state predicate offenses. That is because no rationale would make sense. The right and consistent view is that Chapter 109A, like the other federal predicates in § 2252(b)(2), is across-the-board irrelevant in defining that provision's state predicates. Thus, the federal chapter's four differently worded crimes are independent of the three state offenses at issue here—all of which, for the reasons I've given, must "involv[e] a minor or ward."

IV

Suppose, for a moment, that this case is not as clear as I've suggested. Assume there is no way to know whether to apply the last-antecedent or the series-qualifier rule. Imagine, too, that the legislative history is not quite so compelling and the majority's "template" argument not quite so strained. Who, then, should prevail?

This Court has a rule for how to resolve genuine ambiguity in criminal statutes: in favor of the criminal defendant. As the majority puts the point, the rule of lenity insists that courts side with the defendant "when the ordinary canons of statutory construction have revealed no satisfactory construction." *Ante*, at 361 (citing *Callanan* v. *United States*, 364 U. S. 587, 596 (1961)); see also *Bifulco* v. *United States*,

447 U. S. 381, 387 (1980) (holding that the rule of lenity "applies not only to interpretations of the substantive ambit of criminal prohibitions, but also to the penalties they impose"). At the very least, that principle should tip the scales in Lockhart's favor, because nothing the majority has said shows that the modifying clause in § 2252(b)(2) *unambiguously* applies to only the last term in the preceding series.

But in fact, Lockhart's case is stronger. Consider the following sentence, summarizing various points made above: "The series-qualifier principle, the legislative history, and the rule of lenity discussed in this opinion all point in the same direction." Now answer the following question: Has only the rule of lenity been discussed in this opinion, or have the series-qualifier principle and the legislative history been discussed as well? Even had you not read the preceding 16-plus pages, you would know the right answer—because of the ordinary way all of us use language. That, in the end, is why Lockhart should win.

Syllabus

AMERICOLD REALTY TRUST *v.* CONAGRA FOODS, INC., ET AL.

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

No. 14–1382. Argued January 19, 2016—Decided March 7, 2016

Respondents, corporate citizens of Delaware, Nebraska, and Illinois, sued petitioner Americold Realty Trust, a "real estate investment trust" organized under Maryland law, in a Kansas court. Americold removed the suit to Federal District Court based on diversity-of-citizenship jurisdiction. See 28 U. S. C. §§ 1332(a)(1), 1441(b). The District Court accepted jurisdiction and ruled in Americold's favor. On appeal, the Tenth Circuit held that the District Court lacked jurisdiction to hear the suit. Since Americold was not a corporation, the court reasoned, its citizenship for diversity jurisdiction purposes should be based on the citizenship of its members, which included its shareholders. Because no record of those shareholders' citizenship existed, diversity was not proved.

Held: For purposes of diversity jurisdiction, Americold's citizenship is based on the citizenship of its members, which include its shareholders. Pp. 380–384.

(a) Historically, the relevant citizens for jurisdictional purposes in a suit involving a "mere legal entity" were that entity's "members," or the "real persons who come into court" in the entity's name. *Bank of United States* v. *Deveaux*, 5 Cranch 61, 86, 91. But for the limited exception of jurisdictional citizenship for corporations, see *Louisville, C. & C. R. Co.* v. *Letson*, 2 How. 497, 558, this Court continues to "adhere to [the] oft-repeated rule that diversity jurisdiction in a suit by or against the entity depends on the citizenship of 'all [its] members,'" *Carden* v. *Arkoma Associates*, 494 U. S. 185, 195. Applying the rule here, Americold possesses the citizenship of all its members, who, under Maryland law, include its shareholders. See, *e. g.*, Md. Corp. & Assns. Code Ann. § 8–101(c). Pp. 380–382.

(b) Americold argues that anything called a "trust" possesses the citizenship of its trustees alone. Traditionally, a trust was considered a "fiduciary relationship" between multiple people and could not be haled into court; hence, legal proceedings involving a trust were brought by or against the trustees in their own name, *Deveaux*, 5 Cranch, at 91. Americold confuses the traditional trust with the variety of unincorporated entities that many States have given the "trust" label. Under

Maryland law, the real estate investment trust at issue is treated as a "separate legal entity" that can sue or be sued. §§ 8–102(2), 8–301(2). Despite what such an entity calls itself, so long as it is unincorporated, this Court will apply the "oft-repeated rule" that it possesses the citizenship of all its members. Pp. 382–384.

776 F. 3d 1175, affirmed.

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

Michael D. Pospisil argued the cause for petitioner. With him on the briefs were *John M. Edgar* and *Kristin Linsley Myles.*

John M. Duggan argued the cause for respondents. With him on the brief was *Deron A. Anliker.**

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Federal law permits federal courts to resolve certain non-federal controversies between "citizens" of different States. This rule is easy enough to apply to humans, but can become metaphysical when applied to legal entities. This case asks how to determine the citizenship of a "real estate investment trust," an inanimate creature of Maryland law. We answer: While humans and corporations can assert their own citizenship, other entities take the citizenship of their members.

I

This action began as a typical state-law controversy, one involving a contract dispute and an underground food-storage warehouse fire. A group of corporations whose food perished in that 1991 fire continues to seek compensation from the warehouse's owner, now known as Americold Realty Trust. After the corporations filed their latest suit in Kansas court, Americold removed the suit to the Federal

*Briefs of *amici curiae* urging reversal were filed for the National Association of Real Estate Investment Trusts by *William M. Jay* and *James J. Hanks, Jr.*; and for Winston Wen-Young by *Daniel S. Weinberger*, *Mark W. Stoutenberg*, and *Stephen T. Heiser.*

District Court for the District of Kansas. The District Court accepted jurisdiction and resolved the dispute in favor of Americold.

On appeal, however, the Tenth Circuit asked for supplemental briefing on whether the District Court's exercise of jurisdiction was appropriate. The parties responded that the District Court possessed jurisdiction because the suit involved "citizens of different States." 28 U. S. C. §§ 1332(a)(1), 1441(b).

The Tenth Circuit disagreed. The court considered the corporate plaintiffs citizens of the States where they were chartered and had their principal places of business: Delaware, Nebraska, and Illinois. See *ConAgra Foods, Inc.* v. *Americold Logistics, LLC*, 776 F. 3d 1175, 1182 (2015); § 1332(c)(1) (specifying the citizenship of corporations for jurisdictional purposes). The court applied a different test to determine Americold's citizenship because Americold is a "real estate investment trust," not a corporation. Distilling this Court's precedent, the Tenth Circuit reasoned that the citizenship of any "non-corporate artificial entity" is determined by considering all of the entity's "members," which include, at minimum, its shareholders. *Id.*, at 1180–1181 (citing *Carden* v. *Arkoma Associates*, 494 U. S. 185 (1990)). As there was no record of the citizenship of Americold's shareholders, the court concluded that the parties failed to demonstrate that the plaintiffs were "citizens of different States" than the defendants. See *Strawbridge* v. *Curtiss*, 3 Cranch 267 (1806).

We granted certiorari to resolve confusion among the Courts of Appeals regarding the citizenship of unincorporated entities. 576 U. S. 1094 (2015). We now affirm.

II

Exercising its powers under Article III, the First Congress granted federal courts jurisdiction over controversies between a "citizen" of one State and "a citizen of another

State." 1 Stat. 78. For a long time, however, Congress failed to explain how to determine the citizenship of a non-breathing entity like a business association. In the early 19th century, this Court took that silence literally, ruling that only a human could be a citizen for jurisdictional purposes. *Bank of United States* v. *Deveaux*, 5 Cranch 61, 86–91 (1809). If a "mere legal entity" like a corporation were sued, the relevant citizens were its "members," or the "real persons who come into court" in the entity's name. *Id.*, at 86, 91.

This Court later carved a limited exception for corporations, holding that a corporation itself could be considered a citizen of its State of incorporation. See *Louisville, C. & C. R. Co.* v. *Letson*, 2 How. 497, 558 (1844). Congress etched this exception into the U. S. Code, adding that a corporation should also be considered a citizen of the State where it has its principal place of business. 28 U. S. C. § 1332(c) (1958 ed.). But Congress never expanded this grant of citizenship to include artificial entities other than corporations, such as joint-stock companies or limited partnerships. For these unincorporated entities, we too have "adhere[d] to our oft-repeated rule that diversity jurisdiction in a suit by or against the entity depends on the citizenship of 'all [its] members.'" *Carden*, 494 U. S., at 195–196 (quoting *Chapman* v. *Barney*, 129 U. S. 677, 682 (1889)).

Despite our oft-repetition of the rule linking unincorporated entities with their "members," we have never expressly defined the term. But we have equated an association's members with its owners or "'the several persons composing such association.'" *Carden*, 494 U. S., at 196 (quoting *Great Southern Fire Proof Hotel Co.* v. *Jones*, 177 U. S. 449, 456 (1900)). Applying this principle with reference to specific States' laws, we have identified the members of a joint-stock company as its shareholders, the members of a partnership as its partners, the members of a union as the workers affiliated with it, and so on. See *Carden*, 494 U. S.,

at 189–190 (citing *Chapman*, 129 U. S., at 682; *Great Southern*, 177 U. S., at 457; and *Steelworkers* v. *R. H. Bouligny, Inc.*, 382 U. S. 145, 146 (1965)).

This case asks us to determine the citizenship of Americold Realty Trust, a "real estate investment trust" organized under Maryland law. App. 93. As Americold is not a corporation, it possesses its members' citizenship. Nothing in the record designates who Americold's members are. But Maryland law provides an answer.

In Maryland, a real estate investment trust is an "unincorporated business trust or association" in which property is held and managed "for the benefit and profit of any person who may become a shareholder." Md. Corp. & Assns. Code Ann. §§ 8–101(c), 8–102 (2014). As with joint-stock companies or partnerships, shareholders have "ownership interests" and votes in the trust by virtue of their "shares of beneficial interest." §§ 8–704(b)(5), 8–101(d). These shareholders appear to be in the same position as the shareholders of a joint-stock company or the partners of a limited partnership—both of whom we viewed as members of their relevant entities. See *Carden*, 494 U. S., at 192–196; see also § 8–705(a) (linking the term "beneficial interests" with "membership interests" and "partnership interests"). We therefore conclude that for purposes of diversity jurisdiction, Americold's members include its shareholders.

III

Americold disputes this conclusion. It cites a case called *Navarro Savings Assn.* v. *Lee*, 446 U. S. 458 (1980), to argue that anything called a "trust" possesses the citizenship of its trustees alone, not its shareholder beneficiaries as well. As we have reminded litigants before, however, "*Navarro* had nothing to do with the citizenship of [a] 'trust.'" *Carden*, 494 U. S., at 192–193. Rather, *Navarro* reaffirmed a separate rule that when a trustee files a lawsuit in *her* name, her jurisdictional citizenship is the State to which she belongs—

as is true of any natural person. 446 U. S., at 465. This rule coexists with our discussion above that when an artificial entity is sued in *its* name, it takes the citizenship of each of its members.

That said, Americold's confusion regarding the citizenship of a trust is understandable and widely shared. See *Emerald Investors Trust* v. *Gaunt Parsippany Partners*, 492 F. 3d 192, 201–206 (CA3 2007) (discussing various approaches among the Circuits). The confusion can be explained, perhaps, by tradition. Traditionally, a trust was not considered a distinct legal entity, but a "fiduciary relationship" between multiple people. *Klein* v. *Bryer*, 227 Md. 473, 476–477, 177 A. 2d 412, 413 (1962); Restatement (Second) of Trusts § 2 (1957). Such a relationship was not a thing that could be haled into court; legal proceedings involving a trust were brought by or against the trustees in their own name. *Glenn* v. *Allison*, 58 Md. 527, 529 (1882); *Deveaux*, 5 Cranch, at 91. And when a trustee files a lawsuit or is sued in her own name, her citizenship is all that matters for diversity purposes. *Navarro*, 446 U. S., at 462–466. For a traditional trust, therefore, there is no need to determine its membership, as would be true if the trust, as an entity, were sued.

Many States, however, have applied the "trust" label to a variety of unincorporated entities that have little in common with this traditional template. Maryland, for example, treats a real estate investment trust as a "separate legal entity" that itself can sue or be sued. Md. Corp. & Assns. Code Ann. §§ 8–102(2), 8–301(2). So long as such an entity is unincorporated, we apply our "oft-repeated rule" that it possesses the citizenship of all its members. *Carden*, 494 U. S., at 195. But neither this rule nor *Navarro* limits an entity's membership to its trustees just because the entity happens to call itself a trust.

We therefore decline to apply the same rule to an unincorporated entity sued in its organizational name that applies

to a human trustee sued in her personal name. We also decline an *amicus*' invitation to apply the same rule to an unincorporated entity that applies to a corporation—namely, to consider it a citizen only of its State of establishment and its principal place of business. See Brief for National Association of Real Estate Investment Trusts 11–21. When we last examined the "doctrinal wall" between corporate and unincorporated entities in 1990, we saw no reason to tear it down. *Carden*, 494 U. S., at 190. Then as now we reaffirm that it is up to Congress if it wishes to incorporate other entities into 28 U. S. C. § 1332(c)'s special jurisdictional rule.

* * *

For these reasons, the judgment of the Court of Appeals is

Affirmed.

Syllabus

WEARRY *v.* CAIN, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF LOUISIANA, LIVINGSTON PARISH

No. 14–10008. Decided March 7, 2016

Two years after Eric Walber's brutal murder, Sam Scott implicated Michael Wearry, testifying at Wearry's trial that Wearry and Randy Hutchinson stopped Walber's car; that Hutchinson shoved Walber into the cargo area; that five men, including Wearry, Hutchinson, and Scott, drove the car around; and that Wearry and two others killed Walber by running him over. Another witness, Eric Brown, who was incarcerated at the time on unrelated charges, testified that he had seen Wearry and others with a man who looked like Walber and that he had agreed to testify, not for any prosecutorial favor, but solely because his sister knew the victim's sister. Wearry was convicted of capital murder and sentenced to death.

After Wearry's conviction became final, it emerged that the prosecution had withheld information relevant to Wearry's defense. First, previously undisclosed police records showed that two of Scott's fellow inmates had each made statements casting doubt on his credibility. Second, the State had not disclosed that Brown had twice sought a deal to reduce his existing sentence in exchange for testifying against Wearry. Third, the prosecution had not turned over medical records revealing that Hutchinson may not have been able to engage in the activities Scott ascribed to him. Wearry also maintained that his trial attorney had failed to uncover exonerating evidence. Based on this new evidence, Wearry alleged violations of his due process rights under *Brady* v. *Maryland*, 373 U. S. 83, and of his Sixth Amendment right to effective assistance of counsel. The postconviction court denied relief, concluding that even if Wearry's constitutional rights had been violated, he had failed to show prejudice. In turn, the Louisiana Supreme Court also denied relief.

Held: Because the prosecution failed to disclose material evidence, Wearry's due process rights were violated and he is entitled to a new trial. Under *Brady*, Wearry must show only that the new evidence is sufficient to undermine confidence in the verdict. See *Smith* v. *Cain*, 565 U. S. 73, 75. Beyond doubt, the newly revealed evidence suffices to undermine confidence in Wearry's conviction. The only evidence directly tying him to the crime was Scott's dubious testimony, corroborated by Brown's similarly suspect testimony. Scott's already impugned credi-

bility would have been further diminished had the jury learned that Hutchinson had physical limitations, that Scott had coached another inmate to lie about the murder, or that Scott may have implicated Wearry to settle a personal score. Moreover, any juror who found Scott more credible in light of Brown's testimony might have thought differently had she learned that Brown may have been motivated to come by the possibility of a reduced sentence on an existing conviction. The state postconviction court improperly evaluated the materiality of each piece of evidence in isolation rather than cumulatively, see *Kyles* v. *Whitley*, 514 U. S. 419, 441, emphasized reasons a juror might disregard new evidence while ignoring reasons she might not, cf. *Porter* v. *McCollum*, 558 U. S. 30, 43, and failed to mention the statements of the two inmates impeaching Scott. Because Wearry is entitled to a new trial, the Court does not consider the merits of his ineffective-assistance claim.

Certiorari granted; 2013–2422 (La. 2/27/15), 61 So. 3d 620, reversed and remanded.

Per Curiam.

Michael Wearry is on Louisiana's death row. Urging that the prosecution failed to disclose evidence supporting his innocence and that his counsel provided ineffective assistance at trial, Wearry unsuccessfully sought postconviction relief in state court. Contrary to the state postconviction court, we conclude that the prosecution's failure to disclose material evidence violated Wearry's due process rights. We reverse the state postconviction court's judgment on that account, and therefore do not reach Wearry's ineffective-assistance-of-counsel claim.

I

A

Sometime between 8:20 and 9:30 on the evening of April 4, 1998, Eric Walber was brutally murdered. Nearly two years after the murder, Sam Scott, at the time incarcerated, contacted authorities and implicated Michael Wearry. Scott initially reported that he had been friends with the victim; that he was at work the night of the murder; that the victim had come looking for him but had instead run into Wearry and four others; and that Wearry and the others had later

confessed to shooting and driving over the victim before leaving his body on Blahut Road. In fact, the victim had not been shot, and his body had been found on Crisp Road.

Scott changed his account of the crime over the course of four later statements, each of which differed from the others in material ways. By the time Scott testified as the State's star witness at Wearry's trial, his story bore little resemblance to his original account. According to the version Scott told the jury, he had been playing dice with Wearry and others when the victim drove past. Wearry, who had been losing, decided to rob the victim. After Wearry and an acquaintance, Randy Hutchinson, stopped the victim's car, Hutchinson shoved the victim into the cargo area. Five men, including Scott, Hutchinson, and Wearry, proceeded to drive around, at one point encountering Eric Brown—the State's other main witness—and pausing intermittently to assault the victim. Finally, Scott related, Wearry and two others killed the victim by running him over. On cross-examination, Scott admitted that he had changed his account several times.

Consistent with Scott's testimony, Brown testified that on the night of the murder he had seen Wearry and others with a man who looked like the victim. Incarcerated on unrelated charges at the time of Wearry's trial, Brown acknowledged that he had made a prior inconsistent statement to the police, but had recanted and agreed to testify against Wearry, not for any prosecutorial favor, but solely because his sister knew the victim's sister. The State commented during its opening argument that Brown "is doing 15 years on a drug charge right now, [but] hasn't asked for a thing." 7 Record 1723 (Tr., Mar. 2, 2002). During closing argument, the State reiterated that Brown "has no deal on the table" and was testifying because the victim's "family deserves to know." Pet. for Cert. 19.

Although the State presented no physical evidence at trial, it did offer additional circumstantial evidence linking Wearry

to the victim. One witness testified that he saw Wearry in the victim's car on the night of the murder and, later, holding the victim's class ring. Another witness said he saw Wearry throwing away the victim's cologne. In some respects, however, these witnesses contradicted Scott's account. For example, the witness who reported seeing Wearry in the victim's car did not place Scott in the car.

Wearry's defense at trial rested on an alibi. He claimed that, at the time of the murder, he had been at a wedding reception in Baton Rouge, 40 miles away. Wearry's girlfriend, her sister, and her aunt corroborated Wearry's account. In closing argument, the State stressed that all three witnesses had personal relationships with Wearry. The State also presented two rebuttal witnesses: the bride at the wedding, who reported that the reception had ended by 8:30 or 9:00 (potentially leaving sufficient time for Wearry to have committed the crime); and three jail employees, who testified that they had overheard Wearry say that he was a bystander when the crime occurred.

The jury convicted Wearry of capital murder and sentenced him to death. His conviction and sentence were affirmed on direct appeal.[1]

B

After Wearry's conviction became final, it emerged that the prosecution had withheld relevant information that could have advanced Wearry's plea. Wearry argued during state postconviction proceedings that three categories of belatedly

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[1] Wearry argued, *inter alia*, that the trial court improperly denied his for-cause challenges, and that the prosecution discriminated on the basis of race in jury selection in violation of *Batson* v. *Kentucky*, 476 U. S. 79 (1986). Finding both jury-selection claims credible, then-Justice Johnson dissented from the affirmance of Wearry's conviction. *State* v. *Weary*, 2003–3067 (La. 4/2/06), 931 So. 2d 297, 328–337. (Wearry's name is misspelled in the direct-appeal case caption.)

revealed information would have undermined the prosecution and materially aided Wearry's defense at trial.

First, previously undisclosed police records showed that two of Scott's fellow inmates had made statements that cast doubt on Scott's credibility. One inmate had reported hearing Scott say that he wanted to "'make sure [Wearry] gets the needle cause he jacked over me.'" *Id.*, at 22 (quoting inmate affidavit).[2] The other inmate had told investigators—at a meeting Scott orchestrated—that he had witnessed the murder, but this inmate recanted the next day. "Scott had told him what to say," he explained, and had sug-

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[2] Illustrative of the liberties the dissent takes with the record is the assertion that "Scott blamed [Wearry] for putting him in the position of having to admit his own role in the events surrounding the murder." *Post*, at 398 (opinion of ALITO, J.). Introducing the inmate's statement, the dissent therefore suggests, might have "backfired by allowing the prosecution to return the jury's focus to a point the State emphasized often during trial, namely, that Scott's accusations were credible precisely because Scott had no motive to tell a story that was contrary to his own interests." *Ibid.* True, according to the inmate, Scott had complained that his identification of Wearry had resulted in a lengthier prison term. The inmate, however, did not suggest that Scott was angry with Wearry *because* he had suffered adverse consequences as a result of Wearry's crime. Instead, the inmate separately stated that Scott "wouldn't tell me who did it"—*i. e.*, who killed Eric Walber—"but he said I'm gonna make sure Mike gets the needle cause he jacked over me." Pet. Exh. 13 in No. 01–FELN–015992, p. 103. See also *ibid.* ("If [Scott] would have told me who did this I would tell because I have a heart and what they did wasn't right"). Scott's refusal to identify Wearry as the culprit—while also endeavoring to "make sure Mike gets the needle," *ibid.*—suggests that Wearry did *not* commit the crime, but Scott had decided to bring him down anyway. Nor, contrary to the dissent, is there any reason to believe that Scott anticipated his participation in this case would cost him additional years in prison. Notably, in the first of his five accounts to police, Scott reported that he had not been present at the time of the murder and had learned about it only after the fact. Indeed, it is at least as plausible as the dissent's hypothesis that Scott believed implicating Wearry might win him early release on his existing conviction.

gested that lying about having witnessed the murder "would help him get out of jail." Pet. Exh. 13 in No. 01–FELN–015992, pp. 104, 107. See also Pet. for Cert. 22 (quoting police notes).

Second, the State had failed to disclose that, contrary to the prosecution's assertions at trial, Brown had twice sought a deal to reduce his existing sentence in exchange for testifying against Wearry. The police had told Brown that they would "'talk to the D. A. if he told the truth.'" *Id.*, at 19 (quoting police notes).

Third, the prosecution had failed to turn over medical records on Randy Hutchinson. According to Scott, on the night of the murder, Hutchinson had run into the street to flag down the victim, pulled the victim out of his car, shoved him into the cargo space, and crawled into the cargo space himself. But Hutchinson's medical records revealed that, nine days before the murder, Hutchinson had undergone knee surgery to repair a ruptured patellar tendon. *Id.*, at 10–11, 15–16, 32.[3] An expert witness, Dr. Paul Dworak, testified at the state collateral-review hearing that Hutchinson's surgically repaired knee could not have withstood running, bending, or lifting substantial weight. The State presented an expert witness who disagreed with Dr. Dworak's appraisal of Hutchinson's physical fitness.

During state postconviction proceedings, Wearry also maintained that his trial attorney had failed to uncover exonerating evidence. Wearry's trial attorney admitted at the state collateral-review hearing that he had conducted no independent investigation into Wearry's innocence and had

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[3] The dissent emphasizes a State's witness' testimony that "Hutchinson had had surgery on his knee 'about nine days before the homicide happened.'" *Post*, at 399 (quoting 10 Record 2261 (Tr., Mar. 5, 2002)). But from this witness' statement, neither Wearry nor the jury had any way of knowing what the medical records would have revealed: Hutchinson had undergone a patellar-tendon repair rather than a routine minor procedure.

relied solely on evidence the State and Wearry had provided.[4] For example, despite Wearry's alibi, his attorney undertook no effort to locate independent witnesses from among the dozens of guests who had attended the wedding reception.

Counsel representing Wearry on collateral review conducted an independent investigation. This investigation revealed many witnesses lacking any personal relationship with Wearry who would have been willing to corroborate his alibi had they been called at trial. Collateral-review counsel's investigation also revealed that Scott's brother and sister-in-law would have been willing to testify at trial, as they did at the collateral-review hearing, that Scott was with them, mostly at a strawberry festival, until around 11:00 on the night of the murder.

Based on this new evidence, Wearry alleged violations of his due process rights under *Brady* v. *Maryland*, 373 U. S. 83 (1963), and of his Sixth Amendment right to effective assistance of counsel. Acknowledging that the State "probably ought to have" disclosed the withheld evidence, App. to Pet. for Cert. B–6, and that Wearry's counsel provided "perhaps not the best defense that could have been rendered," *id.*, at B–5, the postconviction court denied relief. Even if Wearry's constitutional rights were violated, the court concluded, he had not shown prejudice. *Id.*, at B–5, B–7. In turn, the Louisiana Supreme Court also denied relief. 2013–2422 (La. 2/27/15), 161 So. 3d 620. Chief Justice Johnson

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[4] Wearry's trial attorney did ask the public defender's investigator to look into the backgrounds of the State's witnesses and to speak with Wearry's family members. But the attorney testified at the collateral-review hearing that he did not know what persons the investigator contacted and, in any event, he had serious doubts about the investigator's qualifications and competence. Moreover, there is no indication that the investigator ever engaged in inquiries regarding Scott's background or his whereabouts on the night of the murder.

would have granted Wearry's petition on the ground that he received ineffective assistance of counsel. *Ibid.*[5]

II

Because we conclude that the Louisiana courts' denial of Wearry's *Brady* claim runs up against settled constitutional principles, and because a new trial is required as a result, we need not and do not consider the merits of his ineffective-assistance-of-counsel claim. "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, *supra*, at 87. See also *Giglio* v. *United States*, 405 U. S. 150, 153–154 (1972) (clarifying that the rule stated in *Brady* applies to evidence undermining witness credibility). Evidence qualifies as material when there is "'any reasonable likelihood'" it could have "'affected the judgment of the jury.'" *Giglio*, *supra*, at 154 (quoting *Napue* v. *Illinois*, 360 U. S. 264, 271 (1959)). To prevail on his *Brady* claim, Wearry need not show that he "more likely than not" would have been acquitted had the new evidence been admitted. *Smith* v. *Cain*, 565 U. S. 73, 75 (2012) (internal quotation marks omitted). He must show only that the new evidence is sufficient to "undermine confidence" in the verdict. *Ibid.* (internal quotation marks and alterations omitted).[6]

Beyond doubt, the newly revealed evidence suffices to undermine confidence in Wearry's conviction. The State's trial evidence resembles a house of cards, built on the jury credit-

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[5] Justice Crichton would have granted Wearry's petition and remanded for the trial court to address his claim of intellectual disability under *Atkins* v. *Virginia*, 536 U. S. 304 (2002). 161 So. 3d, at 627–628. Wearry does not raise his *Atkins* claim in his petition for a writ of certiorari.

[6] Given this legal standard, Wearry can prevail even if, as the dissent suggests, the undisclosed information may not have affected the jury's verdict.

ing Scott's account rather than Wearry's alibi. See *United States* v. *Agurs*, 427 U. S. 97, 113 (1976) ("[I]f the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt"). The dissent asserts that, apart from the testimony of Scott and Brown, there was independent evidence pointing to Wearry as the murderer. See *post*, at 400 (opinion of ALITO, J.). But all of the evidence the dissent cites suggests, at most, that someone in Wearry's group of friends may have committed the crime, and that Wearry may have been involved in events related to the murder *after* it occurred. Perhaps, on the basis of this evidence, Louisiana might have charged Wearry as an accessory after the fact. La. Rev. Stat. Ann. § 14:25 (West 2007) (providing a maximum prison term of five years for accessories after the fact). But Louisiana instead charged Wearry with capital murder, and the only evidence directly tying him to that crime was Scott's dubious testimony, corroborated by the similarly suspect testimony of Brown.[7]

As the dissent recognizes, "Scott did not have an exemplary record of veracity." *Post*, at 398. Scott's credibility, already impugned by his many inconsistent stories, would have been further diminished had the jury learned that Hutchinson may have been physically incapable of performing the role Scott ascribed to him, that Scott had coached another inmate to lie about the murder and thereby enhance his chances to get out of jail, or that Scott may have implicated Wearry to settle a personal score.[8] Moreover, any

[7] As for the three jailers who testified to overhearing Wearry call himself an "'innocent bystander,'" *post*, at 400, so characterizing oneself is the opposite of an admission of guilt.

[8] Because the inmate who told police that Scott may have wanted to settle a score did so close to the end of trial, the State argues, the inmate's "statement was probably . . . never seen by anyone involved with the actual trial until . . . it was [all] over, i[f] at all." Brief in Opposition 18. But "*Brady* suppression occurs when the government fails to turn over even evidence that is known only to police investigators and not to the

juror who found Scott more credible in light of Brown's testimony might have thought differently had she learned that Brown may have been motivated to come forward not by his sister's relationship with the victim's sister—as the prosecution had insisted in its closing argument—but by the possibility of a reduced sentence on an existing conviction. See *Napue*, *supra*, at 270 (even though the State had made no binding promises, a witness' attempt to obtain a deal before testifying was material because the jury "might well have concluded that [the witness] had fabricated testimony in order to curry the [prosecution's] favor"). Even if the jury—armed with all of this new evidence—*could* have voted to convict Wearry, we have "no confidence that it *would* have done so." *Smith*, *supra*, at 76.

Reaching the opposite conclusion, the state postconviction court improperly evaluated the materiality of each piece of evidence in isolation rather than cumulatively, see *Kyles* v. *Whitley*, 514 U. S. 419, 441 (1995) (requiring a "cumulative evaluation" of the materiality of wrongfully withheld evidence), emphasized reasons a juror might disregard new evidence while ignoring reasons she might not, cf. *Porter* v. *McCollum*, 558 U. S. 30, 43 (2009) (*per curiam*) ("it was not reasonable to discount entirely the effect that [a defendant's expert's] testimony might have had on the jury" just because the State's expert provided contrary testimony), and failed even to mention the statements of the two inmates impeaching Scott.

III

In addition to defending the judgment of the Louisiana courts, the dissent criticizes the Court for deciding this "in-

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prosecutor." *Youngblood* v. *West Virginia*, 547 U. S. 867, 869–870 (2006) (*per curiam*) (internal quotation marks omitted). See also *Kyles* v. *Whitley*, 514 U. S. 419, 438 (1995) (rejecting Louisiana's plea for a rule that would not hold the State responsible for failing to disclose exculpatory evidence about which prosecutors did not learn until after trial when that evidence was in the possession of police investigators at the time of trial).

tensely factual question . . . without full briefing and argument." *Post*, at 401. But the Court has not shied away from summarily deciding fact-intensive cases where, as here, lower courts have egregiously misapplied settled law. See, *e. g.*, *Mullenix* v. *Luna*, *ante*, p. 7 (*per curiam*); *Stanton* v. *Sims*, 571 U. S. 3 (2013) (*per curiam*); *Parker* v. *Matthews*, 567 U. S. 37 (2012) (*per curiam*); *Coleman* v. *Johnson*, 566 U. S. 650 (2012) (*per curiam*); *Wetzel* v. *Lambert*, 565 U. S. 520 (2012) (*per curiam*); *Ryburn* v. *Huff*, 565 U. S. 469 (2012) (*per curiam*); *Sears* v. *Upton*, 561 U. S. 945 (2010) (*per curiam*); *Porter* v. *McCollum*, *supra*.

Because "[t]he petition does not . . . fall into a category in which the Court has previously evinced an inclination to police factbound errors," the dissent continues, "[n]othing warned the State," when it was drafting its brief in opposition, that the Court might summarily reverse Wearry's conviction. *Post*, at 401. Contrary to the dissent, however, summarily deciding a capital case, when circumstances so warrant, is hardly unprecedented. See *Sears*, *supra*, at 951–952 (vacating a state postconviction court's denial of relief on a penalty-phase ineffective-assistance-of-counsel claim); *Porter*, *supra*, at 38–40 (attorney provided ineffective assistance of counsel by conducting a constitutionally inadequate investigation into mitigating evidence). Perhaps anticipating the possibility of summary reversal, the State devoted the bulk of its 30-page brief in opposition to a point-by-point rebuttal of Wearry's claims. Given this brief, as well as the State's lower court filings similarly concentrating on evidence supporting its position, the chances that further briefing or argument would change the outcome are vanishingly slim.

The dissent also inveighs against the Court's "depart[ure] from our usual procedures [to] decide petitioner's fact-intensive *Brady* claim at this stage [rather than] allow[ing] petitioner to raise that claim in a federal habeas proceeding." *Post*, at 402. This Court, of course, has jurisdiction over the final judgments of state postconviction courts, see 28 U. S. C.

§ 1257(a), and exercises that jurisdiction in appropriate circumstances. Earlier this Term, for instance, we heard argument in *Foster* v. *Chatman*, No. 14–8349, which involves the Georgia courts' denial of postconviction relief to a capital defendant raising a claim under *Batson* v. *Kentucky*, 476 U. S. 79 (1986). See also *Smith*, 565 U. S., at 76–77 (reversing a state postconviction court's denial of relief on a *Brady* claim); *Sears*, *supra*, at 946. Reviewing the Louisiana courts' denial of postconviction relief is thus hardly the bold departure the dissent paints it to be. The alternative to granting review, after all, is forcing Wearry to endure yet more time on Louisiana's death row in service of a conviction that is constitutionally flawed.

* * *

Because Wearry's due process rights were violated, we grant his petition for a writ of certiorari and motion for leave to proceed *in forma pauperis*, reverse the judgment of the Louisiana postconviction court, and remand for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting.

Without briefing or argument, the Court reverses a 14-year-old murder conviction on the ground that the prosecution violated *Brady* v. *Maryland*, 373 U. S. 83 (1963), by failing to turn over certain information that tended to exculpate petitioner. There is no question in my mind that the prosecution should have disclosed this information, but whether the information was sufficient to warrant reversing petitioner's conviction is another matter. The failure to turn over exculpatory information violates due process only "'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Kyles* v. *Whitley*, 514 U. S. 419, 433–

434 (1995) (quoting *United States* v. *Bagley*, 473 U. S. 667, 682 (1985) (opinion of Blackmun, J.)).

The Court argues that the information in question here could have affected the jury's verdict and that petitioner's conviction must therefore be reversed. The Court ably makes the case for reversal, but there is a reasonable contrary argument that petitioner's conviction should stand because the undisclosed information would *not* have affected the jury's verdict. I will briefly discuss the main points made in the *per curiam*, not for the purpose of showing that they are necessarily wrong, but to show that the *Brady* issue is not open and shut. For good reason, we generally do not decide cases without allowing the parties to file briefs and present argument. Questions that seem quite simple at first glance sometimes look very different after both sides are given a chance to make their case. Of course, this process means extra work for the Court. But it leads to better results, and it gives the losing side the satisfaction of knowing that at least its arguments have been fully heard. There is no justification for departing from our usual procedures in this case.

I

The first item of information discussed by the Court is a police report that recounts statements made about Sam Scott, a key witness for the prosecution, by a fellow inmate. According to this report, Scott told the inmate: "I'm gonna make sure Mike [*i. e.*, petitioner] gets the needle cause he jacked over me." Pet. Exh. 13 in No. 01–FELN–015992, p. 103. Scott, who had been serving a sentence on unrelated drug charges, reportedly told the inmate that he had been expecting to be released but that he "still [had not] gone home because of this," *i. e.*, petitioner's prosecution. *Id.*, at 102. As stated in the report, Scott said that he was now facing the possibility of a 10-year sentence, apparently for his admitted role in the events surrounding the murder. The report did not provide any further explanation for

Scott's alleged statement that petitioner had "jacked [him] over."

The Court reads the report to suggest that Scott implicated petitioner in the murder "to settle a personal score." *Ante*, at 393. But if petitioner's counsel had actually attempted to use this evidence at trial, the net effect might well have been harmful, not helpful, to the defense. The undisclosed police report on which the Court relies may be read to mean that Scott blamed petitioner for putting him in the position of having to admit his own role in the events surrounding the murder and thereby expose himself to the 10-year sentence and lose an opportunity to secure early release from prison on the drug charges. If defense counsel had attempted to impeach Scott with this police report, the effort could have backfired by allowing the prosecution to return the jury's focus to a point the State emphasized often during trial, namely, that Scott's accusations were credible precisely because Scott had no motive to tell a story that was contrary to his own interests. See, *e. g.*, 10 Record 2307 (Tr., Mar. 5, 2002) ("If [Scott] keeps his mouth shut, he is out in less than five more months. . . . [But] [i]nstead of getting out in 180 days, he is going to be doing more time").[1]

The Court next turns to an allegation that Scott had coached another prisoner to make up lies against petitioner. This prisoner never testified at trial, and there is a basis for arguing that this information would not have made a difference to the jury, which was well aware that Scott did not have an exemplary record of veracity. Scott himself ad-

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[1] The majority claims that Scott's unwillingness to tell this fellow inmate who killed the victim somehow exculpates petitioner. See *ante*, at 389, n. 2. In my view, one cannot reasonably infer from the inmate's statement, "[Scott] wouldn't tell me who did it but he said I'm gonna make sure Mike gets the needle cause he jacked over me," that Scott believed petitioner Michael Wearry to be innocent—especially against the backdrop of Scott's complaints about his increased imprisonment. Pet. Exh. 13 in No. 01–FELN–015992, p. 103.

mitted to fabricating information that he told the police during their investigations. In addition, a witness who *did* testify against petitioner at trial also accused Scott of asking him to lie, although admittedly this witness later denied making this accusation. Given that the jury convicted even with these quite serious strikes against Scott's credibility, there is reason to question whether the jury would have seriously considered a different verdict because of an accusation from someone who never took the stand.

Third, the Court observes that the prosecution failed to turn over evidence that another witness, Eric Brown, had asked for favorable treatment from the district attorney in exchange for testifying against petitioner. It is true—and troubling—that the prosecutor claimed in her opening statement that Brown had not sought favorable treatment. But even so, it is far from clear that disclosing the contradictory information had real potential to affect the trial's outcome. For one thing, there is no evidence that Brown (unlike Scott) actually received any deal, despite defense counsel's efforts in cross-examination to establish that Brown's testimony might have earned him leniency from the State. Moreover, Brown admitted during the exchange that he had manipulated his initial story to the police to avoid implicating himself in criminal activity. We know, then, that the jury harbored no illusions about the purity of Brown's motives, notwithstanding the prosecutor's opening misstatement.

Finally, the Court says that the medical records of Randy Hutchinson would have cast doubt on Scott's trial testimony that Hutchinson repeatedly dragged the victim into and out of a car and bludgeoned him with a stick. The records reveal that Hutchinson had knee surgery to repair his patellar tendon just nine days before the murder. But one of the State's witnesses testified at trial that he had seen records showing that Hutchinson had had surgery on his knee "about nine days before the homicide happened." 10 Record 2261 (Tr., Mar. 5, 2002); see also *id.*, at 2263. The jury thus knew

the most salient fact revealed by these records—that Scott had attributed significant strength and mobility to a man nine days removed from knee surgery.[2] Given that these particular details about Hutchinson's actions were a relatively minor part of Scott's account of the crime and the State's case against petitioner, the significance of the undisclosed medical records is subject to reasonable dispute.

While the Court highlights the exculpatory quality of the withheld information, the Court downplays the considerable evidence of petitioner's guilt. Aside from Scott's and Brown's testimony, three witnesses told the jury that they saw petitioner and others driving around shortly after the murder in the victim's red car, which according to one of these witnesses had blood on its exterior. Petitioner offered to sell an Albany High School class ring to one of these witnesses and a set of new speakers to another. The third witness said he saw petitioner throw away a bottle of Tommy Hilfiger cologne. Meanwhile, the victim's mother testified that her son wore an Albany High class ring that was not recovered with his body, had received speakers as a gift shortly before his murder, and had a bottle of Tommy Hilfiger cologne with him on the night when he was killed. In addition, three jailers testified that petitioner called his father after his eventual arrest and stated that "he didn't know what he was doing in jail because he didn't do anything [and] was just an innocent bystander." 9 Record 2120 (Tr., Mar. 4, 2002); see also *id.*, at 2124, 2126.

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[2] The *per curiam* argues that the medical records might have had a greater effect on the jury because they mentioned the particular type of knee surgery that petitioner had undergone, and that is certainly possible. But what is important at this stage is that the basic fact—that petitioner had recently undergone knee surgery—was known to the jury, and the incremental impact of the additional details supplied by the medical records is far from clear. Even at the postconviction evidentiary hearing, the defense's and State's medical experts disagreed about whether the particular procedure at issue would have left the then-20-year-old Hutchinson incapable of the acts Scott described.

In short, this is far from a case in which the withheld information would have allowed the defense to undermine "the *only* evidence linking [petitioner] to the crime." *Smith* v. *Cain*, 565 U. S. 73, 76 (2012).

II

Whether disclosing the information at issue realistically could have changed the trial's outcome is indisputably an intensely factual question. Under *Brady*, we must evaluate the significance of the withheld information in light of *all* the proof at petitioner's trial. See *Kyles*, 514 U. S., at 435 (*Brady* is violated when the withheld "evidence could reasonably be taken to put *the whole case* in such a different light as to undermine confidence in the verdict" (emphasis added)); *United States* v. *Agurs*, 427 U. S. 97, 112 (1976) (*Brady* materiality "must be evaluated in the context of *the entire record*" (emphasis added)). It is unusual and, in my judgment, unreasonable for us to decide such a question without full briefing and argument.

At this stage, all that we have from the State is its brief in opposition to the petition for certiorari. And the State had ample reason to believe when it submitted that brief that the question on the table was whether the Court should hear the case, not whether petitioner's conviction should be reversed. The State undoubtedly knew that we generally deny certiorari on factbound questions that do not implicate any disputed legal issue. See, *e. g.*, this Court's Rule 10; S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice § 5.12(c)(3), p. 352 (10th ed. 2013). Nothing warned the State that this petition was likely to produce an exception to that general rule. The petition does not, for instance, fall into a category in which the Court has previously evinced an inclination to police factbound errors. Cf. *Cash* v. *Maxwell*, 565 U. S. 1138, 1147 (2012) (Scalia, J., dissenting from denial of certiorari) (listing cases from one such category).

To the contrary, we have previously told litigants that petitions like the one here, challenging a state court's denial of postconviction relief, are particularly *unlikely* to be granted: We "'rarely gran[t] review at this stage'" of litigation, even when a petition raises "'arguably meritorious federal constitutional claims,'" because we prefer that the claims be reviewed first by a district court and court of appeals in a federal habeas proceeding. *Lawrence* v. *Florida*, 549 U. S. 327, 335 (2007) (quoting *Kyles* v. *Whitley*, 498 U. S. 931, 932 (1990) (Stevens, J., concurring in denial of stay of execution)).[3]

Why, then, has the Court decided to depart from our usual procedures and decide petitioner's fact-intensive *Brady* claim at this stage? Why not allow petitioner to raise that claim in a federal habeas proceeding? If the case took that course, it would not reach us until a district court and a court of appeals had studied the record and evaluated the likely impact of the information in question.

One consequence of waiting until the claim was raised in a federal habeas proceeding is that our review would then be governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Under AEDPA, relief could be granted only if it could be said that the state court's rejection of the claim represented an "unreasonable application" of *Brady*. 28 U. S. C. § 2254(d)(1). By intervening now before AEDPA comes into play, the Court avoids the application of that standard and is able to exercise plenary review. But if the *Brady* claim is as open and shut as the Court maintains,

[3] The Court implies that meritorious claims in capital cases do constitute a category of factbound errors that the Court has shown willingness to correct on certiorari papers alone. *Ante*, at 395. In support, it cites *Sears* v. *Upton*, 561 U. S. 945 (2010) (*per curiam*), and *Porter* v. *McCollum*, 558 U. S. 30 (2009) (*per curiam*). Notably, *Porter* did not arise directly from state postconviction proceedings, but in federal habeas. And in neither case did the Court take the dramatic step it takes here and summarily reverse a long-final state conviction for capital murder; both cases addressed errors related to the defendants' sentences.

AEDPA would not present an obstacle to the granting of habeas relief. On the other hand, if reasonable jurists could disagree about the application of *Brady* to the facts of this case, there is no good reason to dispose of this case summarily. The State should be given the opportunity to make its full case.

In my view, therefore, summary reversal is highly inappropriate. The Court is anxious to vacate petitioner's conviction before the State has the opportunity to make its case. But if we are going to intervene at this stage, we should grant the petition and hear the case on the merits. There is room on our docket to give this case the careful consideration it deserves.

Syllabus

V. L. *v.* E. L. ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

No. 15–648. Decided March 7, 2016

While V. L. and E. L., two women, were in a relationship, they sought to make V. L. a legal parent of the children whom E. L. had given birth to and whom they had raised together since the children's birth. E. L. did not relinquish her parental rights but gave express consent to V. L.'s adoption of the children as a second parent. A Georgia Superior Court determined that V. L. had complied with the state law's applicable requirements and entered a final decree of adoption. After moving to Alabama, the couple's relationship ended, and V. L. moved out of their shared house. V. L. later petitioned an Alabama court, alleging that E. L. had denied her access to the children and interfered with her ability to exercise her parental rights. The court awarded V. L. scheduled visitation, but the Alabama Supreme Court held that the Georgia court did not have subject-matter jurisdiction under Georgia law to grant the adoption, and thus Alabama courts were not required to accord full faith and credit to the Georgia judgment.

Held: The Alabama Supreme Court erred in refusing to grant the Georgia judgment full faith and credit. The Full Faith and Credit Clause forbids a State to disregard the judgment of a sister State because it disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits. See *Milliken* v. *Meyer*, 311 U. S. 457, 462. A State is not required to afford full faith and credit to a judgment rendered by a court that "did not have jurisdiction over the subject matter or the relevant parties," *Underwriters Nat. Assurance Co.* v. *North Carolina Life & Accident & Health Ins. Guaranty Assn.*, 455 U. S. 691, 705, but Georgia law gives "[t]he superior courts of the several counties . . . exclusive jurisdiction in all matters of adoption," Ga. Code Ann. § 19–8–2(a). That provision on its face gave the Georgia Superior Court subject-matter jurisdiction to hear and decide the adoption petition at issue. The Alabama Supreme Court relied instead on Ga. Code Ann. § 19–8–5(a), which provides that "a child who has any living parent or guardian may be adopted by a third party . . . only if each such living parent and each such guardian has voluntarily and in writing surrendered all of his or her rights to such child." That provision, however, does not speak in jurisdictional terms, and neither the Georgia Supreme

Court nor any Georgia appellate court has construed it as jurisdictional. Nor does it become jurisdictional just because it is "mandatory" and "must be strictly construed." *In re Marks*, 300 Ga. App. 239, 243, 684 S. E. 2d 364, 367. See also *Gonzalez* v. *Thaler*, 565 U. S. 134, 146.

Certiorari granted; 208 So. 3d 1102, reversed and remanded.

Per Curiam.

A Georgia court entered a final judgment of adoption making petitioner V. L. a legal parent of the children that she and respondent E. L. had raised together from birth. V. L. and E. L. later separated while living in Alabama. V. L. asked the Alabama courts to enforce the Georgia judgment and grant her custody or visitation rights. The Alabama Supreme Court ruled against her, holding that the Full Faith and Credit Clause of the United States Constitution does not require the Alabama courts to respect the Georgia judgment. That judgment of the Alabama Supreme Court is now reversed by this summary disposition.

I

V. L. and E. L. are two women who were in a relationship from approximately 1995 until 2011. Through assisted reproductive technology, E. L. gave birth to a child named S. L. in 2002 and to twins named N. L. and H. L. in 2004. After the children were born, V. L. and E. L. raised them together as joint parents.

V. L. and E. L. eventually decided to give legal status to the relationship between V. L. and the children by having V. L. formally adopt them. To facilitate the adoption, the couple rented a house in Alpharetta, Georgia. V. L. then filed an adoption petition in the Superior Court of Fulton County, Georgia. E. L. also appeared in that proceeding. While not relinquishing her own parental rights, she gave her express consent to V. L.'s adoption of the children as a second parent. The Georgia court determined that V. L. had complied with the applicable requirements of Georgia law,

and entered a final decree of adoption allowing V. L. to adopt the children and recognizing both V. L. and E. L. as their legal parents.

V. L. and E. L. ended their relationship in 2011, while living in Alabama, and V. L. moved out of the house that the couple had shared. V. L. later filed a petition in the Circuit Court of Jefferson County, Alabama, alleging that E. L. had denied her access to the children and interfered with her ability to exercise her parental rights. She asked the Alabama court to register the Georgia adoption judgment and award her some measure of custody or visitation rights. The matter was transferred to the Family Court of Jefferson County. That court entered an order awarding V. L. scheduled visitation with the children.

E. L. appealed the visitation order to the Alabama Court of Civil Appeals. She argued, among other points, that the Alabama courts should not recognize the Georgia judgment because the Georgia court lacked subject-matter jurisdiction to enter it. The Court of Civil Appeals rejected that argument. It held, however, that the Alabama Family Court had erred by failing to conduct an evidentiary hearing before awarding V. L. visitation rights, and so it remanded for the Family Court to conduct that hearing.

The Alabama Supreme Court reversed. It held that the Georgia court had no subject-matter jurisdiction under Georgia law to enter a judgment allowing V. L. to adopt the children while still recognizing E. L.'s parental rights. As a consequence, the Alabama Supreme Court held Alabama courts were not required to accord full faith and credit to the Georgia judgment.

II

The Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." Art. IV, § 1. That Clause requires each State to recognize and give effect to valid judgments rendered by the courts of its sister

States. It serves "to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation." *Milwaukee County* v. *M. E. White Co.*, 296 U. S. 268, 277 (1935).

With respect to judgments, "the full faith and credit obligation is exacting." *Baker* v. *General Motors Corp.*, 522 U. S. 222, 233 (1998). "A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Ibid.* A State may not disregard the judgment of a sister State because it disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits. On the contrary, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." *Milliken* v. *Meyer*, 311 U. S. 457, 462 (1940).

A State is not required, however, to afford full faith and credit to a judgment rendered by a court that "did not have jurisdiction over the subject matter or the relevant parties." *Underwriters Nat. Assurance Co.* v. *North Carolina Life & Accident & Health Ins. Guaranty Assn.*, 455 U. S. 691, 705 (1982). "Consequently, before a court is bound by [a] judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court's decree." *Ibid.* That jurisdictional inquiry, however, is a limited one. "[I]f the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself.'" *Milliken*, *supra*, at 462 (quoting *Adam* v. *Saenger*, 303 U. S. 59, 62 (1938)).

Those principles resolve this case. Under Georgia law, as relevant here, "[t]he superior courts of the several counties

shall have exclusive jurisdiction in all matters of adoption." Ga. Code Ann. § 19–8–2(a) (2015). That provision on its face gave the Georgia Superior Court subject-matter jurisdiction to hear and decide the adoption petition at issue here. The Superior Court resolved that matter by entering a final judgment that made V. L. the legal adoptive parent of the children. Whatever the merits of that judgment, it was within the statutory grant of jurisdiction over "all matters of adoption." *Ibid.* The Georgia court thus had the "adjudicatory authority over the subject matter" required to entitle its judgment to full faith and credit. *Baker*, *supra*, at 233.

The Alabama Supreme Court reached a different result by relying on Ga. Code Ann. § 19–8–5(a). That statute states (as relevant here) that "a child who has any living parent or guardian may be adopted by a third party . . . only if each such living parent and each such guardian has voluntarily and in writing surrendered all of his or her rights to such child." The Alabama Supreme Court concluded that this provision prohibited the Georgia Superior Court from allowing V. L. to adopt the children while also allowing E. L. to keep her existing parental rights. It further concluded that this provision went not to the merits but to the Georgia court's subject-matter jurisdiction. In reaching that crucial second conclusion, the Alabama Supreme Court seems to have relied solely on the fact that the right to adoption under Georgia law is purely statutory, and "'[t]he requirements of Georgia's adoptions statutes are mandatory and must be strictly construed in favor of the natural parents.'" *Ex parte E. L.*, 208 So. 3d 1102, 1113 (2015) (quoting *In re Marks*, 300 Ga. App. 239, 243, 684 S. E. 2d 364, 367 (2009)).

That analysis is not consistent with this Court's controlling precedent. Where a judgment indicates on its face that it was rendered by a court of competent jurisdiction, such jurisdiction "'is to be presumed unless disproved.'" *Milliken*, *supra*, at 462 (quoting *Adam*, *supra*, at 62). There is nothing here to rebut that presumption. The Georgia statute on

which the Alabama Supreme Court relied, Ga. Code Ann. § 19–8–5(a), does not speak in jurisdictional terms; for instance, it does not say that a Georgia court "shall have jurisdiction to enter an adoption decree" only if each existing parent or guardian has surrendered his or her parental rights. Neither the Georgia Supreme Court nor any Georgia appellate court, moreover, has construed § 19–8–5(a) as jurisdictional. That construction would also be difficult to reconcile with Georgia law. Georgia recognizes that in general, subject-matter jurisdiction addresses "whether a court has jurisdiction to decide a particular class of cases," *Goodrum* v. *Goodrum*, 283 Ga. 163, 657 S. E. 2d 192 (2008), not whether a court should grant relief in any given case. Unlike § 19–8–2(a), which expressly gives Georgia superior courts "exclusive jurisdiction in all matters of adoption," § 19–8–5(a) does not speak to whether a court has the power to decide a general class of cases. It only provides a rule of decision to apply in determining if a particular adoption should be allowed.

Section 19–8–5(a) does not become jurisdictional just because it is " 'mandatory' " and " 'must be strictly construed.' " 208 So. 3d, at 1113 (quoting *Marks*, *supra*, at 243, 684 S. E. 2d, at 367). This Court "has long rejected the notion that all mandatory prescriptions, however emphatic, are properly typed jurisdictional." *Gonzalez* v. *Thaler*, 565 U. S. 134, 146 (2012) (internal quotation marks and ellipsis omitted). Indeed, the Alabama Supreme Court's reasoning would give jurisdictional status to *every* requirement of the Georgia adoption statutes, since Georgia law indicates those requirements are all mandatory and must be strictly construed. *Marks*, *supra*, at 243, 684 S. E. 2d, at 367. That result would comport neither with Georgia law nor with common sense.

As Justice Holmes observed more than a century ago, "it sometimes may be difficult to decide whether certain words in a statute are directed to jurisdiction or to merits." *Fauntleroy* v. *Lum*, 210 U. S. 230, 234–235 (1908). In such cases,

especially where the Full Faith and Credit Clause is concerned, a court must be "slow to read ambiguous words, as meaning to leave the judgment open to dispute, or as intended to do more than fix the rule by which the court should decide." *Id.*, at 235. That time-honored rule controls here. The Georgia judgment appears on its face to have been issued by a court with jurisdiction, and there is no established Georgia law to the contrary. It follows that the Alabama Supreme Court erred in refusing to grant that judgment full faith and credit.

The petition for writ of certiorari is granted. The judgment of the Alabama Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

CAETANO *v.* MASSACHUSETTS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

No. 14–10078. Decided March 21, 2016

The Supreme Judicial Court of Massachusetts offered three explanations to support its ruling upholding a state law that prohibited the possession of stun guns: that stun guns "were not in common use at the time of the Second Amendment's enactment," that they are "unusual" because they are "a thoroughly modern invention," and that they are not "readily adaptable to use in the military."

Held: The Massachusetts court's explanation for upholding its law contradicts this Court's precedent. In *District of Columbia* v. *Heller*, 554 U. S. 570, this Court clearly stated that the Second Amendment "extends . . . to . . . arms . . . that were not in existence at the time of the founding," *id.*, at 582, and it rejected the proposition "that only those weapons useful in warfare are protected," *id.*, at 624–625.

Certiorari granted; 470 Mass. 774, 26 N. E. 3d 688, vacated and remanded.

Per Curiam.

The Court has held that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding," *District of Columbia* v. *Heller*, 554 U. S. 570, 582 (2008), and that this "Second Amendment right is fully applicable to the States," *McDonald* v. *Chicago*, 561 U. S. 742, 750 (2010). In this case, the Supreme Judicial Court of Massachusetts upheld a Massachusetts law prohibiting the possession of stun guns after examining "whether a stun gun is the type of weapon contemplated by Congress in 1789 as being protected by the Second Amendment." 470 Mass. 774, 777, 26 N. E. 3d 688, 691 (2015).

The court offered three explanations to support its holding that the Second Amendment does not extend to stun guns. First, the court explained that stun guns are not protected because they "were not in common use at the time of the Second Amendment's enactment." *Id.*, at 781, 26 N. E. 3d,

at 693. This is inconsistent with *Heller*'s clear statement that the Second Amendment "extends . . . to . . . arms . . . that were not in existence at the time of the founding." 554 U. S., at 582.

The court next asked whether stun guns are "dangerous per se at common law and unusual," 470 Mass., at 781, 26 N. E. 3d, at 694, in an attempt to apply one "important limitation on the right to keep and carry arms," *Heller*, 554 U. S., at 627; see *ibid.* (referring to "the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons' "). In so doing, the court concluded that stun guns are "unusual" because they are "a thoroughly modern invention." 470 Mass., at 781, 26 N. E. 3d, at 693–694. By equating "unusual" with "not in common use at the time of the Second Amendment's enactment," the court's second explanation is the same as the first; it is inconsistent with *Heller* for the same reason.

Finally, the court used "a contemporary lens" and found "nothing in the record to suggest that [stun guns] are readily adaptable to use in the military." 470 Mass., at 781, 26 N. E. 3d, at 694. But *Heller* rejected the proposition "that only those weapons useful in warfare are protected." 554 U. S., at 624–625.

For these three reasons, the explanation the Massachusetts court offered for upholding the law contradicts this Court's precedent. Consequently, the petition for a writ of certiorari and the motion for leave to proceed *in forma pauperis* are granted. The judgment of the Supreme Judicial Court of Massachusetts is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring in the judgment.

After a "bad altercation" with an abusive boyfriend put her in the hospital, Jaime Caetano found herself homeless

and "in fear for [her] life." Tr. 31, 38 (July 10, 2013). She obtained multiple restraining orders against her abuser, but they proved futile. So when a friend offered her a stun gun "for self-defense against [her] former boy friend," 470 Mass. 774, 776, 26 N. E. 3d 688, 690 (2015), Caetano accepted the weapon.

It is a good thing she did. One night after leaving work, Caetano found her ex-boyfriend "waiting for [her] outside." Tr. 35. He "started screaming" that she was "not gonna [expletive deleted] work at this place" any more because she "should be home with the kids" they had together. *Ibid.* Caetano's abuser towered over her by nearly a foot and outweighed her by close to 100 pounds. But she didn't need physical strength to protect herself. She stood her ground, displayed the stun gun, and announced: "I'm not gonna take this anymore. . . . I don't wanna have to [use the stun gun on] you, but if you don't leave me alone, I'm gonna have to." *Id.*, at 35–36. The gambit worked. The ex-boyfriend "got scared and he left [her] alone." *Id.*, at 36.

It is settled that the Second Amendment protects an individual right to keep and bear arms that applies against both the Federal Government and the States. *District of Columbia* v. *Heller*, 554 U. S. 570 (2008); *McDonald* v. *Chicago*, 561 U. S. 742 (2010). That right vindicates the "basic right" of "individual self-defense." *Id.*, at 767; see *Heller*, *supra*, at 599, 628. Caetano's encounter with her violent ex-boyfriend illustrates the connection between those fundamental rights: By arming herself, Caetano was able to protect against a physical threat that restraining orders had proved useless to prevent. And, commendably, she did so by using a weapon that posed little, if any, danger of permanently harming either herself or the father of her children.

Under Massachusetts law, however, Caetano's mere possession of the stun gun that may have saved her life made her a criminal. See Mass. Gen. Laws, ch. 140, § 131J (2014). When police later discovered the weapon, she was arrested,

tried, and convicted. The Massachusetts Supreme Judicial Court affirmed the conviction, holding that a stun gun "is not the type of weapon that is eligible for Second Amendment protection" because it was "not in common use at the time of [the Second Amendment's] enactment." 470 Mass., at 781, 26 N. E. 3d, at 693.

This reasoning defies our decision in *Heller*, which rejected as "bordering on the frivolous" the argument "that only those arms in existence in the 18th century are protected by the Second Amendment." 554 U. S., at 582. The decision below also does a grave disservice to vulnerable individuals like Caetano who must defend themselves because the State will not.

I

The events leading to Caetano's prosecution occurred sometime after the confrontation between her and her ex-boyfriend. In September 2011, police officers responded to a reported shoplifting at an Ashland, Massachusetts, supermarket. The store's manager had detained a suspect, but he identified Caetano and another person in the parking lot as potential accomplices. Police approached the two and obtained Caetano's consent to search her purse. They found no evidence of shoplifting, but saw Caetano's stun gun. Caetano explained to the officers that she had acquired the weapon to defend herself against a violent ex-boyfriend.

The officers believed Caetano, but they arrested her for violating Mass. Gen. Laws, ch. 140, § 131J, "which bans entirely the possession of an electrical weapon," 470 Mass., at 775, 26 N. E. 3d, at 689.[1] When Caetano moved to dismiss

[1] Specifically, the statute prohibits the possession of any "portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to incapacitate temporarily, injure or kill." Mass. Gen. Laws, ch. 140, § 131J (2014). The statute includes exceptions for law enforcement officers and weapon suppliers, who may possess electrical weapons "designed to incapacitate tem-

the charge on Second Amendment grounds, the trial court denied the motion.

A subsequent bench trial established the following undisputed facts. The parties stipulated that Caetano possessed the stun gun and that the weapon fell within the statute's prohibition.[2] The Commonwealth also did not challenge Caetano's testimony that she possessed the weapon to defend herself against the violent ex-boyfriend. Indeed, the prosecutor urged the court "to believe the defendant." Tr. 40. The trial court nonetheless found Caetano guilty, and she appealed to the Massachusetts Supreme Judicial Court.

The Supreme Judicial Court rejected Caetano's Second Amendment claim, holding that "a stun gun is not the type of weapon that is eligible for Second Amendment protection." 470 Mass., at 775, 26 N. E. 3d, at 689. The court reasoned that stun guns are unprotected because they were "not 'in common use at the time' of enactment of the Second Amendment," *id.*, at 781, 26 N. E. 3d, at 693 (quoting *Heller*, *supra*, at 627), and because they fall within the "traditional prohibition against carrying dangerous and unusual weapons," 470 Mass., at 779, 26 N. E. 3d, at 692 (citing *Heller*, *supra*, at 627).

II

Although the Supreme Judicial Court professed to apply *Heller*, each step of its analysis defied *Heller*'s reasoning.

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porarily." *Ibid.* Violations are punishable by a fine of $500 to $1,000, imprisonment of 6 months to 2½ years, or both. *Ibid.*

[2] Stun guns like Caetano's "are designed to stun a person with an electrical current" by running a current between two metal prongs on the device and placing the prongs in direct contact with the person. 470 Mass. 774, 775, n. 2, 26 N. E. 3d 688, 689, n. 2 (2015). A similar device, popularly known by the brand name "Taser," shoots out wires tipped with electrodes that can deliver an electrical current from a distance. Tr. 25–26. Tasers can also be used like a stun gun without deploying the electrodes—a so-called "dry stun." *Id.*, at 26. As the Commonwealth's witness testified at trial, these sorts of electrical weapons are "non-lethal force" "designed to incapacitate"—"not kill"—a target. *Id.*, at 27.

A

The state court repeatedly framed the question before it as whether a particular weapon was " 'in common use at the time' of enactment of the Second Amendment." 470 Mass., at 781, 26 N. E. 3d, at 693; see also *id.*, at 779, 780, 781, 26 N. E. 3d, at 692, 693, 694. In *Heller*, we emphatically rejected such a formulation. We found the argument "that only those arms in existence in the 18th century are protected by the Second Amendment" not merely wrong, but "bordering on the frivolous." 554 U. S., at 582. Instead, we held that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, *even those that were not in existence at the time of the founding.*" *Ibid.* (emphasis added).[3] It is hard to imagine language speaking more directly to the point. Yet the Supreme Judicial Court did not so much as mention it.

Instead, the court seized on language, originating in *United States* v. *Miller*, 307 U. S. 174 (1939), that " 'the sorts of weapons protected were those "in common use at the time." ' " 470 Mass., at 778, 26 N. E. 3d, at 692 (quoting *Heller*, *supra*, at 627, in turn quoting *Miller*, *supra*, at 179). That quotation does not mean, as the court below thought, that only weapons popular in 1789 are covered by the Second Amendment. It simply reflects the reality that the founding-era militia consisted of citizens "who would bring the sorts of lawful weapons that they possessed at home to militia duty," *Heller*, 554 U. S., at 627, and that the Second Amendment accordingly guarantees the right to carry weapons "typically possessed by law-abiding citizens for lawful purposes," *id.*, at 625. While stun guns were not in existence at the end of the 18th century, the same is true for the

[3] Stun guns are plainly "bearable arms." As *Heller* explained, the term includes any "[w]eapo[n] of offence" or "thing that a man wears for his defence, or takes into his hands," that is "carr[ied] . . . for the purpose of offensive or defensive action." 554 U. S., at 581, 584 (internal quotation marks omitted).

weapons most commonly used today for self-defense, namely, revolvers and semiautomatic pistols. Revolvers were virtually unknown until well into the 19th century,[4] and semiautomatic pistols were not invented until near the end of that century.[5] Electronic stun guns are no more exempt from the Second Amendment's protections, simply because they were unknown to the First Congress, than electronic communications are exempt from the First Amendment, or electronic imaging devices are exempt from the Fourth Amendment. *Id.*, at 582 (citing *Reno* v. *American Civil Liberties Union*, 521 U. S. 844, 849 (1997), and *Kyllo* v. *United States*, 533 U. S. 27, 35–36 (2001)). As *Heller* aptly put it: "We do not interpret constitutional rights that way." 554 U. S., at 582.

B

The Supreme Judicial Court's holding that stun guns may be banned as "dangerous and unusual weapons" fares no better. As the *per curiam* opinion recognizes, this is a conjunctive test: A weapon may not be banned unless it is *both* dangerous *and* unusual. Because the Court rejects the lower court's conclusion that stun guns are "unusual," it does not need to consider the lower court's conclusion that they are also "dangerous." See *ante*, at 412. But make no mistake—the decision below gravely erred on both grounds.

1

As to "dangerous," the court below held that a weapon is "dangerous per se" if it is "'designed and constructed to produce death or great bodily harm' and 'for the purpose of bodily assault or defense.'" 470 Mass., at 779, 26 N. E. 3d,

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[4] See J. Bilby, A Revolution in Arms: A History of the First Repeating Rifles 23 (2006). Samuel Colt did not patent his famous revolver until 1836. *Ibid.*

[5] See Firearms: An Illustrated History 166 (2014); see also W. Greener, The Gun and Its Development 524–529, 531–534 (9th ed. 1910) (discussing revolvers and self-loading semiautomatic pistols as "modern pistols").

at 692 (quoting *Commonwealth* v. *Appleby*, 380 Mass. 296, 303, 402 N. E. 2d 1051, 1056 (1980)). That test may be appropriate for applying statutes criminalizing assault with a dangerous weapon. See *ibid.*, 402 N. E. 2d, at 1056. But it cannot be used to identify arms that fall outside the Second Amendment. First, the relative dangerousness of a weapon is irrelevant when the weapon belongs to a class of arms commonly used for lawful purposes. See *Heller*, *supra*, at 627 (contrasting "'dangerous and unusual weapons'" that may be banned with protected "weapons . . . 'in common use at the time'"). Second, even in cases where dangerousness might be relevant, the Supreme Judicial Court's test sweeps far too broadly. *Heller* defined the "Arms" *covered by* the Second Amendment to include "'any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.'" 554 U. S., at 581. Under the decision below, however, virtually every covered arm would qualify as "dangerous."

Were there any doubt on this point, one need only look at the court's first example of "dangerous per se" weapons: "firearms." 470 Mass., at 779, 26 N. E. 3d, at 692. If *Heller* tells us anything, it is that firearms cannot be categorically prohibited just because they are dangerous. 554 U. S., at 636. *A fortiori*, stun guns that the Commonwealth's own witness described as "non-lethal force," Tr. 27, cannot be banned on that basis.

2

The Supreme Judicial Court's conclusion that stun guns are "unusual" rested largely on its premise that one must ask whether a weapon was commonly used in 1789. See 470 Mass., at 780–781, 26 N. E. 3d, at 693–694. As already discussed, that is simply wrong. See *supra*, at 416–417.

The court also opined that a weapon's unusualness depends on whether "it is a weapon of warfare to be used by the militia." 470 Mass., at 780, 26 N. E. 3d, at 693. It asserted

that we followed such an approach in *Miller* and "approved its use in *Heller*." 470 Mass., at 780, 26 N. E. 3d, at 693. But *Heller* actually said that it would be a "startling reading" of *Miller* to conclude that "only those weapons useful in warfare are protected." 554 U. S., at 624. Instead, *Miller* and *Heller* recognized that militia members traditionally reported for duty carrying "the sorts of lawful weapons that they possessed at home," and that the Second Amendment therefore protects such weapons as a class, regardless of any particular weapon's suitability for military use. 554 U. S., at 627; see *id.*, at 624–625. Indeed, *Heller* acknowledged that advancements in military technology might render many commonly owned weapons ineffective in warfare. *Id.*, at 627–628. But such "modern developments . . . cannot change our interpretation of the right." *Ibid.*

In any event, the Supreme Judicial Court's assumption that stun guns are unsuited for militia or military use is untenable. Section 131J allows law enforcement and correctional officers to carry stun guns and Tasers, presumably for such purposes as nonlethal crowd control. Subduing members of a mob is little different from "suppress[ing] Insurrections," a traditional role of the militia. U. S. Const., Art. I, § 8, cl. 15; see also *ibid.* (militia may be called forth "to execute the Laws of the Union"). Additionally, several branches of the U. S. armed services equip troops with electrical stun weapons to "incapacitate a target without permanent injury or known side effects." U. S. Army, Project Manager Close Combat Systems, PD Combat Munitions: Launched Electrode Stun Device (LESD), http://www.pica.army.mil/pmccs/combatmunitions/nonlethalsys/taserx26e.html (all Internet materials as last visited Mar. 18, 2016); see U. S. Marine Corps Administrative Message 560/08 (Oct. 2, 2008) (Marine Corps guidance for use of Tasers), http://www.marines.mil/News/Messages/MessagesDisplay/tabid/13286/Article/113024/marine-corps-training-and-use-of-

human-electro-muscular-incapacitation-hemi-dev.aspx; Joint Non-Lethal Weapons Directorate, Non-Lethal Weapons (NLW) Reference Book 3 (2012) (Department of Defense report stating that "[m]ultiple Services employ" Tasers), http://dtic.mil/dtic/tr/fulltext/u2/a565971.pdf.

C

As the foregoing makes clear, the pertinent Second Amendment inquiry is whether stun guns are commonly possessed by law-abiding citizens for lawful purposes *today*. The Supreme Judicial Court offered only a cursory discussion of that question, noting that the " 'number of Tasers and stun guns is dwarfed by the number of firearms.' " 470 Mass., at 781, 26 N. E. 3d, at 693. This observation may be true, but it is beside the point. Otherwise, a State would be free to ban *all* weapons *except* handguns, because "handguns are the most popular weapon chosen by Americans for self-defense in the home." *Heller*, *supra*, at 629.

The more relevant statistic is that "[h]undreds of thousands of Tasers and stun guns have been sold to private citizens," who it appears may lawfully possess them in 45 States. *People* v. *Yanna*, 297 Mich. App. 137, 144, 824 N. W. 2d 241, 245 (2012) (holding Michigan stun gun ban unconstitutional); see Volokh, Nonlethal Self-Defense, (Almost Entirely) Nonlethal Weapons, and the Rights To Keep and Bear Arms and Defend Life, 62 Stan. L. Rev. 199, 244 (2009) (citing stun gun bans in seven States); Wis. Stat. § 941.295 (Supp. 2015) (amended Wisconsin law permitting stun gun possession); see also Brief in Opposition 11 (acknowledging that "approximately 200,000 civilians owned stun guns" as of 2009). While less popular than handguns, stun guns are widely owned and accepted as a legitimate means of self-defense across the country. Massachusetts' categorical ban of such weapons therefore violates the Second Amendment.

III

The lower court's ill treatment of *Heller* cannot stand. The reasoning of the Massachusetts court poses a grave threat to the fundamental right of self-defense. The Supreme Judicial Court suggested that Caetano could have simply gotten a firearm to defend herself. 470 Mass., at 783, 26 N. E. 3d, at 695. But the right to bear other weapons is "no answer" to a ban on the possession of protected arms. *Heller*, 554 U. S., at 629. Moreover, a weapon is an effective means of self-defense only if one is prepared to use it, and it is presumptuous to tell Caetano she should have been ready to shoot the father of her two young children if she wanted to protect herself. Courts should not be in the business of demanding that citizens use *more* force for self-defense than they are comfortable wielding.[6]

Countless people may have reservations about using deadly force, whether for moral, religious, or emotional reasons—or simply out of fear of killing the wrong person. See Brief for Arming Women Against Rape & Endangerment as *Amicus Curiae* 4–5. "Self-defense," however, "is a basic right." *McDonald*, 561 U. S., at 767. I am not prepared to say that a State may force an individual to choose between exercising that right and following her conscience, at least where both can be accommodated by a weapon already in widespread use across the Nation.

* * *

A State's most basic responsibility is to keep its people safe. The Commonwealth of Massachusetts was either unable or unwilling to do what was necessary to protect Jaime

[6] The court below also noted that Massachusetts no longer requires a license to possess mace or pepper spray. 470 Mass., at 783, 26 N. E. 3d, at 695. But the law was changed in 2014, after Caetano was convicted. A spray can also be foiled by a stiff breeze, while a stun gun cannot.

Caetano, so she was forced to protect herself. To make matters worse, the Commonwealth chose to deploy its prosecutorial resources to prosecute and convict her of a criminal offense for arming herself with a nonlethal weapon that may well have saved her life. The Supreme Judicial Court then affirmed her conviction on the flimsiest of grounds. This Court's grudging *per curiam* now sends the case back to that same court. And the consequences for Caetano may prove more tragic still, as her conviction likely bars her from ever bearing arms for self-defense. See Pet. for Cert. 14.

If the fundamental right of self-defense does not protect Caetano, then the safety of all Americans is left to the mercy of state authorities who may be more concerned about disarming the people than about keeping them safe.

MONTANA *v.* WYOMING ET AL.

ON BILL OF COMPLAINT

No. 137, Orig. Decided May 2, 2011—Order and judgment entered March 21, 2016

Order and judgment entered.

Opinion reported: 563 U. S. 368.

ORDER AND JUDGMENT

The Court having exercised original jurisdiction over this controversy among sovereign States; the issues having been tried before the Special Master appointed by this Court; the Court having considered the briefs on the parties' exceptions to the Second Interim Report of the Special Master; IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. Wyoming's Motion for Partial Summary Judgment on the notice requirement for damages is granted for the years 1982, 1985, 1992, 1994, and 1998.

2. Wyoming also is not liable to Montana for the years 1981, 1987, 1988, 1989, 2000, 2001, 2002, and 2003.

3. Wyoming is liable to Montana for reducing the volume of water available in the Tongue River at the Stateline between Wyoming and Montana by 1,300 acre-feet in 2004.

4. Wyoming is liable to Montana for reducing the volume of water available in the Tongue River at the Stateline between Wyoming and Montana by 56 acre-feet in 2006.

5. The case is remanded to the Special Master for determination of damages and other appropriate relief.

Syllabus

STURGEON *v.* FROST, ALASKA REGIONAL DIRECTOR OF THE NATIONAL PARK SERVICE, ET AL.

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

No. 14–1209. Argued January 20, 2016—Decided March 22, 2016

The Alaska National Interest Lands Conservation Act (ANILCA) set aside 104 million acres of land in Alaska for preservation purposes. Under ANILCA, those lands were placed into "conservation system units," which were defined to include "any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument." 16 U. S. C. § 3102(4). In addition to federal land, over 18 million acres of state, Native Corporation, and private land were also included within the boundaries of those conservation system units.

In 2007, John Sturgeon was piloting his hovercraft over a stretch of the Nation River that flows through the Yukon-Charley Rivers National Preserve, a conservation system unit in Alaska that is managed by the National Park Service. Alaska law permits the use of hovercraft. National Park Service regulations do not. See 36 CFR § 2.17(e). Park Service rangers approached Sturgeon, informing him that hovercraft were prohibited within the preserve under Park Service regulations. Sturgeon protested that Park Service regulations did not apply because the river was owned by the State of Alaska. The rangers ordered Sturgeon to remove his hovercraft from the preserve, and he complied. Sturgeon later filed suit against the Park Service in the United States District Court for the District of Alaska, seeking declaratory and injunctive relief permitting him to operate his hovercraft within the boundaries of the Yukon-Charley. Alaska intervened in support of Sturgeon.

The Secretary of the Interior has authority to "prescribe regulations" concerning "boating and other activities on or relating to water located within System units." 54 U. S. C. § 100751(b). The Park Service's hovercraft regulation was adopted pursuant to Section 100751(b). The hovercraft ban is not limited to Alaska, but instead has effect in federally managed preservation areas across the country. Section 103(c) of ANILCA, in contrast, addresses the scope of the Park Service's authority over lands within the boundaries of conservation system units in Alaska. The first sentence of Section 103(c) specifies the property included as a portion of those units. It states: "Only those lands within

the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit." 16 U. S. C. § 3103(c). ANILCA defines the word "land" to include "lands, waters, and interests therein," and the term "public lands" to include lands to which the United States has "title," with certain exceptions. § 3102.

The second sentence of Section 103(c) concerns the Park Service's authority to regulate "non-public" lands in Alaska, which include state, Native Corporation, and private property. It provides: "No lands which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units." § 3103(c). The third sentence of Section 103(c) explains how new lands become part of conservation system units: "If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly." *Ibid.*

Interpreting Section 103(c) of ANILCA, the District Court granted summary judgment to the Park Service, and the Ninth Circuit affirmed in pertinent part. According to the Ninth Circuit, because the hovercraft regulation "applies to all federal-owned lands and waters administered by [the Park Service] nationwide, as well as all navigable waters lying within national parks," the hovercraft ban does not apply "solely" within conservation system units in Alaska. 768 F. 3d 1066, 1077. The Ninth Circuit concluded that the Park Service therefore has authority to enforce its hovercraft regulation on the Nation River. The Ninth Circuit did not address whether the Nation River counts as "public land" for purposes of ANILCA.

Held: The Ninth Circuit's interpretation of Section 103(c) is inconsistent with both the text and context of ANILCA. Pp. 438–441.

(a) The Ninth Circuit's interpretation of Section 103(c) violates "a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme," *Roberts* v. *Sea-Land Services, Inc.*, 566 U. S. 93, 101. ANILCA repeatedly recognizes that Alaska is different, and ANILCA itself accordingly carves out numerous Alaska-specific exceptions to the Park Service's general authority over federally managed preservation areas. Those Alaska-specific provisions reflect the simple truth that Alaska is often the exception, not the rule. Yet the reading below would prevent the Park Service from recognizing Alaska's unique conditions. Under that reading, the Park Service could regulate "non-

public" lands in Alaska only through rules applicable outside Alaska as well. The Court concludes that, whatever the reach of the Park Service's authority under ANILCA, Section 103(c) did not adopt such a "topsy-turvy" approach. Pp. 438–440.

(b) Moreover, it is clear that Section 103(c) draws a distinction between "public" and "non-public" lands within the boundaries of conservation system units in Alaska. And yet, according to the court below, if the Park Service wanted to differentiate between that "public" and "non-public" land in an Alaska-specific way, it would have to regulate the "non-public" land pursuant to rules applicable outside Alaska, and the "public" land pursuant to Alaska-specific provisions. Assuming the Park Service has authority over "non-public" land in Alaska (an issue the Court does not decide), the Court concludes that this is an implausible reading of the statute. The Court therefore rejects the interpretation of Section 103(c) adopted by the court below. Pp. 440–441.

(c) The Court does not reach the remainder of the parties' arguments. In particular, it does not decide whether the Nation River qualifies as "public land" for purposes of ANILCA. It also does not decide whether the Park Service has authority under Section 100751(b) to regulate Sturgeon's activities on the Nation River, even if the river is not "public" land, or whether—as Sturgeon argues—any such authority is limited by ANILCA. Finally, the Court does not consider whether the Park Service has authority under ANILCA over both "public" and "non-public" lands within the boundaries of conservation system units in Alaska, to the extent a regulation is written to apply specifically to both types of land. The Court leaves those arguments to the lower courts for consideration as necessary. P. 441.

768 F. 3d 1066, vacated and remanded.

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

Matthew T. Findley argued the cause for petitioner. With him on the briefs were *Eva R. Gardner*, *Douglas Pope*, *William S. Consovoy*, *J. Michael Connolly*, and *Michael H. Park*.

Ruth Botstein, Assistant Attorney General of Alaska, argued the cause for the State of Alaska as *amicus curiae* urging reversal. With her on the brief were *Craig W. Richards*, Attorney General, and *Janell Hafner*, Assistant Attorney General.

Rachel P. Kovner argued the cause for respondents. With her on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Cruden*, *Deputy Solicitor General Kneedler*, *Andrew C. Mergen*, *Dean K. Dunsmore*, and *Elizabeth Ann Peterson*.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

For almost 40 years, John Sturgeon has hunted moose along the Nation River in Alaska. Because parts of the river are shallow and difficult to navigate, Sturgeon travels by hovercraft, an amphibious vehicle capable of gliding over land and water. To reach his preferred hunting grounds, Sturgeon must pilot his hovercraft over a stretch of the Nation River that flows through the Yukon-Charley Rivers National Preserve, a 1.7 million acre federal preservation area managed by the National Park Service. 16 U. S. C. § 410hh(10).

Alaska law permits the use of hovercraft. National Park Service regulations do not. See 36 CFR § 2.17(e) (2015). After Park Service rangers informed Sturgeon that he was prohibited from using his hovercraft within the boundaries of the preserve, Sturgeon filed suit, seeking declaratory and

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*Briefs of *amici curiae* urging reversal were filed for the Alaska Miners Association, Inc., et al. by *Jason T. Morgan* and *Joseph J. Perkins, Jr.*; for Arctic Slope Regional Corp. et al. by *Jahna M. Lindemuth*, *Katherine Demarest*, and *Timothy J. Droske*; for Doyon, Ltd., et al. by *James D. Linxwiler* and *Josh Van Gorkom*; for the Pacific Legal Foundation by *Damien M. Schiff*; for the Safari Club International by *Anna M. Seidman* and *Douglas S. Burdin*; for the Southeastern Legal Foundation by *Kimberly S. Hermann*; and for Sen. Dan Sullivan et al. by *Jonathan W. Katchen* and *Kyle W. Parker*.

Katherine Strong, *Valerie Brown*, *Thomas E. Meacham*, and *Donald B. Ayer* filed a brief for the National Parks Conservation Association et al. as *amici curiae* urging affirmance.

Robert T. Anderson, *Riyaz A. Kanji*, *Carter G. Phillips*, *Lloyd B. Miller*, and *Heather R. Kendall* filed a brief for Alaska Native Subsistence Users as *amici curiae*.

injunctive relief. He argues that the Nation River is owned by the State, and that the Alaska National Interest Lands Conservation Act (ANILCA) prohibits the Park Service from enforcing its regulations on state-owned land in Alaska. The Park Service disagrees, contending that it has authority to regulate waters flowing through federally managed preservation areas. The District Court and the Court of Appeals ruled in favor of the Park Service. We granted certiorari.

I

In 1867, Secretary of State William Seward, serving under President Andrew Johnson, negotiated a treaty to purchase Alaska from Russia for $7.2 million. Treaty Concerning the Cession of the Russian Possessions in North America, Mar. 30, 1867, 15 Stat. 539. In a single stroke, the United States gained 365 million acres of land—an area more than twice the size of Texas. Despite the bargain price of two cents an acre, however, the purchase was mocked by contemporaries as "Seward's Folly" and President Johnson's "Polar Bear Garden." See C. Naske & H. Slotnick, Alaska: A History 92–94 (2011) (Naske & Slotnick); S. Rep. No. 1163, 85th Cong., 1st Sess., 2 (1957).

The monikers didn't stick. In 1898, the "Three Lucky Swedes"—Jafet Lindeberg, Eric Lindblom, and Jon Brynteson—struck gold in Nome, Alaska. As word of their discovery spread, thousands traveled to Alaska to try their hand at mining. Once the gold rush subsided, settlers turned to other types of mining, fishing, and trapping, fueling an emerging export economy. See Naske & Slotnick 128–129, 155, 249–251; D. Wharton, The Alaska Gold Rush 186–187 (1972).

Despite newfound recognition of Alaska's economic potential, however, it was not until the 1950's that Congress seriously considered admitting Alaska as a State. By that time, it was clear that Alaska was strategically important both in the Pacific and Arctic, and that the Territory was rich in

natural resources, including oil. Moreover, the people of Alaska favored statehood. See Naske & Slotnick 201, 224–235. But there was a problem: Out of the 365 million acres of land in Alaska, 98 percent were owned by the Federal Government. As a result, absent a land grant from the Federal Government to the State, there would be little land available to drive private economic activity and contribute to the state tax base. See S. Rep. No. 1163, at 2, 12 ("The expenses of the State of Alaska will be comparatively high, partially due to the vast land areas within the State; but the State would be able to realize revenues from only 2 percent of this vast area unless some provision were made to modify the present land-ownership conditions").

A solution was struck. The 1958 Alaska Statehood Act permitted Alaska to select 103 million acres of "vacant, unappropriated, and unreserved" federal land—just over a quarter of all land in Alaska—for state ownership. §§ 6(a)–(b), 72 Stat. 340. That land grant included "mineral deposits," which were "subject to lease by the State as the State legislature may direct." § 6(i), *id.*, at 342. Upon statehood, Alaska also gained "title to and ownership of the lands beneath navigable waters" within the State, in addition to "the natural resources within such lands and waters," including "the right and power to manage, administer, lease, develop, and use the said lands and natural resources." § 3(a), 67 Stat. 30, 43 U. S. C. § 1311(a); § 6(m), 72 Stat. 343. With over 100 million acres of land now available to the new State, Alaska could begin to fulfill its state policy "to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." Alaska Const., Art. VIII, § 1 (2014).

The Statehood Act did not, however, determine the rights of the Alaska Natives, who asserted aboriginal title to much of the same land now claimed by the State. Naske & Slotnick 287–289. To resolve the dispute, Congress in 1971 passed the Alaska Native Claims Settlement Act (ANCSA),

which extinguished aboriginal land claims in Alaska. 85 Stat. 688, as amended, 43 U. S. C. § 1601 *et seq.* In exchange, Congress provided for a $960 million settlement and permitted corporations organized by groups of Alaska Natives to select 40 million acres of federal land to manage within the State. §§ 1605, 1610–1615; Naske & Slotnick 296–297. Congress sought to implement the settlement "rapidly, with certainty, in conformity with the real economic and social needs" of Alaska Natives. § 1601(b).

In addition to settling the claims of the Alaska Natives, ANCSA directed the Secretary of the Interior to select up to 80 million acres of unreserved federal land in Alaska for addition to the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems, subject to congressional approval. § 1616(d)(2). When Congress failed to approve the Secretary's selections, however, President Carter unilaterally designated 56 million acres of federal land in Alaska as national monuments. See Presidential Proclamation Nos. 4611–4627, 3 CFR 69–104 (1978).

President Carter's actions were unpopular among many Alaskans, who were concerned that the new monuments would be subject to restrictive federal regulations. Protesters demonstrated in Fairbanks, and more than 2,500 Alaskans participated in the "Great Denali-McKinley Trespass." The goal of the trespass was to break over 25 Park Service rules in a two-day period—including by camping, hunting, snowmobiling, setting campfires, shooting guns, and unleashing dogs. During the event, a "rider on horseback, acting the part of Paul Revere, galloped through the crowd yelling, 'The Feds are coming! The Feds are coming!'" N. Y. Times, Jan. 15, 1979, p. A8; Anchorage Daily News, Jan. 15, 1979, pp. 1–2.

Congress once again stepped in to settle the controversy, passing the Alaska National Interest Lands Conservation Act. 94 Stat. 2371, 16 U. S. C. § 3101 *et seq.* ANILCA had two stated goals: First, to provide "sufficient protection for

the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska." § 3101(d). And second, to provide "adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people." *Ibid.*

ANILCA set aside 104 million acres of land in Alaska for preservation purposes, in the process creating ten new national parks, preserves, and monuments—including the Yukon-Charley Rivers National Preserve—and tripling the number of acres set aside in the United States for federal wilderness preservation. See § 410hh; Naske & Slotnick 315–316. At the same time, ANILCA specified that the Park Service could not prohibit on those lands certain activities of particular importance to Alaskans. See, *e. g.*, § 3170(a) (Secretary must permit reasonable use of vehicles "for travel to and from villages and homesites"); § 3201 (Secretary must permit "the taking of fish and wildlife for sport purposes and subsistence uses" within National Preserves in Alaska, subject to regulation and certain exceptions). President Carter's earlier land designations were rescinded. See § 3209(a).

Under ANILCA, federal preservation lands in Alaska were placed into "conservation system units," which were defined to include "any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument." § 3102(4). Congress drew the boundaries of those units to "follow hydrographic divides or embrace other topographic or natural features," however, rather than to map the Federal Government's landholdings. § 3103(b). As a consequence, in addition to federal land, over 18 million acres of state, Native Corporation, and private land ended up inside the boundaries of conservation system units. See Brief for Petitioner 6.

This brings us back to Sturgeon and his hovercraft.

II

A

One fall day in 2007, Sturgeon was piloting his hovercraft on the Nation River, which rises in the Ogilvie Mountains in Canada and joins the Yukon River within the boundaries of the Yukon-Charley Rivers National Preserve conservation system unit (Yukon-Charley). Sturgeon was headed to a hunting ground upstream from the preserve, just shy of the Canadian border. To reach that hunting ground, dubbed "moose meadows," Sturgeon had to travel on a portion of the river that flows through the preserve.

About two miles into his trip on the Nation River, Sturgeon stopped on a gravel bar to repair the steering cable of his hovercraft. As he was performing the repairs, Sturgeon was approached by three Park Service rangers. The rangers informed him that hovercraft were prohibited under Park Service regulations, and that he was committing a crime by operating his hovercraft within the boundaries of the Yukon-Charley. Despite Sturgeon's protests that Park Service regulations did not apply because the river was owned by the State of Alaska, the rangers ordered Sturgeon to remove his hovercraft from the preserve. Sturgeon complied, heading home without a moose.

Sturgeon now fears that he will be criminally prosecuted if he returns to hunt along the Nation River in his hovercraft. To avoid prosecution, Sturgeon sued the Park Service and several federal officials in the United States District Court for the District of Alaska. He seeks declaratory and injunctive relief permitting him to operate his hovercraft within the boundaries of the Yukon-Charley. Alaska intervened in support of Sturgeon, and the Park Service opposed the suit.

The District Court granted summary judgment to the Park Service. *Sturgeon* v. *Masica*, 2013 WL 5888230 (Oct. 30, 2013). The Court of Appeals for the Ninth Circuit af-

firmed in pertinent part. *Sturgeon* v. *Masica*, 768 F. 3d 1066 (2014).

We granted certiorari. 576 U. S. 1094 (2015).

B

The Secretary of the Interior has authority to "prescribe regulations" concerning "boating and other activities on or relating to water located within System units, including water subject to the jurisdiction of the United States." 54 U. S. C. § 100751(b) (2012 ed., Supp. II). "System units" are in turn defined as "any area of land and water administered by the Secretary, acting through the Director [of the Park Service], for park, monument, historic, parkway, recreational, or other purposes." §§ 100102, 100501.

The Park Service's hovercraft regulation was adopted pursuant to Section 100751(b). The hovercraft ban applies not only within "[t]he boundaries of federally owned lands and waters administered by the National Park Service," but also to "[w]aters subject to the jurisdiction of the United States located within the boundaries of the National Park System, including navigable waters . . . without regard to the ownership of submerged lands." 36 CFR § 1.2(a). The hovercraft ban is not limited to Alaska, but instead has effect in federally managed preservation areas across the country.

Section 103(c) of ANILCA, in contrast, addresses the scope of the Park Service's authority over lands within the boundaries of conservation system units in Alaska. The first sentence of Section 103(c) specifies the property included as a portion of those units. It states: "Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit." 16 U. S. C. § 3103(c). ANILCA defines the word "land" to include "lands, waters, and interests therein," and the term "public lands" to include "lands the title to which is in the United States after December 2, 1980," with certain excep-

tions. § 3102. In sum, only "lands, waters, and interests therein" to which the United States has "title" are considered "public" land "included as a portion" of the conservation system units in Alaska.

The second sentence of Section 103(c) concerns the Park Service's authority to regulate "non-public" lands in Alaska, which include state, Native Corporation, and private property. It provides: "No lands which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units." § 3103(c).

The third sentence of Section 103(c) explains how new lands become part of conservation system units: "If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly." *Ibid.*

C

The parties dispute whether Section 103(c) of ANILCA created an Alaska-specific exception to the Park Service's general authority over boating and related activities in federally managed preservation areas. Sturgeon, the Park Service, and the Ninth Circuit each adopt a different reading of Section 103(c), reaching different conclusions about the scope of the Park Service's powers.

Sturgeon, joined by the State, understands Section 103(c) to stand for a simple proposition: The Park Service is prohibited from regulating "non-public" land in Alaska as if that land were owned by the Federal Government. He contends that his reading is consistent with the history of federal land management in Alaska, beginning with the Alaska Statehood Act and culminating in ANILCA.

Sturgeon's argument proceeds in two steps. First, he asserts that the Nation River is not "public land" for purposes

of ANILCA and is therefore not part of the Yukon-Charley. As discussed, ANILCA defines "public lands" as lands to which the United States has "title." 16 U. S. C. § 3102. And Section 103(c) provides that "[o]nly those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit." § 3103(c).

Sturgeon argues that the Nation River is not "public land" because it is owned by the State and not by the Federal Government. To support his argument, Sturgeon relies on the Alaska Statehood Act, which granted ownership of the submerged lands beneath the navigable waters in Alaska, and the resources within those waters, to the State. See § 6(m), 72 Stat. 343; 43 U. S. C. § 1311(a). He also cites this Court's decision in *United States* v. *California*, 436 U. S. 32 (1978), which stated that "the Submerged Lands Act transferred title to and ownership of the submerged lands and waters" to the States. *Id.*, at 40 (internal quotation marks omitted). Because the State and not the Federal Government owns the Nation River, Sturgeon urges, it is not "public" land under ANILCA and is therefore not part of the Yukon-Charley.

Second, Sturgeon asserts that because the Nation River is not part of the Yukon-Charley, the Park Service lacks authority to regulate it. His argument rests on the second sentence of Section 103(c), which states that "[n]o lands which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units." 16 U. S. C. § 3103(c).

Sturgeon argues that the phrase "regulations applicable solely to public lands within such units" refers to those regulations that apply "solely" by virtue of the Park Service's "authority to manage national parks." Brief for Petitioner 18, 26–27. The word "solely," Sturgeon contends, simply ensures that "non-public" lands within the boundaries of those

units remain subject to laws generally "applicable to both public and private lands (such as the Clean Air Act and Clean Water Act)." *Id.*, at 19. Because the hovercraft regulation was adopted pursuant to the Park Service's authority over federally managed preservation areas, and is not a law of general applicability like the Clean Air Act or the Clean Water Act, Sturgeon concludes that Section 103(c) bars enforcement of the regulation.

The Park Service, in contrast, reads Section 103(c) more narrowly. In its brief in this Court, the Park Service, while defending the reasoning of the Ninth Circuit, relies primarily on very different arguments. The agency stresses that it has longstanding authority to regulate waters within federally managed preservation areas, and that Section 103(c) does not take any of that authority away. In reaching its conclusion, the Park Service disagrees with Sturgeon at each step.

First, the Park Service contends that the Nation River is part of the Yukon-Charley. To support that contention, the agency cites ANILCA's definition of "public lands," which—as noted—includes "lands, waters, and interests therein" to which the United States has "title." 16 U. S. C. § 3102. The Park Service argues that the United States has "title" to an "interest" in the water within the boundaries of the Yukon-Charley under the reserved water rights doctrine.

The reserved water rights doctrine specifies that "when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation." *Cappaert* v. *United States*, 426 U. S. 128, 138 (1976). By creating the Yukon-Charley, the Park Service urges, the Federal Government reserved the water within the boundaries of the conservation system unit to achieve the Government's conservation goals. As a result, the Federal Government has "title" to an "interest" in the

Nation River, making it "public" land subject to Park Service regulations.

Second, the Park Service contends that even if the Nation River is not "public" land, the agency still has authority to regulate it. According to the Park Service, the second sentence of Section 103(c) imposes only a limited restriction on the agency's power, prohibiting it from enforcing on "non-public" lands only those regulations that explicitly apply "solely to public lands." The hovercraft regulation applies both within "[t]he boundaries of federally owned lands and waters administered by the National Park Service" *and* to "[w]aters subject to the jurisdiction of the United States located within the boundaries of the National Park System, including navigable waters . . . without regard to the ownership of submerged lands." 36 CFR § 1.2(a). Accordingly, the Park Service asserts, the hovercraft regulation does not apply "solely to public lands," and Section 103(c) therefore does not prevent enforcement of the regulation. See Brief for Respondents 56–58.

The Ninth Circuit, for its part, adopted a reading of Section 103(c) different from the primary argument advanced by the Park Service in this Court. The Court of Appeals did not reach the question whether the Nation River counts as "public" land for purposes of ANILCA. Instead, it held that the phrase "regulations applicable solely to public lands within such units" distinguishes between Park Service regulations that apply solely to "public" lands *in Alaska*, and Park Service regulations that apply to federally managed preservation areas across the country. In the Ninth Circuit's view, the Park Service may enforce nationally applicable regulations on both "public" and "non-public" property within the boundaries of conservation system units in Alaska, because such regulations do not apply "solely to public lands within such units." The Park Service may not, however, apply Alaska-specific regulations to "non-public" lands within the boundaries of those units.

According to the Ninth Circuit, because the hovercraft regulation "applies to all federal-owned lands and waters administered by [the Park Service] nationwide, as well as all navigable waters lying within national parks," the hovercraft ban does not apply "solely" within conservation system units in Alaska. 768 F. 3d, at 1077. The Ninth Circuit concluded that the Park Service therefore has authority to enforce its hovercraft regulation on the Nation River. *Id.*, at 1078. The Ninth Circuit's holding is subject to some interpretation, but Sturgeon, the State, the Alaska Native Corporations, and the Park Service (at least at times) concur in our understanding of the decision below. See Brief for Petitioner 25; Brief for State of Alaska as *Amicus Curiae* 23; Brief for Arctic Slope Regional Corporation et al. as *Amici Curiae* 12–13; Brief for Doyon, Ltd., et al. as *Amici Curiae* 31–32; Brief for Respondents 20; Tr. of Oral Arg. 61; 80 Fed. Reg. 65573 (2015).

III

We reject the interpretation of Section 103(c) adopted by the Ninth Circuit. The court's reading of the phrase "regulations applicable solely to public lands within such units" may be plausible in the abstract, but it is ultimately inconsistent with both the text and context of the statute as a whole. Statutory language "cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts* v. *Sea-Land Services, Inc.*, 566 U. S. 93, 101 (2012) (internal quotation marks omitted).

Under the reading of the statute adopted below, the Park Service may apply nationally applicable regulations to "nonpublic" lands within the boundaries of conservation system units in Alaska, but it may not apply Alaska-specific regulations to those lands. That is a surprising conclusion. ANILCA repeatedly recognizes that Alaska is different—from its "unrivaled scenic and geological values," to the

"unique" situation of its "rural residents dependent on subsistence uses," to "the need for development and use of Arctic resources with appropriate recognition and consideration given to the unique nature of the Arctic environment." 16 U. S. C. §§ 3101(b), 3111(2), 3147(b)(5).

ANILCA itself accordingly carves out numerous Alaska-specific exceptions to the Park Service's general authority over federally managed preservation areas. For example, ANILCA requires the Secretary of the Interior to permit "the exercise of valid commercial fishing rights or privileges" within the National Wildlife Refuge System in Alaska, including the use of "campsites, cabins, motorized vehicles, and aircraft landings directly incident to the exercise of such rights or privileges," with certain exceptions. 94 Stat. 2393. ANILCA also requires the Secretary to "permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation." 16 U. S. C. § 3121(b). And it provides that National Preserves "in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park *except* as otherwise provided in this Act and *except* that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed" pursuant to applicable law. § 3201 (emphasis added).

Many similar examples are woven throughout ANILCA. See, *e. g.*, 94 Stat. 2393 (Secretary must administer wildlife refuge "so as to not impede the passage of navigation and access by boat on the Yukon and Kuskokwim Rivers," subject to reasonable regulation); *id.*, at 2388 (Secretary must allow reindeer grazing uses in certain areas, including construction of necessary facilities); 16 U. S. C. § 3203(a) (Alaska-specific rules for wilderness management apply "in recognition of the unique conditions in Alaska"); § 3170(a) (Secretary must permit reasonable use of snowmachines, motorboats,

and airplanes within conservation system units "for travel to and from villages and homesites").

All those Alaska-specific provisions reflect the simple truth that Alaska is often the exception, not the rule. Yet the reading below would prevent the Park Service from recognizing Alaska's unique conditions. Under that reading, the Park Service could regulate "non-public" lands in Alaska only through rules applicable *outside* Alaska as well. Thus, for example, if the Park Service elected to allow hovercraft during hunting season in Alaska—in a departure from its nationwide rule—the more relaxed regulation would apply only to the "public" land within the boundaries of the unit. Hovercraft would still be banned from the "non-public" land, even during hunting season. Whatever the reach of the Park Service's authority under ANILCA, we cannot conclude that Section 103(c) adopted such a topsy-turvy approach.

Moreover, it is clear that Section 103(c) draws a distinction between "public" and "non-public" lands within the boundaries of conservation system units in Alaska. See § 3103(c) ("Only those lands within the boundaries of any conservation system unit which are public lands . . . shall be deemed to be included as a portion of such unit"); *ibid.* (No lands "conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units"). And yet, according to the court below, if the Park Service wanted to differentiate between that "public" and "non-public" land in an Alaska-specific way, it would have to regulate the "non-public" land pursuant to rules applicable outside Alaska, and the "public" land pursuant to Alaska-specific provisions. Assuming the Park Service has authority over "non-public" land in Alaska (an issue we do not decide), that strikes us as an implausible reading of the statute.

Looking at ANILCA both as a whole and with respect to Section 103(c), the Act contemplates the possibility that all

the land within the boundaries of conservation system units in Alaska may be treated differently from federally managed preservation areas across the country, and that "non-public" lands within the boundaries of those units may be treated differently from "public" lands within the unit. Under the Ninth Circuit's reading of Section 103(c), however, the former is not an option, and the latter would require contorted and counterintuitive measures.

We therefore reject the interpretation of Section 103(c) adopted by the court below. That reading of the statute was the sole basis for the disposition of this case by the Court of Appeals. We accordingly vacate the judgment of that court and remand for further proceedings.

We do not reach the remainder of the parties' arguments. In particular, we do not decide whether the Nation River qualifies as "public land" for purposes of ANILCA. Sturgeon claims that it does not; the Park Service that it does. The parties' arguments in this respect touch on vital issues of state sovereignty, on the one hand, and federal authority, on the other. We find that in this case those issues should be addressed by the lower courts in the first instance.

Given this determination, we also do not decide whether the Park Service has authority under Section 100751(b) to regulate Sturgeon's activities on the Nation River, even if the river is not "public" land, or whether—as Sturgeon argues—any such authority is limited by ANILCA. Finally, we do not consider the Park Service's alternative argument that it has authority under ANILCA over both "public" and "non-public" lands within the boundaries of conservation system units in Alaska, to the extent a regulation is written to apply specifically to both types of land. We leave those arguments to the lower courts for consideration as necessary.

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

It is so ordered.

Syllabus

TYSON FOODS, INC. *v.* BOUAPHAKEO ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

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

No. 14–1146. Argued November 10, 2015—Decided March 22, 2016

Respondents, employees of petitioner Tyson Foods, work in the kill, cut, and retrim departments of a pork processing plant in Iowa. Respondents' work requires them to wear protective gear, but the exact composition of the gear depends on the tasks a worker performs on a given day. Petitioner compensated some, but not all, employees for this donning and doffing, and did not record the time each employee spent on those activities. Respondents filed suit, alleging that the donning and doffing were integral and indispensable to their hazardous work and that petitioner's policy not to pay for those activities denied them overtime compensation required by the Fair Labor Standards Act of 1938 (FLSA). Respondents also raised a claim under an Iowa wage law. They sought certification of their state claims as a class action under Federal Rule of Civil Procedure 23 and certification of their FLSA claims as a "collective action." See 29 U. S. C. § 216. Petitioner objected to certification of both classes, arguing that, because of the variance in protective gear each employee wore, the employees' claims were not sufficiently similar to be resolved on a classwide basis. The District Court concluded that common questions, such as whether donning and doffing protective gear was compensable under the FLSA, were susceptible to classwide resolution even if not all of the workers wore the same gear. To recover for a violation of the FLSA's overtime provision, the employees had to show that they each worked more than 40 hours a week, inclusive of the time spent donning and doffing. Because petitioner failed to keep records of this time, the employees primarily relied on a study performed by an industrial relations expert, Dr. Kenneth Mericle. Mericle conducted videotaped observations analyzing how long various donning and doffing activities took, and then averaged the time taken to produce an estimate of 18 minutes a day for the cut and retrim departments and 21.25 minutes for the kill department. These estimates were then added to the timesheets of each employee to ascertain which class members worked more than 40 hours a week and the value of classwide recovery. Petitioner argued that the varying amounts of time it took employees to don and doff different protective

gear made reliance on Mericle's sample improper, and that its use would lead to recovery for individuals who, in fact, had not worked the requisite 40 hours. The jury awarded the class about $2.9 million in unpaid wages. The award has not yet been disbursed to individual employees. The Eighth Circuit affirmed the judgment and the award.

Held: The District Court did not err in certifying and maintaining the class. Pp. 452–462.

(a) Before certifying a class under Rule 23(b)(3), a district court must find that "questions of law or fact common to class members predominate over any questions affecting only individual members." The parties agree that the most significant question common to the class is whether donning and doffing protective gear is compensable under the FLSA. Petitioner claims, however, that individual inquiries into the time each worker spent donning and doffing predominate over this common question. Respondents argue that individual inquiries are unnecessary because it can be assumed each employee donned and doffed for the same average time observed in Mericle's sample.

Whether and when statistical evidence such as Mericle's sample can be used to establish classwide liability depends on the purpose for which the evidence is being introduced and on "the elements of the underlying cause of action," *Erica P. John Fund, Inc.* v. *Halliburton Co.*, 563 U. S. 804, 809. Because a representative sample may be the only feasible way to establish liability, it cannot be deemed improper merely because the claim is brought on behalf of a class. Respondents can show that Mericle's sample is a permissible means of establishing hours worked in a class action by showing that each class member could have relied on that sample to establish liability had each brought an individual action.

Anderson v. *Mt. Clemens Pottery Co.*, 328 U. S. 680, shows why Mericle's sample was permissible in the circumstances of this case. There, where an employer violated its statutory duty to keep proper records, the Court concluded the employees could meet their burden by proving that they in fact "performed work for which [they were] improperly compensated and . . . produc[ing] sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." *Id.*, at 687. Here, similarly, respondents sought to introduce a representative sample to fill an evidentiary gap created by the employer's failure to keep adequate records. Had the employees proceeded with individual lawsuits, each employee likely would have had to introduce Mericle's study to prove the hours he or she worked. The representative evidence was a permissible means of showing individual hours worked.

This holding is in accord with *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U. S. 338, where the underlying question was, as here, whether the sam-

ple at issue could have been used to establish liability in an individual action. There, the employees were not similarly situated, so none of them could have prevailed in an individual suit by relying on depositions detailing the ways in which other employees were discriminated against by their particular store managers. In contrast, the employees here, who worked in the same facility, did similar work, and were paid under the same policy, could have introduced Mericle's study in a series of individual suits.

This case presents no occasion for adoption of broad and categorical rules governing the use of representative and statistical evidence in class actions. Rather, the ability to use a representative sample to establish classwide liability will depend on the purpose for which the sample is being introduced and on the underlying cause of action. In FLSA actions, inferring the hours an employee has worked from a study such as Mericle's has been permitted by the Court so long as the study is otherwise admissible. *Mt. Clemens*, *supra*, at 687. Pp. 453–460.

(b) Petitioner contends that respondents are required to demonstrate that uninjured class members will not recover damages here. That question is not yet fairly presented by this case, because the damages award has not yet been disbursed and the record does not indicate how it will be disbursed. Petitioner may raise a challenge to the allocation method when the case returns to the District Court for disbursal of the award. Pp. 460–462.

765 F. 3d 791, affirmed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ROBERTS, C. J., filed a concurring opinion, in which ALITO, J., joined as to Part II, *post*, p. 462. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined, *post*, p. 467.

Carter G. Phillips argued the cause for petitioner. With him on the briefs were *Joseph R. Guerra*, *C. Frederick Beckner III*, *Kathleen Moriarity Mueller*, *Michael J. Mueller*, *Emily Burkhardt Vicente*, and *Evangeline C. Paschal.*

David C. Frederick argued the cause for respondents. With him on the brief were *Derek T. Ho*, *Scott Michelman*, *Scott L. Nelson*, *Allison M. Zieve*, *Robert L. Wiggins, Jr.*, and *Eric Schnapper.*

Elizabeth B. Preloger argued the cause for the United States as *amicus curiae* urging affirmance. With her on

the brief were *Solicitor General Verrilli*, *Deputy Solicitor General Kneedler*, *Brian H. Fletcher*, and *M. Patricia Smith*.*

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*Briefs of *amici curiae* urging reversal were filed for the Association of American Railroads by *J. Scott Ballenger* and *Daniel Saphire*; for the Atlantic Legal Foundation et al. by *Martin S. Kaufman* and *Mary-Christine Sungaila*; for the Cato Institute by *Andrew M. Grossman*, *Ilya Shapiro*, *Deborah H. Renner*, and *John B. Lewis*; for the Chamber of Commerce of the United States of America et al. by *Ashley C. Parrish*, *Nikesh Jindal*, *Kate Comerford Todd*, *Warren Postman*, *Deborah R. White*, *Karen R. Harned*, and *Elizabeth Milito*; for the Consumer Data Industry Association by *Robert A. Long, Jr.*, and *David M. Zionts*; for Dow Chemical Co. by *Stephen M. Shapiro*, *Timothy S. Bishop*, *Joshua D. Yount*, *Chad M. Clamage*, *Charles J. Kalil*, and *Duncan A. Stuart*; for DRI–The Voice of the Defense Bar by *William M. Jay*, *John Parker Sweeney*, and *Joshua M. Daniels*; for the Equal Employment Advisory Council by *Rae T. Vann*; for the National Association of Manufacturers et al. by *Phillip S. Goldberg* and *Cary Silverman*; for the Pacific Legal Foundation by *Timothy Sandefur* and *Anastasia P. Boden*; for the Product Liability Advisory Council, Inc., by *John H. Beisner* and *Geoffrey M. Wyatt*; for Trans Union LLC by *Stephen J. Newman* and *Julia B. Strickland*; for Wal-Mart Stores, Inc., by *Theodore J. Boutrous, Jr.*, *Julian W. Poon*, *Alexander K. Mircheff*, *Mark A. Perry*, and *Amir C. Tayrani*; and for the Washington Legal Foundation by *Richard A. Samp*.

Briefs of *amici curiae* urging affirmance were filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *Carolyn E. Shapiro*, Solicitor General, *Brett E. Legner*, Deputy Solicitor General, and *Cara A. Hendrickson*, *Jane R. Flanagan*, and *Leigh J. Richie*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *George Jepsen* of Connecticut, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Eric T. Schneiderman* of New York, *Ellen F. Rosenblum* of Oregon, *Kathleen G. Kane* of Pennsylvania, and *Bob Ferguson* of Washington; for AARP et al. by *Seth R. Lesser*, *Catherine Ruckelshaus*, *Dan Kohrman*, and *Laurie A. McCann*; for the American Association for Justice by *Jeffrey R. White* and *Larry A. Tawwater*; for the American Federation of Labor and Congress of Industrial Organizations by *Lynn K. Rhinehart*, *Harold Craig Becker*, and *Yona Rozen*; for the American Independent Business Alliance by *Thomas V. Urmy, Jr.*; for Civil Procedure Professors by *David N. Rosen*; for Complex Litigation Law Professors by *Robert A. Clifford*; for Economists et al. by *Ellen Meriwether*; for the Impact Fund et al. by *Deepak Gupta*, *Jonathan*

JUSTICE KENNEDY delivered the opinion of the Court.

Following a jury trial, a class of employees recovered $2.9 million in compensatory damages from their employer for a violation of the Fair Labor Standards Act of 1938 (FLSA), 52 Stat. 1060, as amended, 29 U. S. C. § 201 *et seq.* The employees' primary grievance was that they did not receive statutorily mandated overtime pay for time spent donning and doffing protective equipment.

The employer seeks to reverse the judgment. It makes two arguments. Both relate to whether it was proper to permit the employees to pursue their claims as a class. First, the employer argues the class should not have been certified because the primary method of proving injury assumed each employee spent the same time donning and doffing protective gear, even though differences in the composition of that gear may have meant that, in fact, employees took different amounts of time to don and doff. Second, the employer argues certification was improper because the damages awarded to the class may be distributed to some persons who did not work any uncompensated overtime.

The Court of Appeals for the Eighth Circuit concluded there was no error in the District Court's decision to certify and maintain the class. This Court granted certiorari. 576 U. S. 1003 (2015).

E. Taylor, *Jocelyn Larkin*, and *Robert L. Schug*; for Industrial Polymers, Inc., et al. by *Paul D. Clement*, *Jeffrey M. Harris*, *Donald L. Perelman*, *Roberta D. Liebenberg*, *Gerard A. Dever*, *Matthew Duncan*, *Richard A. Koffman*, *Kit A. Pierson*, *Christopher J. Cormier*, *Robert W. Coykendall*, *Roger N. Walter*, and *Joseph Goldberg*; for Public Justice, P. C., by *Jonathan D. Selbin*, *Rachel Geman*, *Michael J. Miarmi*, *Jason L. Lichtman*, *Elizabeth J. Cabraser*, and *Leslie A. Brueckner*; for the United Food and Commercial Workers International Union by *Joseph M. Sellers*, *Christine E. Webber*, *Nicholas W. Clark*, and *Renee L. Bowser*; for Michelle Braun et al. by *Robert S. Peck*, *Michael D. Donovan*, and *Judith L. Spanier*; and for Alexandra D. Lahav et al. by *Sachin S. Pandva*, *pro se*.

Allan Erbsen filed a brief for Civil Procedure Scholars as *amici curiae*.

I

Respondents are employees at petitioner Tyson Foods' pork processing plant in Storm Lake, Iowa. They work in the plant's kill, cut, and retrim departments, where hogs are slaughtered, trimmed, and prepared for shipment. Grueling and dangerous, the work requires employees to wear certain protective gear. The exact composition of the gear depends on the tasks a worker performs on a given day.

Until 1998, employees at the plant were paid under a system called "gang-time." This compensated them only for time spent at their workstations, not for the time required to put on and take off their protective gear. In response to a federal-court injunction, and a Department of Labor suit to enforce that injunction, Tyson in 1998 began to pay all its employees for an additional four minutes a day for what it called "K-code time." The 4-minute period was the amount of time Tyson estimated employees needed to don and doff their gear. In 2007, Tyson stopped paying K-code time uniformly to all employees. Instead, it compensated some employees for between four and eight minutes but paid others nothing beyond their gang-time wages. At no point did Tyson record the time each employee spent donning and doffing.

Unsatisfied by these changes, respondents filed suit in the United States District Court for the Northern District of Iowa, alleging violations of the FLSA. The FLSA requires that a covered employee who works more than 40 hours a week receive compensation for excess time worked "at a rate not less than one and one-half times the regular rate at which he is employed." 29 U. S. C. § 207(a). In 1947, nine years after the FLSA was first enacted, Congress passed the Portal-to-Portal Act, which clarified that compensable work does not include time spent walking to and from the employee's workstation or other "preliminary or postliminary activities." § 254(d). The FLSA, however, still requires employers to pay employees for activities "integral and

indispensable" to their regular work, even if those activities do not occur at the employee's workstation. *Steiner* v. *Mitchell*, 350 U. S. 247, 249, 255 (1956). The FLSA also requires an employer to "make, keep, and preserve . . . records of the persons employed by him and of the wages, hours, and other conditions and practices of employment." § 211(c).

In their complaint, respondents alleged that donning and doffing protective gear were integral and indispensable to their hazardous work and that petitioner's policy not to pay for those activities denied them overtime compensation required by the FLSA. Respondents also raised a claim under the Iowa Wage Payment Collection Law. This statute provides for recovery under state law when an employer fails to pay its employees "all wages due," which includes FLSA-mandated overtime. Iowa Code § 91A.3 (2013); cf. *Anthony* v. *State*, 632 N. W. 2d 897, 901–902 (Iowa 2001).

Respondents sought certification of their Iowa law claims as a class action under Rule 23 of the Federal Rules of Civil Procedure. Rule 23 permits one or more individuals to sue as "representative parties on behalf of all members" of a class if certain preconditions are met. Fed. Rule Civ. Proc. 23(a). Respondents also sought certification of their federal claims as a "collective action" under 29 U. S. C. § 216. Section 216 is a provision of the FLSA that permits employees to sue on behalf of "themselves and other employees similarly situated." § 216(b).

Tyson objected to the certification of both classes on the same ground. It contended that, because of the variance in protective gear each employee wore, the employees' claims were not sufficiently similar to be resolved on a classwide basis. The District Court rejected that position. It concluded there were common questions susceptible to classwide resolution, such as "whether the donning and doffing of [protective gear] is considered work under the FLSA, whether such work is integral and [in]dispensable, and whether any compensable work is *de minim[i]s*." 564 F.

Supp. 2d 870, 899 (ND Iowa 2008). The District Court acknowledged that the workers did not all wear the same protective gear, but found that "when the putative plaintiffs are limited to those that are paid via a gang time system, there are far more factual similarities than dissimilarities." *Id.*, at 899–900. As a result, the District Court certified the following classes:

> "All current and former employees of Tyson's Storm Lake, Iowa, processing facility who have been employed at any time from February 7, 2004 [in the case of the FLSA collective action and February 7, 2005, in the case of the state-law class action], to the present, and who are or were paid under a 'gang time' compensation system in the Kill, Cut, or Retrim departments." *Id.*, at 901.

The only difference in definition between the classes was the date at which the class period began. The size of the class certified under Rule 23, however, was larger than that certified under § 216. This is because, while a class under Rule 23 includes all unnamed members who fall within the class definition, the "sole consequence of conditional certification [under § 216] is the sending of court-approved written notice to employees . . . who in turn become parties to a collective action only by filing written consent with the court." *Genesis HealthCare Corp.* v. *Symczyk*, 569 U. S. 66, 75 (2013). A total of 444 employees joined the collective action, while the Rule 23 class contained 3,344 members.

The case proceeded to trial before a jury. The parties stipulated that the employees were entitled to be paid for donning and doffing of certain equipment worn to protect from knife cuts. The jury was left to determine whether the time spent donning and doffing other protective equipment was compensable; whether Tyson was required to pay for donning and doffing during meal breaks; and the total

amount of time spent on work that was not compensated under Tyson's gang-time system.

Since the employees' claims relate only to overtime, each employee had to show he or she worked more than 40 hours a week, inclusive of time spent donning and doffing, in order to recover. As a result of Tyson's failure to keep records of donning and doffing time, however, the employees were forced to rely on what the parties describe as "representative evidence." This evidence included employee testimony, video recordings of donning and doffing at the plant, and, most important, a study performed by an industrial relations expert, Dr. Kenneth Mericle. Mericle conducted 744 videotaped observations and analyzed how long various donning and doffing activities took. He then averaged the time taken in the observations to produce an estimate of 18 minutes a day for the cut and retrim departments and 21.25 minutes for the kill department.

Although it had not kept records for time spent donning and doffing, Tyson had information regarding each employee's gang-time and K-code time. Using this data, the employees' other expert, Dr. Liesl Fox, was able to estimate the amount of uncompensated work each employee did by adding Mericle's estimated average donning and doffing time to the gang-time each employee worked and then subtracting any K-code time. For example, if an employee in the kill department had worked 39.125 hours of gang-time in a 6-day workweek and had been paid an hour of K-code time, the estimated number of compensable hours the employee worked would be: 39.125 (individual number of gang-time hours worked) + 2.125 (the average donning and doffing hours for a 6-day week, based on Mericle's estimated average of 21.25 minutes a day) – 1 (K-code hours) = 40.25. That would mean the employee was being undercompensated by a quarter of an hour of overtime a week, in violation of the FLSA. On the other hand, if the employee's records showed only 38 hours of gang-time and an hour of K-code time, the calcula-

tion would be: $38 + 2.125 - 1 = 39.125$. Having worked less than 40 hours, that employee would not be entitled to overtime pay and would not have proved an FLSA violation.

Using this methodology, Fox stated that 212 employees did not meet the 40-hour threshold and could not recover. The remaining class members, Fox maintained, had potentially been undercompensated to some degree.

Respondents proposed to bifurcate proceedings. They requested that, first, a trial be conducted on the questions whether time spent in donning and doffing was compensable work under the FLSA and how long those activities took to perform on average; and, second, that Fox's methodology be used to determine which employees suffered an FLSA violation and how much each was entitled to recover. Petitioner insisted upon a single proceeding in which damages would be calculated in the aggregate and by the jury. The District Court submitted both issues of liability and damages to the jury.

Petitioner did not move for a hearing regarding the statistical validity of respondents' studies under *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993), nor did it attempt to discredit the evidence with testimony from a rebuttal expert. Instead, as it had done in its opposition to class certification, petitioner argued to the jury that the varying amounts of time it took employees to don and doff different protective equipment made the lawsuit too speculative for classwide recovery. Petitioner also argued that Mericle's study overstated the average donning and doffing time. The jury was instructed that nontestifying members of the class could only recover if the evidence established they "suffered the same harm as a result of the same unlawful decision or policy." App. 471–472.

Fox's calculations supported an aggregate award of approximately $6.7 million in unpaid wages. The jury returned a special verdict finding that time spent in donning and doffing protective gear at the beginning and end of the

day was compensable work but that time during meal breaks was not. The jury more than halved the damages recommended by Fox. It awarded the class about $2.9 million in unpaid wages. That damages award has not yet been disbursed to the individual employees.

Tyson moved to set aside the jury verdict, arguing, among other things, that, in light of the variation in donning and doffing time, the classes should not have been certified. The District Court denied Tyson's motion, and the Court of Appeals for the Eighth Circuit affirmed the judgment and the award.

The Court of Appeals recognized that a verdict for the employees "require[d] inference" from their representative proof, but it held that "this inference is allowable under *Anderson v. Mt. Clemens Pottery Co.*, 328 U. S. 680, 687 . . . (1946)." 765 F. 3d 791, 797 (2014). The Court of Appeals rejected petitioner's challenge to the sufficiency of the evidence for similar reasons, holding that, under the facts of this case, the jury could have drawn "a 'reasonable inference' of class-wide liability." *Id.*, at 799 (quoting *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U. S. 680, 687 (1946)). Judge Beam dissented, stating that, in his view, the class should not have been certified.

For the reasons that follow, this Court now affirms.

II

Petitioner challenges the class certification of the state-law claims and the certification of the FLSA collective action. The parties do not dispute that the standard for certifying a collective action under the FLSA is no more stringent than the standard for certifying a class under the Federal Rules of Civil Procedure. This opinion assumes, without deciding, that this is correct. For purposes of this case then, if certification of respondents' class action under the Federal Rules was proper, certification of the collective action was proper as well.

Furthermore, as noted above, Iowa's Wage Payment Collection Law was used in this litigation as a state-law mechanism for recovery of FLSA-mandated overtime pay. The parties do not dispute that, in order to prove a violation of the Iowa statute, the employees had to do no more than demonstrate a violation of the FLSA. In this opinion, then, no distinction is made between the requirements for the class action raising the state-law claims and the collective action raising the federal claims.

A

Federal Rule of Civil Procedure 23(b)(3) requires that, before a class is certified under that subsection, a district court must find that "questions of law or fact common to class members predominate over any questions affecting only individual members." The "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Products, Inc.* v. *Windsor*, 521 U. S. 591, 623 (1997). This calls upon courts to give careful scrutiny to the relation between common and individual questions in a case. An individual question is one where "members of a proposed class will need to present evidence that varies from member to member," while a common question is one where "the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof." 2 W. Rubenstein, Newberg on Class Actions § 4:50, pp. 196–197 (5th ed. 2012) (internal quotation marks omitted). The predominance inquiry "asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Id.*, § 4:49, at 195–196. When "one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class mem-

bers." 7AA C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 1778, pp. 123–124 (3d ed. 2005) (footnotes omitted).

Here, the parties do not dispute that there are important questions common to all class members, the most significant of which is whether time spent donning and doffing the required protective gear is compensable work under the FLSA. Cf. *IBP, Inc.* v. *Alvarez*, 546 U. S. 21 (2005) (holding that time spent walking between the locker room and the production area after donning protective gear is compensable work under the FLSA). To be entitled to recovery, however, each employee must prove that the amount of time spent donning and doffing, when added to his or her regular hours, amounted to more than 40 hours in a given week. Petitioner argues that these necessarily person-specific inquiries into individual worktime predominate over the common questions raised by respondents' claims, making class certification improper.

Respondents counter that these individual inquiries are unnecessary because it can be assumed each employee donned and doffed for the same average time observed in Mericle's sample. Whether this inference is permissible becomes the central dispute in this case. Petitioner contends that Mericle's study manufactures predominance by assuming away the very differences that make the case inappropriate for classwide resolution. Reliance on a representative sample, petitioner argues, absolves each employee of the responsibility to prove personal injury, and thus deprives petitioner of any ability to litigate its defenses to individual claims.

Calling this unfair, petitioner and various of its *amici* maintain that the Court should announce a broad rule against the use in class actions of what the parties call representative evidence. A categorical exclusion of that sort, however, would make little sense. A representative or statistical sample, like all evidence, is a means to establish or

defend against liability. Its permissibility turns not on the form a proceeding takes—be it a class or individual action—but on the degree to which the evidence is reliable in proving or disproving the elements of the relevant cause of action. See Fed. Rules Evid. 401, 403, and 702.

It follows that the Court would reach too far were it to establish general rules governing the use of statistical evidence, or so-called representative evidence, in all class-action cases. Evidence of this type is used in various substantive realms of the law. Brief for Complex Litigation Law Professors as *Amici Curiae* 5–9; Brief for Economists et al. as *Amici Curiae* 8–10. Whether and when statistical evidence can be used to establish classwide liability will depend on the purpose for which the evidence is being introduced and on "the elements of the underlying cause of action," *Erica P. John Fund, Inc.* v. *Halliburton Co.*, 563 U. S. 804, 809 (2011).

In many cases, a representative sample is "the only practicable means to collect and present relevant data" establishing a defendant's liability. Manual of Complex Litigation § 11.493, p. 102 (4th ed. 2004). In a case where representative evidence is relevant in proving a plaintiff's individual claim, that evidence cannot be deemed improper merely because the claim is brought on behalf of a class. To so hold would ignore the Rules Enabling Act's pellucid instruction that use of the class device cannot "abridge . . . any substantive right." 28 U. S. C. § 2072(b).

One way for respondents to show, then, that the sample relied upon here is a permissible method of proving classwide liability is by showing that each class member could have relied on that sample to establish liability if he or she had brought an individual action. If the sample could have sustained a reasonable jury finding as to hours worked in each employee's individual action, that sample is a permissible means of establishing the employees' hours worked in a class action.

This Court's decision in *Anderson* v. *Mt. Clemens* explains why Mericle's sample was permissible in the circumstances of this case. In *Mt. Clemens*, 7 employees and their union, seeking to represent over 300 others, brought a collective action against their employer for failing to compensate them for time spent walking to and from their workstations. The variance in walking time among workers was alleged to be upwards of 10 minutes a day, which is roughly consistent with the variances in donning and doffing times here. 328 U. S., at 685.

The Court in *Mt. Clemens* held that when employers violate their statutory duty to keep proper records, and employees thereby have no way to establish the time spent doing uncompensated work, the "remedial nature of [the FLSA] and the great public policy which it embodies . . . militate against making" the burden of proving uncompensated work "an impossible hurdle for the employee." *Id.*, at 687; see also *Hoffmann-La Roche Inc.* v. *Sperling*, 493 U. S. 165, 173 (1989) ("The broad remedial goal of the statute should be enforced to the full extent of its terms"). Instead of punishing "the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work," the Court held "an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." 328 U. S., at 687. Under these circumstances, "[t]he burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence." *Id.*, at 687–688.

In this suit, as in *Mt. Clemens*, respondents sought to introduce a representative sample to fill an evidentiary gap created by the employer's failure to keep adequate records. If the employees had proceeded with 3,344 individual law-

suits, each employee likely would have had to introduce Mericle's study to prove the hours he or she worked. Rather than absolving the employees from proving individual injury, the representative evidence here was a permissible means of making that very showing.

Reliance on Mericle's study did not deprive petitioner of its ability to litigate individual defenses. Since there were no alternative means for the employees to establish their hours worked, petitioner's primary defense was to show that Mericle's study was unrepresentative or inaccurate. That defense is itself common to the claims made by all class members. Respondents' "failure of proof on th[is] common question" likely would have ended "the litigation and thus [would not have] cause[d] individual questions . . . to overwhelm questions common to the class." *Amgen Inc.* v. *Connecticut Retirement Plans and Trust Funds*, 568 U. S. 455, 468 (2013) (emphasis deleted). When, as here, "the concern about the proposed class is not that it exhibits some fatal dissimilarity but, rather, a fatal similarity—[an alleged] failure of proof as to an element of the plaintiffs' cause of action—courts should engage that question as a matter of summary judgment, not class certification." Nagareda, Class Certification in the Age of Aggregate Proof, 84 N. Y. U. L. Rev. 97, 107 (2009).

Petitioner's reliance on *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U. S. 338 (2011), is misplaced. *Wal-Mart* does not stand for the broad proposition that a representative sample is an impermissible means of establishing classwide liability.

Wal-Mart involved a nationwide Title VII class of over 1½ million employees. In reversing class certification, this Court did not reach Rule 23(b)(3)'s predominance prong, holding instead that the class failed to meet even Rule 23(a)'s more basic requirement that class members share a common question of fact or law. The plaintiffs in *Wal-Mart* did not provide significant proof of a common policy of discrimination to which each employee was subject. "The only corporate policy that the plaintiffs' evidence convincingly establishe[d

was] Wal-Mart's 'policy' of allowing discretion by local supervisors over employment matters"; and even then, the plaintiffs could not identify "a common mode of exercising discretion that pervade[d] the entire company." *Id.*, at 355–356 (emphasis deleted).

The plaintiffs in *Wal-Mart* proposed to use representative evidence as a means of overcoming this absence of a common policy. Under their proposed methodology, a "sample set of the class members would be selected, as to whom liability for sex discrimination and the backpay owing as a result would be determined in depositions supervised by a master." *Id.*, at 367. The aggregate damages award was to be derived by taking the "percentage of claims determined to be valid" from this sample and applying it to the rest of the class, and then multiplying the "number of (presumptively) valid claims" by "the average backpay award in the sample set." *Ibid.* The Court held that this "Trial By Formula" was contrary to the Rules Enabling Act because it "'enlarge[d]'" the class members' "'substantive right[s]'" and deprived defendants of their right to litigate statutory defenses to individual claims. *Ibid.*

The Court's holding in the instant case is in accord with *Wal-Mart*. The underlying question in *Wal-Mart*, as here, was whether the sample at issue could have been used to establish liability in an individual action. Since the Court held that the employees were not similarly situated, none of them could have prevailed in an individual suit by relying on depositions detailing the ways in which other employees were discriminated against by their particular store managers. By extension, if the employees had brought 1½ million individual suits, there would be little or no role for representative evidence. Permitting the use of that sample in a class action, therefore, would have violated the Rules Enabling Act by giving plaintiffs and defendants different rights in a class proceeding than they could have asserted in an individual action.

In contrast, the study here could have been sufficient to sustain a jury finding as to hours worked if it were introduced in each employee's individual action. While the experiences of the employees in *Wal-Mart* bore little relationship to one another, in this case each employee worked in the same facility, did similar work, and was paid under the same policy. As *Mt. Clemens* confirms, under these circumstances the experiences of a subset of employees can be probative as to the experiences of all of them.

This is not to say that all inferences drawn from representative evidence in an FLSA case are "just and reasonable." *Mt. Clemens*, 328 U. S., at 687. Representative evidence that is statistically inadequate or based on implausible assumptions could not lead to a fair or accurate estimate of the uncompensated hours an employee has worked. Petitioner, however, did not raise a challenge to respondents' experts' methodology under *Daubert*; and, as a result, there is no basis in the record to conclude it was legal error to admit that evidence.

Once a district court finds evidence to be admissible, its persuasiveness is, in general, a matter for the jury. Reasonable minds may differ as to whether the average time Mericle calculated is probative as to the time actually worked by each employee. Resolving that question, however, is the near-exclusive province of the jury. The District Court could have denied class certification on this ground only if it concluded that no reasonable juror could have believed that the employees spent roughly equal time donning and doffing. Cf. *Anderson* v. *Liberty Lobby, Inc.*, 477 U. S. 242, 250–252 (1986). The District Court made no such finding, and the record here provides no basis for this Court to second-guess that conclusion.

The Court reiterates that, while petitioner, respondents, or their respective *amici* may urge adoption of broad and categorical rules governing the use of representative and statistical evidence in class actions, this case provides no oc-

casion to do so. Whether a representative sample may be used to establish classwide liability will depend on the purpose for which the sample is being introduced and on the underlying cause of action. In FLSA actions, inferring the hours an employee has worked from a study such as Mericle's has been permitted by the Court so long as the study is otherwise admissible. *Mt. Clemens*, *supra*, at 687; see also Fed. Rules Evid. 402 and 702. The fairness and utility of statistical methods in contexts other than those presented here will depend on facts and circumstances particular to those cases.

B

In its petition for certiorari petitioner framed its second question presented as whether a class may be certified if it contains "members who were not injured and have no legal right to any damages." Pet. for Cert. i. In its merits brief, however, petitioner reframes its argument. It now concedes that "[t]he fact that federal courts lack authority to compensate persons who cannot prove injury does not mean that a class action (or collective action) can never be certified in the absence of proof that all class members were injured." Brief for Petitioner 49. In light of petitioner's abandonment of its argument from the petition, the Court need not, and does not, address it.

Petitioner's new argument is that, "where class plaintiffs cannot offer" proof that all class members are injured, "they must demonstrate instead that there is some mechanism to identify the uninjured class members prior to judgment and ensure that uninjured members (1) do not contribute to the size of any damage award and (2) cannot recover such damages." *Ibid.* Petitioner contends that respondents have not demonstrated any mechanism for ensuring that uninjured class members do not recover damages here.

Petitioner's new argument is predicated on the assumption that the damages award cannot be apportioned so that only those class members who suffered an FLSA violation re-

cover. According to petitioner, because Fox's mechanism for determining who had worked over 40 hours depended on Mericle's estimate of donning and doffing time, and because the jury must have rejected Mericle's estimate when it reduced the damages award by more than half, it will not be possible to know which workers are entitled to share in the award.

As petitioner and its *amici* stress, the question whether uninjured class members may recover is one of great importance. See, *e. g.*, Brief for Consumer Data Industry Association as *Amicus Curiae*. It is not, however, a question yet fairly presented by this case, because the damages award has not yet been disbursed, nor does the record indicate how it will be disbursed.

Respondents allege there remain ways of distributing the award to only those individuals who worked more than 40 hours. For example, by working backwards from the damages award, and assuming each employee donned and doffed for an identical amount of time (an assumption that follows from the jury's finding that the employees suffered equivalent harm under the policy), it may be possible to calculate the average donning and doffing time the jury necessarily must have found, and then apply this figure to each employee's known gang-time hours to determine which employees worked more than 40 hours.

Whether that or some other methodology will be successful in identifying uninjured class members is a question that, on this record, is premature. Petitioner may raise a challenge to the proposed method of allocation when the case returns to the District Court for disbursal of the award.

Finally, it bears emphasis that this problem appears to be one of petitioner's own making. Respondents proposed bifurcating between the liability and damages phases of this proceeding for the precise reason that it may be difficult to remove uninjured individuals from the class after an award is rendered. It was petitioner who argued against that op-

tion and now seeks to profit from the difficulty it caused. Whether, in light of the foregoing, any error should be deemed invited is a question for the District Court to address in the first instance.

* * *

The judgment of the Court of Appeals for the Eighth Circuit is affirmed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

CHIEF JUSTICE ROBERTS, with whom JUSTICE ALITO joins as to Part II, concurring.

Petitioner Tyson Foods presents two primary arguments. First, it claims that class certification was improper because each individual plaintiff spent different amounts of time donning and doffing protective gear. Therefore, according to Tyson, whether and to what extent it owed damages to each individual employee for uncompensated overtime was not a question capable of resolution on a class-wide basis. Second, Tyson argues that the verdict cannot stand because, while no one disputes that the class as certified contains hundreds of uninjured employees, the plaintiffs have not come up with any way to ensure that those employees do not recover damages from the jury's lump-sum award.

The Court rejects the first argument and leaves the second for initial resolution by the lower courts. I join the Court's opinion in full. I write separately to explain my understanding of the Court's resolution of the case and to express my concern that the District Court may not be able to fashion a method for awarding damages only to those class members who suffered an actual injury.

I

A class may be certified under Federal Rule of Civil Procedure 23(b)(3) only if "questions of law or fact common to class members predominate over any questions affecting only indi-

vidual members." A common question is one in which "the issue is susceptible to generalized, class-wide proof." *Ante*, at 453 (quoting 2 W. Rubenstein, Newberg on Class Actions § 4:50, pp. 196–197 (5th ed. 2012)) (internal quotation marks omitted).

To prove liability and damages, respondents had to establish the amount of compensable (but uncompensated) donning and doffing time for each individual plaintiff. The Court properly concludes that despite the differences in donning and doffing time for individual class members, respondents could adequately prove the amount of time for each individual through generalized, class-wide proof. That proof was Dr. Mericle's representative study. As the Court observes, "each class member could have relied on that [study] to establish liability if he or she had brought an individual action." *Ante*, at 455. And when representative evidence would suffice to prove a plaintiff's individual claim, that evidence cannot be deemed improper merely because the claim is brought as part of a class action. See *ante*, at 454–455.

I agree with Justice Thomas that our decision in *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U. S. 680 (1946), does not provide a "special, relaxed rule authorizing plaintiffs to use otherwise inadequate representative evidence in FLSA-based cases." *Post*, at 472 (dissenting opinion). But I do not read the Court's opinion to be inconsistent with that conclusion. Rather, I take the Court to conclude that Dr. Mericle's study constituted sufficient proof from which the jury could find "the amount and extent of [each individual respondent's] work as a matter of just and reasonable inference"—the same standard of proof that would apply in any case. *Ante*, at 456 (internal quotation marks omitted). It is with that understanding that I join the opinion of the Court.

II

As for Tyson's second argument, it is undisputed that hundreds of class members suffered no injury in this case. See

Brief for Respondents 52–53; Tr. of Oral Arg. 30. The question is: which ones? The only way to know is to figure out how much donning and doffing time the jury found Tyson owed the workers in each department. But the jury returned a lump-sum verdict of $2.9 million on a class-wide basis, without specifying any particular amount of donning and doffing time used to calculate that number. If we knew that the jury had accepted the plaintiffs' proposed average donning and doffing times in calculating the verdict, we could easily overcome this problem. But we know the jury did no such thing. And with no way to reverse engineer the verdict to determine how much donning and doffing time the jury found Tyson owed workers in each department, we do not know which plaintiffs the jury found to be injured (or not).

Tyson contends that unless the District Court can fashion a means of identifying those class members not entitled to damages, it must throw out the jury's verdict and decertify the class. I agree with the Court's decision to leave that issue to be addressed in the first instance by the District Court. But I am not convinced that the District Court will be able to devise a means of distributing the aggregate award only to injured class members.

As the Court explains, each plaintiff in this case suffered actual harm only if he: (1) was not compensated for at least some compensable donning and doffing time; *and* (2) worked more than 40 hours in a workweek, including any compensable donning and doffing time. See *ante*, at 461. In other words, it is not enough that a plaintiff was uncompensated for compensable donning and doffing time; unless that plaintiff also worked more than 40 hours in a week (including compensable donning and doffing time), he is owed no overtime pay and therefore suffered no injury.

If the jury credited Dr. Mericle's averages—18 minutes per day of donning and doffing time for employees in the fabrication (cut and retrim) departments, 21.25 for employees in the kill department—the District Court could have as-

sumed that the jury found that each plaintiff from those departments donned and doffed the average amounts of time and used those averages to determine which plaintiffs had worked more than 40 hours (and awarded damages on that understanding).

The problem is that the jury obviously did not credit Dr. Mericle's averages. According to Dr. Fox, another of the plaintiffs' experts, those averages would have resulted in a $6.7 million verdict across the 3,344 member class. *Ante*, at 451–452. The jury, however, awarded the plaintiffs only $2.9 million.

How, then, did the jury arrive at that $2.9 million figure? The jury might have determined that Dr. Mericle's average was correct for the kill department, but overstated for the fabrication departments. Or vice versa. Or the jury might have found that Dr. Mericle's averages overstated the donning and doffing time in all departments, by varying degrees. Any of those conclusions would have been permissible on these facts, and any of those options would have reduced the jury verdict from the $6.7 million proposed by Dr. Fox. But in arriving at the $2.9 million verdict, we have no way of knowing how much donning and doffing time the jury actually found to have occurred in the kill and fabrication departments, respectively.

And there's the rub. We know that the jury must have found at least one of Dr. Mericle's two averages to be too high. And we know, as Dr. Fox testified, that if Dr. Mericle's averages were even slightly too high, hundreds of class members would fall short of the 40-hour workweek threshold that would entitle them to damages. See *post*, at 471. But because we do not know how much donning and doffing time the jury found to have occurred in each department, we have no way of knowing which plaintiffs failed to cross that 40-hour threshold.

To illustrate: Take a fabrication employee and a kill employee, each of whom worked a 39-hour workweek before

counting any compensable donning and doffing time. If the jury credited Dr. Mericle's kill department average but discounted his fabrication average to below one hour per week, the jury would have found that the kill employee was injured, while the fabrication employee was not. But the jury also might have done the exact opposite. We just don't know—and so we have no way to determine which plaintiffs the jury concluded were injured.

The plaintiffs believe they can surmount this obstacle. As the Court explains, they propose to work backward from the damages award by assuming that each employee donned and doffed for an identical amount of time. *Ante*, at 461. That won't work, however, because there is no indication that the jury made the same assumption. Indeed, the most reasonable guess is that the jury did *not* find that employees in different departments donned and doffed for identical amounts of time. After all, the plaintiffs' own expert indicated that employees in different departments donned and doffed for *different* amounts of time.

Given this difficulty, it remains to be seen whether the jury verdict can stand. The Court observes in dicta that the problem of distributing the damages award "appears to be one of petitioner's own making." *Ibid.* Perhaps. But Tyson's insistence on a lump-sum jury award cannot overcome the limitations placed on the federal courts by the Constitution. Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not. The Judiciary's role is limited "to provid[ing] relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm." *Lewis* v. *Casey*, 518 U. S. 343, 349 (1996). Therefore, if there is no way to ensure that the jury's damages award goes only to injured class members, that award cannot stand. This issue should be considered by the District Court in the first instance. As the Court properly concludes, the problem is not presently ripe for our review.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting.

Our precedents generally prohibit plaintiffs from maintaining a class action when an important element of liability depends on facts that vary among individual class members. This case concerns whether and when class-action plaintiffs can overcome that general rule by using representative evidence as common proof of an otherwise individualized issue. Our precedents resolve that question: Before class-action plaintiffs can use representative evidence in this way, district courts must undertake a rigorous analysis to ensure that such evidence is sufficiently probative of the individual issue to make it susceptible to classwide proof. The District Court did not satisfy that obligation here, and its failure to do so prejudiced defendant Tyson Foods at trial. The Court reaches a contrary conclusion by redefining class-action requirements and devising an unsound special evidentiary rule for cases under the Fair Labor Standards Act of 1938 (FLSA), 29 U. S. C. § 201 *et seq.* I respectfully dissent.

I

"The class action is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Comcast Corp.* v. *Behrend*, 569 U. S. 27, 33 (2013) (internal quotation marks omitted). Plaintiffs thus "must affirmatively demonstrate [their] compliance" with Rule 23. *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U. S. 338, 350 (2011). Where, as here, a putative class seeks money damages, plaintiffs also must satisfy the "demanding" standard of predominance, *Comcast*, *supra*, at 34, by proving that "questions of law or fact common to class members predominate over any questions affecting only individual members," Fed. Rule Civ. Proc. 23(b)(3).

District courts must also ensure continued compliance with Rule 23 throughout the case. When a district court erroneously certifies a class, then holds a trial, reversal is

required when the record shows that improper certification prejudiced the defendant. And an incorrect class certification decision almost inevitably prejudices the defendant. When a district court allows class plaintiffs to prove an individualized issue with classwide evidence, the court relieves them of their burden to prove each element of their claim for each class member and impedes the defendant's efforts to mount an effective defense.

Here, the District Court misconstrued the elements of the plaintiffs' claims. And it failed to recognize that one critical element of those claims raised an individual issue that would predominate over any common issues. The court therefore did not ask whether that individual issue was susceptible to common proof. That error, at the class certification stage, then prejudiced Tyson at trial. It was only at trial that the plaintiffs introduced the critical evidence at issue in this case. They introduced, as representative of the class, a study by the plaintiffs' expert, Dr. Kenneth Mericle. The District Court still declined to consider whether this evidence was appropriate common proof—even though the study showed wide variations among class members on an important individual issue. These errors prejudiced Tyson and warrant reversal.

A

The District Court erred at the class certification stage by holding that the plaintiffs satisfied Rule 23's predominance requirement. The plaintiffs alleged that Tyson failed to adequately pay workers overtime for donning and doffing protective gear, in violation of the Iowa Wage Payment Collection Law, Iowa Code § 91A.3 (2013). This Iowa law mirrors the FLSA.[1] An employer violates these laws if it employs someone "for a workweek longer than forty hours" and fails

[1] The plaintiffs also brought a collective action under the FLSA. Because the jury verdict combined the two actions, deficiencies in the class action require reversal of the entire judgment.

to adequately compensate him for the overtime. 29 U. S. C. § 207(a)(1). Here, the plaintiffs could establish Tyson's liability to all class members only if: (1) the donning and doffing at issue is compensable work; (2) all employees worked over 40 hours, including donning and doffing time; and (3) Tyson failed to compensate each employee for all overtime.

The District Court should have begun its predominance inquiry by determining which elements of the plaintiffs' claims present common or individual issues, and assessed whether individual issues would overwhelm common ones. See *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U. S. 258, 275–276 (2014); *Erica P. John Fund, Inc.* v. *Halliburton Co.*, 563 U. S. 804, 809 (2011). The plaintiffs' claims here had one element that was clearly individualized: whether each employee worked over 40 hours without receiving full overtime pay. The amount of time that employees spent on donning and doffing varied by person because individuals take different amounts of time to don and doff the same gear, and their gear varied. This issue was critical to determining Tyson's liability because some employees would not have worked over 40 hours per week without counting time spent on donning and doffing. The critical issue for class certification thus was whether the individualized nature of employees' donning and doffing times defeated predominance.

The District Court, however, certified a 3,344-member class without acknowledging the significance of this individual issue, let alone addressing whether it was susceptible to common proof. The court acknowledged that "[i]ndividual questions may exist" and that Tyson was objecting to being "forced to defend against *un* common evidence" because the plaintiffs had no common evidence establishing what gear all employees wore "or how long [they] spend donning and doffing their [gear]." 564 F. Supp. 2d 870, 900, 909 (ND Iowa 2008). But, in the District Court's view, common issues predominated because the plaintiffs could establish classwide liability just by showing that Tyson was not paying any em-

ployee for the time it took to don or doff basic gear. *Id.*, at 909; see *id.*, at 900, 904, 905 (similar).

The District Court thus did not give proper consideration to the significance of variable donning and doffing times. Establishing an FLSA violation across the entire class was impossible without evidence that *each* employee would have worked over 40 hours per week if donning and doffing time were included. But the District Court did not fully appreciate that this was a critical individual issue that defined Tyson's liability, and it did not analyze, in any way, whether this issue was susceptible to common proof. As a result, the District Court erred when it certified the class.

B

It was only later at trial that the plaintiffs introduced the critical evidence that they claimed could establish all employees' donning and doffing times on a classwide basis. This evidence came from the plaintiffs' expert, Dr. Mericle, who studied how long certain Tyson employees took to don and doff various gear. This was the "most important" evidence at trial. *Ante*, at 450. Without it, the plaintiffs almost certainly could not have obtained a classwide verdict. But rather than showing that employees' donning and doffing times were susceptible to classwide proof, Mericle's evidence showed that employees' donning and doffing times varied materially. Mericle's evidence thus confirmed the inappropriateness of class treatment.

Mericle used about 53 employees per donning- or doffing-related activity to extrapolate averages for the 3,344-person class. By averaging the times that sample employees spent per activity, Mericle estimated that all cut or retrim department employees spent 18 minutes per day on uncompensated activities (including donning and doffing), while kill department employees averaged 21.25 minutes.

Mericle's data, however, revealed material variances in the amount of time that individual employees spent on the same

activities. Cut and retrim employees took between 0.583 minutes and over 10 minutes to don preshift equipment at their lockers. Postshift doffing took one employee less than two minutes, and another over nine minutes. Kill department employees had similar variances. No two employees performed the same activity in the same amount of time, and Mericle observed "a lot of variation within the activity." App. 387.

The plaintiffs' trial evidence also showed that variances in the amount of time that employees spent on donning and doffing activities significantly affected the number of class members who could assert overtime claims. The plaintiffs' other expert, Dr. Liesl Fox, added Mericle's average times to individual employees' timesheets to determine which class members had overtime claims. She discovered that 212 of the 3,344 class members had no claims at all because they had not worked over 40 hours per week. If Mericle's averages even slightly overestimated average donning and doffing times, another 282 class members would have no overtime claims. If average donning or doffing times dropped from 18–21 minutes to 15 minutes, Fox stated, another 110 employees had no overtime claims. According to Fox, incremental changes to donning and doffing times mattered so much that her estimated damages figure ($6.6 million) would be meaningless if the jury discounted Mericle's data at all. Yet the jury ultimately rejected that damages figure—seemingly disagreeing that Mericle's average times reflected the amount of time that every class member spent donning and doffing.

Because the District Court did not evaluate Mericle's and Fox's evidence in its initial class certification decision, it should have revisited certification when faced with this evidence at trial. It declined to do so even after Tyson objected to using this evidence to establish the amount of time all class members spent donning and doffing. See 2011 WL 3793962 (ND Iowa, Aug. 25, 2011) (rejecting decertification

motion); 2012 WL 4471119 (ND Iowa, Sept. 26, 2012) (summarily denying post-trial decertification). The court thus never made findings or analyzed whether, under Rule 23(b)(3), Mericle's study could be used as common proof of an individual issue that would otherwise preclude class treatment.

The District Court's jury instructions did not cure this deficiency. No instruction could remedy a court's failure to address why an individual issue was susceptible to common proof. In any event, the court instructed the jury that "expert testimony"—like Mericle's—should get "as much weight as you think it deserves." App. 471. The court also let the jury rely on representative evidence to establish each class member's claim even if the jury believed that employees' donning and doffing times varied considerably. See *ibid.*

In sum, the plaintiffs at no time had to justify whether the variability among class members here was too much for representative evidence to fill the gap with common proof. Nor did the District Court address whether Mericle's study—which showed significant variability in how much time employees spent on donning and doffing—was permissible common proof. These errors created an unacceptable risk that Tyson would be held liable to a large class without adequate proof that each individual class member was owed overtime. Before defendants can be forced to defend against a class action, courts must be sure that Rule 23's criteria are met. The District Court's failure to do so warrants reversal.

II

The majority reaches a contrary result by erring in three significant ways. First, the majority alters the predominance inquiry so that important individual issues are less likely to defeat class certification. Next, the majority creates a special, relaxed rule authorizing plaintiffs to use otherwise inadequate representative evidence in FLSA-based cases by misreading *Anderson* v. *Mt. Clemens Pottery Co.*,

328 U. S. 680 (1946). Finally, the majority points to Tyson's litigation strategy and purported differences from prior Rule 23 precedents. None of these justifications withstands scrutiny.

A

The majority begins by redefining the predominance standard. According to the majority, if some "'central issues'" present common questions, "'the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.'" *Ante*, at 453–454 (quoting 7AA C. Wright, A. Miller, & M. Kane, Federal Practice & Procedure § 1778, pp. 123–124 (3d ed. 2005); footnotes omitted).

We recently—and correctly—held the opposite. In *Comcast*, we deemed the lack of a common methodology for proving damages fatal to predominance because "[q]uestions of individual damage calculations will inevitably overwhelm questions common to the class." 569 U. S., at 34.[2] If, as the majority states, this case presents "no occasion" to announce "broad and categorical rules governing the use of representative and statistical evidence in class actions," *ante*, at 459–460, it should most certainly not present an occasion to transform basic aspects of the predominance inquiry.

B

The majority further errs in concluding that the representative evidence here showed that class members' claims

[2] The majority relies on the same treatise citations that the *Comcast* dissent invoked to argue that individualized damages calculations should never defeat predominance. 569 U. S., at 27, 41–42 (opinion of BREYER, J.). Since then, these treatises have acknowledged the tension between their views of predominance and *Comcast*. See 7AA C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 1778, p. 37 (3d ed. Supp. 2015); 2 W. Rubenstein, Newberg on Class Actions § 4:54, p. 21 (5th ed. Supp. June 2015).

were susceptible to common proof. See *ante*, at 453–460. As the majority observes, representative evidence can be used to prove an individual issue on a classwide basis if each class member, in an individual action, could rely on that evidence to prove his individual claim. *Ante*, at 455. But that premise should doom the plaintiffs' case. Even testifying class members would seem unable to use Mericle's averages. For instance, Mericle's study estimated that kill department employees took an average 6.4 minutes to don equipment at their lockers before their shift—but employee Donald Brown testified that this activity took him around 2 minutes. Others also testified to donning and doffing times that diverged markedly from Mericle's estimates. So Mericle's study could not sustain a jury verdict in favor of these plaintiffs, had they brought individual suits.

According to the majority, this disparity between average times and individual times poses no problem because *Mt. Clemens*, *supra*, allows plaintiffs to use such representative evidence as common proof. See *ante*, at 456–459. In the majority's view, *Mt. Clemens* established that (1) if the employer did not record the time that employees spent on compensable work, employees can use representative evidence to establish the employer's liability, *ante*, at 456; and (2) employees can use "the experiences of a subset of employees" to establish "the experiences of all of them" if "each employee worked in the same facility, did similar work, and was paid under the same policy," *ante*, at 459.

The majority's reliance on *Mt. Clemens* is questionable given that decision's shaky foundations. Seventy years ago, *Mt. Clemens* construed the FLSA broadly to vindicate the Court's understanding of the FLSA's "remedial" purposes. 328 U. S., at 687. Within a year, Congress rejected that interpretation. Citing the "emergency" this Court had created by spurring "excessive and needless litigation," Congress repudiated this Court's understanding of what the FLSA meant by "work" and the "workweek" and limited

employees' ability to sue collectively. 29 U. S. C. §§ 251(a)–(b); see *Integrity Staffing Solutions, Inc.* v. *Busk*, 574 U. S. 27, 41–42 (2014) (noting repudiation in the Portal-to-Portal Act of 1947); *Hoffmann-La Roche Inc.* v. *Sperling*, 493 U. S. 165, 173 (1989) (noting repudiation of representative actions). Since then, this Court has decided many FLSA cases, but has never relied on *Mt. Clemens* to do so.[3]

Putting these concerns aside, the majority today goes beyond what *Mt. Clemens* held. First, *Mt. Clemens* does not hold that employees can use representative evidence in FLSA cases to prove an otherwise uncertain element of liability. *Mt. Clemens* involved an employer's alleged failure to pay employees for time they spent walking to and from their workspaces and on preshift preparatory activities. See 328 U. S., at 684–685. The Court held that the FLSA required employers to compensate employees for those activities. *Id.*, at 690–692 (overruled by 29 U. S. C. §§ 252, 254). The employer was thus presumptively liable to all employees because they all claimed to work 40 hours per week. See Record in *Mt. Clemens*, O. T. 1945, No. 342 (Record), pp. 10–11 (complaint). All additional uncompensated work was necessarily unpaid overtime. That explains why the Court "assum[ed] that the employee has proved that he has performed work and has not been paid in accordance with the statute." 328 U. S., at 688.

Mt. Clemens also rejected the notion that employees who had *already* established the employer's liability had to prove

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[3] THE CHIEF JUSTICE believes that the majority does not actually depend upon *Mt. Clemens* as a special evidentiary rule, and instead applies "the same standard of proof that would apply in any case." *Ante*, at 463 (concurring opinion). That interpretation is difficult to credit given that the majority never explains why Dr. Mericle's representative evidence could have sustained a jury finding in favor of any individual employee in an individual case, and instead devotes several paragraphs to the proposition that "[t]his Court's decision in [*Mt. Clemens*] explains why Mericle's sample was permissible in the circumstances of this case." *Ante*, at 456; see *ante*, at 456–457.

damages using precise, employee-specific records. *Id.*, at 687. Rather, if the employer failed to keep records but its liability was certain, employees could use evidence that "show[s] the amount and extent of that work as a matter of just and reasonable inference." *Ibid.* The Court, however, limited this holding to instances where the employer's FLSA violation was "certain," as in *Mt. Clemens* itself. *Id.*, at 688; see *ibid.* (inference permissible "as to the extent of the damages"). *Mt. Clemens* does not justify the use of representative evidence in this case, where Tyson's liability to many class members was uncertain.

Second, the majority misreads *Mt. Clemens* as "confirm-[ing]" that when employees "worked in the same facility, did similar work, and w[ere] paid under the same policy," representative evidence can prove all of their claims. *Ante*, at 459. *Mt. Clemens* said nothing about whether or why the employees there shared sufficient similarities for their claims to be susceptible to common proof. The *Mt. Clemens* plaintiffs were the local union and seven employees. See 328 U. S., at 684. They brought a representative action, a type of collective action that allowed employees to designate a union to pursue their claims for them. See § 16(b), 52 Stat. 1069; Record 7 (complaint). Some 300 employees did so. See *Mt. Clemens Pottery Co.* v. *Anderson*, 149 F. 2d 461 (CA6 1945); Record 33–41. The District Court did not make findings about what made these employees similar, instead reasoning that the FLSA's broad objectives supported a liberal approach to allowing class suits. Record 29–32 (order filed June 13, 1941). This Court also said nothing about whether the employees suffered the same harm in the same manner; that issue was not before it. In *Mt. Clemens*' aftermath, however, Congress eliminated representative actions, like the one in *Mt. Clemens*, that required too few similarities among plaintiffs and allowed plaintiffs "not themselves possessing claims" to sue. *Hoffman-La Roche*, *supra*, at 173. *Mt. Clemens* thus offers no guidance about what degree of

similarity among employees suffices for representative evidence to establish all employees' experiences.

In any event, *Mt. Clemens* did not accept that the representative evidence there would be probative even were the employees sufficiently similar. All *Mt. Clemens* decided was that the lack of precise data about the amount of time each employee worked was not fatal to their case. 328 U. S., at 686–687. The Court then remanded the case, leaving the lower courts to "draw whatever reasonable inferences can be drawn from the employees' evidence," if any. *Id.*, at 693–694.[4] *Mt. Clemens* therefore does not support the majority's conclusion that representative evidence can prove thousands of employees' FLSA claims if they share a facility, job functions, and pay policies. See *ante*, at 459.

By focusing on similarities irrelevant to whether employees spend variable times on the task for which they are allegedly undercompensated, the majority would allow representative evidence to establish classwide liability even where much of the class might not have overtime claims at all. Whether employees work in one plant or many, have similar job functions, or are paid at the same rate has nothing to do with how fast they walk, don, or doff—the key variables here for FLSA liability.

The majority suggests that *Mt. Clemens*' evidentiary rule is limited to cases where the employer breaches its obligation to keep records of employees' compensable work. See *ante*, at 456. But that limitation is illusory. FLSA cases often involve allegations that a particular activity is uncompensated work. Just last Term, we rejected class-action plain-

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[4] If anything, *Mt. Clemens* suggests that the representative evidence here is impermissible. The Court affirmed that the District Court's proposed "formula of compensation," calculated based on estimated average times it derived from employees' representative testimony, was impermissible. 328 U. S., at 689; see 149 F. 2d, at 465 ("It does not suffice for the employee to base his right to recover on a mere estimated average of overtime worked").

tiffs' theory that waiting in an antitheft security screening line constitutes work. See *Integrity Staffing Solutions, Inc.*, 574 U. S., at 29. The majority thus puts employers to an untenable choice. They must either track any time that might be the subject of an innovative lawsuit, or they must defend class actions against representative evidence that unfairly homogenizes an individual issue. Either way, the majority's misinterpretation of *Mt. Clemens* will profoundly affect future FLSA-based class actions—which have already increased dramatically in recent years. Erichson, CAFA's Impact on Class Action Lawyers, 156 U. Pa. L. Rev. 1593, 1617 (2008).

C

The majority makes several other arguments why Mericle's study was adequate common proof of all class members' experiences. None has merit.

First, the majority contends that, because Tyson's trial defense—that Mericle's study was unrepresentative or inaccurate—was "itself common," Tyson was "not deprive[d] . . . of its ability to litigate individual defenses." *Ante*, at 457. But looking to what defenses remained available is an unsound way to gauge whether the class-action device prevented the defendant from mounting individualized defenses. That Tyson was able to mount only a *common* defense confirms its disadvantage. Testifying class members attested to spending less time on donning and doffing than Mericle's averages would suggest. Had Tyson been able to cross-examine more than four of them, it may have incurred far less liability. See *supra*, at 473–474.

Second, the majority argues that Tyson's failure to challenge Mericle's testimony under *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993), left to the jury any remaining questions about the value of this evidence. *Ante*, at 459. But *Comcast* rejected this argument. Failing to challenge evidence under *Daubert* precludes defendants from "argu[ing] that [the] testimony was not admis-

sible," but it does not preclude defendants from "argu[ing] that the evidence failed to show that the case is susceptible to awarding damages on a class-wide basis." *Comcast*, 569 U. S., at 33, n. 4 (internal quotation marks omitted).

Finally, the majority's attempts to distinguish this case from *Wal-Mart* are unavailing. See *ante*, at 457–459. *Wal-Mart* involved a nationwide Title VII class action alleging that Wal-Mart's policy of delegating employment decisions to individual store managers let managers exercise their discretion in a discriminatory manner. See 564 U. S., at 342. We held that discretionary decisionmaking could not be a common policy uniting all class members' claims because managers presumptively exercise their discretion in an individualized manner. See *id.*, at 355–356. Some may rely on performance-based criteria; others may use tests; yet others might intentionally discriminate. *Ibid.* Because of this variability, "demonstrating the invalidity of one manager's use of discretion will do nothing to demonstrate the invalidity of another's." *Ibid.*

Moreover, the *Wal-Mart* plaintiffs' representative evidence—120 employee anecdotes—did not make this individualized issue susceptible to common proof. *Id.*, at 358. Using 120 anecdotes to represent the experiences of 1.5 million class members was too far below the 1:8 ratio of anecdotes to class members that our prior cases accepted. *Ibid.* Thus, this representative evidence was "too weak to raise any inference that all the individual, discretionary personnel decisions are discriminatory." *Ibid.*

The plaintiffs' reliance on Mericle's study fails for the same reasons. Just as individual managers inherently make discretionary decisions differently, so too do individual employees inherently spend different amounts of time donning and doffing. And, just as 120 employee anecdotes could not establish that all 1.5 million class members faced discrimination, neither can Mericle's study establish that all 3,344 class members spent the same amount of time donning and doffing.

Like the 120 Wal-Mart anecdotes, Mericle's study—which used about 57 employees per activity to extrapolate times for 3,344—falls short of the 1:8 ratio this Court deems "significant" to the probative value of representative evidence. See *ibid.*

III

I agree with the majority's conclusion in Part II–B that we should not address whether a class action can be maintained if a class contains uninjured members. Given that conclusion, however, I am perplexed by the majority's readiness to suggest, in dicta, that Tyson's opposition to bifurcating the proceedings might be invited error. *Ante*, at 461–462. I see no reason to opine on this issue.

* * *

I respectfully dissent.

Syllabus

NEBRASKA ET AL. *v.* PARKER ET AL.

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

No. 14–1406. Argued January 20, 2016—Decided March 22, 2016

In 1854, the Omaha Tribe entered into a treaty with the United States agreeing to establish a 300,000-acre reservation and to "cede" and "forever relinquish all right and title to" its remaining land in present-day Nebraska for a fixed sum of money. In 1865, the Omaha Tribe again entered into a treaty with the United States agreeing to "cede, sell, and convey" land for a fixed sum. When, in 1872, the Tribe sought to sell more of its land to the United States, Congress took a different tack. In lieu of a fixed-sum purchase, Congress authorized the Secretary of the Interior to survey, appraise, and sell tracts of reservation land to western settlers and to deposit any proceeds from the land sales in the U. S. Treasury for the Tribe's benefit. Congress took the same approach in 1882 when it passed the Act in question. That Act authorized the Secretary of the Interior to survey, appraise, and sell roughly 50,000 acres of reservation land lying west of a railroad right-of-way. W. E. Peebles purchased a tract under the terms of the 1882 Act and established the village of Pender.

In 2006, the Tribe amended its Beverage Control Ordinance and sought to subject Pender retailers to the amended ordinance. See 18 U. S. C. § 1161 (permitting tribes to regulate liquor sales on reservation land and in "Indian country"). Pender and its retailers brought a suit against the Tribe in Federal District Court to challenge the ordinance, and the State intervened on their behalf. They alleged that they were not within the reservation boundaries or in Indian country and therefore could not be subject to the ordinance. They sought declaratory relief and a permanent injunction prohibiting the Tribe from asserting its jurisdiction over the disputed land. Concluding that the 1882 Act did not diminish the Omaha Reservation, the District Court denied relief, and the Eighth Circuit affirmed.

Held: The 1882 Act did not diminish the Omaha Indian Reservation. Pp. 487–494.

(a) Only Congress may diminish the boundaries of an Indian reservation, and its intent to do so must be clear. *Solem* v. *Bartlett*, 465 U. S. 463, 470. This Court's framework for determining whether an Indian reservation has been diminished is well settled and starts with the statutory text. *Hagen* v. *Utah*, 510 U. S. 399, 411. Here, the 1882 Act

bears none of the common textual indications that express such clear intent, *e. g.*, "[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests" or "an unconditional commitment from Congress to compensate the Indian tribe for its opened land," *Solem*, *supra*, at 470. The Act's language opening the land "for settlement under such rules and regulations as [the Secretary] may prescribe," 22 Stat. 341, falls into a category of surplus land Acts that "merely opened reservation land to settlement," *DeCoteau* v. *District County Court for Tenth Judicial Dist.*, 420 U. S. 425, 448. A comparison of the text of the 1854 and 1865 treaties, which unequivocally terminated the Tribe's jurisdiction over its land, with the 1882 Act confirms this conclusion. Pp. 487–490.

(b) In diminishment cases, this Court has also examined "all the circumstances surrounding the opening of a reservation," *Hagen*, *supra*, at 412, including the contemporaneous understanding of the Act's effect on the reservation. Here, such historical evidence cannot overcome the text of the 1882 Act, which lacks any indication that Congress intended to diminish the reservation. Dueling remarks by legislators about the 1882 Act are far from the unequivocal evidence required in diminishment cases. Pp. 490–492.

(c) Finally, and to a lesser extent, the Court may look to subsequent demographic history and subsequent treatment of the land by government officials. See *Solem*, *supra*, at 471–472. This Court has never relied solely on this third consideration to find diminishment, and the mixed record of subsequent treatment of the disputed land in this case cannot overcome the statutory text. Petitioners point to the Tribe's absence from the disputed territory for more than 120 years, but this subsequent demographic history is the "least compelling" evidence in the diminishment analysis. *South Dakota* v. *Yankton Sioux Tribe*, 522 U. S. 329, 356. Likewise, evidence of the subsequent treatment of the disputed land by government officials has similarly limited value. And, while compelling, the justifiable expectations of the non-Indians living on the land cannot alone diminish reservation boundaries. Pp. 492–494.

(d) Because the parties have raised only the single question of diminishment, the Court expresses no view about whether equitable considerations of laches and acquiescence may curtail the Tribe's power to tax the retailers of Pender. Cf. *City of Sherrill* v. *Oneida Indian Nation of N. Y.*, 544 U. S. 197, 217–221. P. 494.

774 F. 3d 1166, affirmed.

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

James D. Smith, Solicitor General of Nebraska, argued the cause for petitioners. With him on the briefs were *Douglas J. Peterson*, Attorney General, *Ryan S. Post* and *David A. Lopez*, Assistant Attorneys General, *Marnie A. Jensen*, and *Mark D. Hill*.

Paul D. Clement argued the cause for the Omaha Tribal Council respondents. With him on the brief were *Maurice R. Johnson*, Attorney General of the Omaha Tribe of Nebraska, and *Jeffrey M. Harris*.

Allon Kedem argued the cause for the United States. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Cruden*, *Deputy Solicitor General Kneedler*, *William B. Lazarus*, *Mary Gabrielle Sprague*, *Katherine J. Barton*, and *Daron Carreiro*.*

JUSTICE THOMAS delivered the opinion of the Court.

The village of Pender, Nebraska, sits a few miles west of an abandoned right-of-way once used by the Sioux City and Nebraska Railroad Company. We must decide whether Pender and surrounding Thurston County, Nebraska, are within the boundaries of the Omaha Indian Reservation or whether the passage of an 1882 Act empowering the United States Secretary of the Interior to sell the Tribe's land west of the right-of-way "diminished" the reservation's boundaries, thereby "free[ing]" the disputed land of "its reservation status." *Solem* v. *Bartlett*, 465 U. S. 463, 467 (1984). We hold that Congress did not diminish the reservation in

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*Briefs of *amici curiae* urging reversal were filed for the Citizens Equal Rights Foundation by *James J. Devine*, *Jr.*; and for the Village of Hobart, Wisconsin, et al. by *Frank W. Kowalkowski* and *Dillon J. Ambrose*.

Colette Routel filed a brief for Historical Scholars et al. as *amici curiae* urging affirmance.

Marc D. Slonim, *Richard M. Berley*, and *Donald R. Wharton* filed a brief for the National Congress of American Indians et al. as *amici curiae*.

1882 and that the disputed land is within the reservation's boundaries.

I

A

Centuries ago, the Omaha Tribe settled in present-day eastern Nebraska. By the mid-19th century, the Tribe was destitute and, in exchange for much-needed revenue, agreed to sell a large swath of its land to the United States. In 1854, the Tribe entered into a treaty with the United States to create a 300,000-acre reservation. Treaty with the Omahas (1854 Treaty), Mar. 16, 1854, 10 Stat. 1043. The Tribe agreed to "cede" and "forever relinquish all right and title to" its land west of the Mississippi River, excepting the reservation, in exchange for $840,000, to be paid over 40 years. *Id.*, at 1043–1044.

In 1865, after the displaced Wisconsin Winnebago Tribe moved west, the Omaha Tribe agreed to "cede, sell, and convey" an additional 98,000 acres on the north side of the reservation to the United States for the purpose of creating a reservation for the Winnebagoes. Treaty with the Omaha Indians (1865 Treaty), Mar. 6, 1865, 14 Stat. 667–668. The Tribe sold the land for a fixed sum of $50,000. *Id.*, at 667.

In 1872, the Tribe again expressed its wish to sell portions of the reservation, but Congress took a different tack than it had in the 1854 and 1865 Treaties. Instead of purchasing a portion of the reservation for a fixed sum, Congress authorized the Secretary of the Interior to survey, appraise, and sell up to 50,000 acres on the western side of the reservation "to be separated from the remaining portion of said reservation" by a north-south line agreed to by the Tribe and Congress. Act of June 10, 1872 (1872 Act), ch. 436, § 1, 17 Stat. 391. Under the 1872 Act, a nonmember could purchase "tracts not exceeding one hundred and sixty acres each" or "the entire body offered." *Ibid.* Proceeds from any sales would be "placed to the credit of said Indians on the books of

the treasury of the United States." *Ibid.* But the proceeds were meager. The 1872 Act resulted in only two sales totaling 300.72 acres.

Then came the 1882 Act, central to the dispute between petitioners and respondents. In that Act, Congress again empowered the Secretary of the Interior "to cause to be surveyed, if necessary, and sold" more than 50,000 acres lying west of a right-of-way granted by the Tribe and approved by the Secretary of the Interior in 1880 for use by the Sioux City and Nebraska Railroad Company. Act of Aug. 7, 1882 (1882 Act), 22 Stat. 341. The land for sale under the terms of the 1882 Act overlapped substantially with the land Congress tried, but failed, to sell in 1872. Once the land was appraised "in tracts of forty acres each," the Secretary was "to issue [a] proclamation" that the "lands are open for settlement under such rules and regulations as he may prescribe." §§ 1, 2, *id.*, at 341. Within one year of that proclamation, a nonmember could purchase up to 160 acres of land (for no less than $2.50 per acre) in cash paid to the United States, so long as the settler "occup[ied]" it, made "valuable improvements thereon," and was "a citizen of the United States, or . . . declared his intention to become such." § 2, *id.*, at 341. The proceeds from any land sales, "after paying all expenses incident to and necessary for carrying out the provisions of th[e] act," were to "be placed to the credit of said Indians in the Treasury of the United States." § 3, *id.*, at 341. Interest earned on the proceeds was to be "annually expended for the benefit of said Indians, under the direction of the Secretary of the Interior." *Ibid.*

The 1882 Act also included a provision, common in the late 19th century, that enabled members of the Tribe to select individual allotments, §§ 5–8, *id.*, at 342–343, as a means of encouraging them to depart from the communal lifestyle of the reservation. See *Solem*, *supra*, at 467. The 1882 Act provided that the United States would convey the land to a member or his heirs in fee simple after holding it in trust on

behalf of the member and his heirs for 25 years. § 6, 22 Stat. 342. Members could select allotments on any part of the reservation, either east or west of the right-of-way. § 8, *id.*, at 343.

After the members selected their allotments—only 10 to 15 of which were located west of the right-of-way—the Secretary proclaimed that the remaining 50,157 acres west of the right-of-way were open for settlement by nonmembers in April 1884. One of those settlers was W. E. Peebles, who "purchased a tract of 160 acres, on which he platted the townsite for Pender." *Smith* v. *Parker*, 996 F. Supp. 2d 815, 828 (Neb. 2014).

B

The village of Pender today numbers 1,300 residents. Most are not associated with the Omaha Tribe. Less than 2% of Omaha tribal members have lived west of the right-of-way since the early 20th century.

Despite its longstanding absence, the Tribe sought to assert jurisdiction over Pender in 2006 by subjecting Pender retailers to its newly amended Beverage Control Ordinance. The ordinance requires those retailers to obtain a liquor license (costing $500, $1,000, or $1,500 depending upon the class of license) and imposes a 10% sales tax on liquor sales. Nonmembers who violate the ordinance are subject to a $10,000 fine.

The village of Pender and Pender retailers, including bars, a bowling alley, and social clubs, brought a federal suit against members of the Omaha Tribal Council in their official capacities to challenge the Tribe's power to impose the requirements of the Beverage Control Ordinance on nonmembers. Federal law permits the Tribe to regulate liquor sales on its reservation and in "Indian country" so long as the Tribe's regulations are (as they were here) "certified by the Secretary of the Interior, and published in the Federal Register." 18 U. S. C. § 1161. The challengers alleged that they were neither within the boundaries of the Omaha In-

dian Reservation nor in Indian country and, consequently, were not bound by the ordinance.

The State of Nebraska intervened on behalf of the plaintiffs, and the United States intervened on behalf of the Omaha Tribal Council members. The State's intervention was prompted, in part, by the Omaha Tribe's demand that Nebraska share with the Tribe revenue that the State received from fuel taxes imposed west of the right-of-way. In addition to the relief sought by Pender and the Pender retailers, Nebraska sought a permanent injunction prohibiting the Tribe from asserting tribal jurisdiction over the 50,157 acres west of the abandoned right-of-way.

After examining the text of the 1882 Act, as well as the contemporaneous and subsequent understanding of the 1882 Act's effect on the reservation boundaries, the District Court concluded that Congress did not diminish the Omaha Reservation in 1882. 996 F. Supp. 2d, at 844. Accordingly, the District Court denied the plaintiffs' request for injunctive and declaratory relief barring the Tribe's enforcement of the Beverage Control Ordinance. The Eighth Circuit affirmed. *Smith* v. *Parker*, 774 F. 3d 1166, 1168–1169 (2014). We granted certiorari to resolve whether the 1882 Act diminished the Omaha Reservation. 576 U. S. 1095 (2015).

II

We must determine whether Congress "diminished" the Omaha Indian Reservation in 1882. If it did so, the State now has jurisdiction over the disputed land. *Solem*, 465 U. S., at 467. If Congress, on the other hand, did not diminish the reservation and instead only enabled nonmembers to purchase land within the reservation, then federal, state, and tribal authorities share jurisdiction over these "opened" but undiminished reservation lands. *Ibid.*

The framework we employ to determine whether an Indian reservation has been diminished is well settled. *Id.*, at 470–472. "[O]nly Congress can divest a reservation of its

land and diminish its boundaries," and its intent to do so must be clear. *Id.*, at 470. To assess whether an Act of Congress diminished a reservation, we start with the statutory text, for "[t]he most probative evidence of diminishment is, of course, the statutory language used to open the Indian lands." *Hagen* v. *Utah*, 510 U. S. 399, 411 (1994). Under our precedents, we also "examine all the circumstances surrounding the opening of a reservation." *Id.*, at 412. Because of "the turn-of-the-century assumption that Indian reservations were a thing of the past," many surplus land Acts did not clearly convey "whether opened lands retained reservation status or were divested of all Indian interests." *Solem*, *supra*, at 468. For that reason, our precedents also look to any "unequivocal evidence" of the contemporaneous and subsequent understanding of the status of the reservation by members and nonmembers, as well as the United States and the State of Nebraska. *South Dakota* v. *Yankton Sioux Tribe*, 522 U. S. 329, 351 (1998).

A

As with any other question of statutory interpretation, we begin with the text of the 1882 Act, the most "probative evidence" of diminishment. *Solem*, *supra*, at 470; see, *e. g.*, *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 241 (1989) ("The task of resolving the dispute over the meaning of [a statutory text] begins where all such inquiries must begin: with the language of the statute itself"). Common textual indications of Congress' intent to diminish reservation boundaries include "[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests" or "an unconditional commitment from Congress to compensate the Indian tribe for its opened land." *Solem*, *supra*, at 470. Such language "providing for the total surrender of tribal claims in exchange for a fixed payment" evinces Congress' intent to diminish a reservation, *Yankton Sioux*, *supra*, at 345, and creates "an almost insur-

mountable presumption that Congress meant for the tribe's reservation to be diminished," *Solem*, *supra*, at 470–471. Similarly, a statutory provision restoring portions of a reservation to "the public domain" signifies diminishment. *Hagen*, 510 U. S., at 414. In the 19th century, to restore land to the public domain was to extinguish the land's prior use—its use, for example, as an Indian reservation—and to return it to the United States either to be sold or set aside for other public purposes. *Id.*, at 412–413.

The 1882 Act bore none of these hallmarks of diminishment. The 1882 Act empowered the Secretary to survey and appraise the disputed land, which then could be purchased in 160-acre tracts by nonmembers. 22 Stat. 341. The 1882 Act states that the disputed lands would be "open for settlement under such rules and regulations as [the Secretary of the Interior] may prescribe." *Ibid.* And the parcels would be sold piecemeal in 160-acre tracts. *Ibid.* So rather than the Tribe's receiving a fixed sum for all of the disputed lands, the Tribe's profits were entirely dependent upon how many nonmembers purchased the appraised tracts of land.

From this text, it is clear that the 1882 Act falls into another category of surplus land Acts: those that "merely opened reservation land to settlement and provided that the uncertain future proceeds of settler purchases should be applied to the Indians' benefit." *DeCoteau* v. *District County Court for Tenth Judicial Dist.*, 420 U. S. 425, 448 (1975). Such schemes allow "non-Indian settlers to own land on the reservation." *Seymour* v. *Superintendent of Wash. State Penitentiary*, 368 U. S. 351, 356 (1962). But in doing so, they do not diminish the reservation's boundaries.

Our conclusion that Congress did not intend to diminish the reservation in 1882 is confirmed by the text of earlier treaties between the United States and the Tribe. See *Mattz* v. *Arnett*, 412 U. S. 481, 504 (1973) (comparing statutory text to earlier bills). In drafting the 1882 Act, Con-

gress legislated against the backdrop of the 1854 and 1865 Treaties—both of which terminated the Tribe's jurisdiction over their land "in unequivocal terms." *Ibid.* Those treaties "ced[ed]" the lands and "relinquish[ed]" any claims to them in exchange for a fixed sum. 10 Stat. 1043–1044; see also 14 Stat. 667 ("The Omaha tribe of Indians do hereby *cede, sell, and convey* to the United States a tract of land from the north side of their present reservation . . . " (emphasis added)). The 1882 Act speaks in much different terms, both in describing the way the individual parcels were to be sold to nonmembers and the way in which the Tribe would profit from those sales. That 1882 Act also closely tracks the 1872 Act, which petitioners do not contend diminished the reservation. The change in language in the 1882 Act undermines petitioners' claim that Congress intended to do the same with the reservation's boundaries in 1882 as it did in 1854 and 1865. Petitioners have failed at the first and most important step. They cannot establish that the text of the 1882 Act evinced an intent to diminish the reservation.

B

We now turn to the history surrounding the passage of the 1882 Act. The mixed historical evidence relied upon by the parties cannot overcome the lack of clear textual signal that Congress intended to diminish the reservation. That historical evidence in no way "*unequivocally* reveal[s] a widely held, contemporaneous understanding that the affected reservation would shrink as a result of the proposed legislation." *Solem*, 465 U. S., at 471 (emphasis added); see also *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U. S. 546, 568 (2005) (describing the "often murky, ambiguous, and contradictory" nature of extratextual evidence of congressional intent).

Petitioners rely largely on isolated statements that some legislators made about the 1882 Act. Senator Henry Dawes of Massachusetts, for example, noted that he had been "as-

sured that [the 1882 Act] would *leave an ample reservation*" for the Tribe. 13 Cong. Rec. 3032 (1882) (emphasis added). And Senator John Ingalls of Kansas observed "that this bill practically breaks up that portion at least of the reservation which is to be sold, and provides that it shall be disposed of to private purchasers." *Id.*, at 3028. Whatever value these contemporaneous floor statements might have, other such statements support the opposite conclusion—that Congress never intended to diminish the reservation. Senator Charles Jones of Florida, for example, spoke of "white men purchas[ing] titles to land *within* this reservation and settl[ing] down with the Indians on it." *Id.*, at 3078 (emphasis added). Such dueling remarks by individual legislators are far from the "clear and plain" evidence of diminishment required under this Court's precedent. *Yankton Sioux*, 522 U. S., at 343 (internal quotation marks omitted); see also *Solem*, 465 U. S., at 478 (noting that it was unclear whether statements referring to a " 'reduced reservation' " alluded to the "reduction in Indian-owned lands that would occur once some of the opened lands were sold to settlers or to the reduction that a complete cession of tribal interests in the opened area would precipitate").

More illuminating than cherry-picked statements by individual legislators would be historical evidence of "the manner in which the transaction was negotiated" with the Omaha Tribe. *Id.*, at 471.[1] In *Yankton Sioux*, for example, recorded negotiations between the Commissioner of Indian Affairs and leaders of the Yankton Sioux Tribe unambiguously

[1] Until this Court's 1903 decision in *Lone Wolf* v. *Hitchcock*, 187 U. S. 553, 566–568, the question whether Congress could unilaterally abrogate treaties with tribes and divest them of their reservation lands was unsettled. Thus, what the tribe agreed to has been significant in the Court's diminishment analysis. See, *e. g.*, *South Dakota* v. *Yankton Sioux Tribe*, 522 U. S. 329, 351–353 (1998). Historical evidence of how pre-*Lone Wolf* sales of lands were negotiated has been deemed compelling, whereas historical evidence of negotiations post-*Lone Wolf* might be less so. See, *e. g.*, *Hagen* v. *Utah*, 510 U. S. 399, 416–417 (1994).

"signaled [the Tribe's] understanding that the cession of the surplus lands dissolved tribal governance of the 1858 reservation." 522 U. S., at 353. No such unambiguous evidence exists in the record of these negotiations. In particular, petitioners' reliance on the remarks of Representative Edward Valentine of Nebraska, who stated, "You cannot find one of those Indians that does not want the western portion sold," and that the Tribe wished to sell the land to those who would "'reside upon it and cultivate it'" so that the Tribe members could "benefit of these improvements," 13 Cong. Rec. 6541, falls short. Nothing about this statement or other similar statements unequivocally supports a finding that the existing boundaries of the reservation would be diminished.

C

Finally, we consider both the subsequent demographic history of opened lands, which serves as "one additional clue as to what Congress expected would happen once land on a particular reservation was opened to non-Indian settlers," *Solem*, 465 U. S., at 472, as well as the United States' "treatment of the affected areas, particularly in the years immediately following the opening," which has "some evidentiary value," *id.*, at 471. Our cases suggest that such evidence might "reinforc[e]" a finding of diminishment or nondiminishment based on the text. *Mattz*, 412 U. S., at 505; see also, *e. g., Rosebud Sioux Tribe* v. *Kneip*, 430 U. S. 584, 604–605 (1977) (invoking subsequent history to reject a petitioner's "strained" textual reading of a congressional Act). But this Court has never relied solely on this third consideration to find diminishment.

As petitioners have discussed at length, the Tribe was almost entirely absent from the disputed territory for more than 120 years. Brief for Petitioners 24–30. The Omaha Tribe does not enforce any of its regulations—including those governing businesses, fire protection, animal control, fireworks, and wildlife and parks—in Pender or in other lo-

cales west of the right-of-way. 996 F. Supp. 2d, at 832. Nor does it maintain an office, provide social services, or host tribal celebrations or ceremonies west of the right-of-way. *Ibid.*

This subsequent demographic history cannot overcome our conclusion that Congress did not intend to diminish the reservation in 1882. And it is not our role to "rewrite" the 1882 Act in light of this subsequent demographic history. *DeCoteau*, 420 U. S., at 447. After all, evidence of the changing demographics of disputed land is "the least compelling" evidence in our diminishment analysis, for "[e]very surplus land Act necessarily resulted in a surge of non-Indian settlement and degraded the 'Indian character' of the reservation, yet we have repeatedly stated that not every surplus land Act diminished the affected reservation." *Yankton Sioux*, 522 U. S., at 356.

Evidence of the subsequent treatment of the disputed land by Government officials likewise has "limited interpretive value." *Id.*, at 355. Petitioners highlight that, for more than a century and with few exceptions, reports from the Office of Indian Affairs and in opinion letters from Government officials treated the disputed land as Nebraska's. Brief for Petitioners 24–38; see also 996 F. Supp. 2d, at 828, 830. It was not until this litigation commenced that the Department of the Interior definitively changed its position, concluding that the reservation boundaries were in fact not diminished in 1882. See *id.*, at 830–831. For their part, respondents discuss late-19th-century statutes referring to the disputed land as part of the reservation, as well as inconsistencies in maps and statements by Government officials. Brief for Respondent Omaha Tribal Council et al. 45–52; Brief for United States 38–52; see also 996 F. Supp. 2d, at 827, 832–833. This "mixed record" of subsequent treatment of the disputed land cannot overcome the statutory text, which is devoid of any language indicative of Congress' intent to diminish. *Yankton Sioux*, *supra*, at 356.

Petitioners' concerns about upsetting the "justifiable expectations" of the almost exclusively non-Indian settlers who live on the land are compelling, *Rosebud Sioux*, *supra*, at 605, but these expectations alone, resulting from the Tribe's failure to assert jurisdiction, cannot diminish reservation boundaries. Only Congress has the power to diminish a reservation. *DeCoteau*, 420 U. S., at 449. And though petitioners wish that Congress would have "spoken differently" in 1882, "we cannot remake history." *Ibid.*

* * *

In light of the statutory text, we hold that the 1882 Act did not diminish the Omaha Indian Reservation. Because petitioners have raised only the single question of diminishment,[2] we express no view about whether equitable considerations of laches and acquiescence may curtail the Tribe's power to tax the retailers of Pender in light of the Tribe's century-long absence from the disputed lands. Cf. *City of Sherrill* v. *Oneida Indian Nation of N. Y.*, 544 U. S. 197, 217–221 (2005).

The judgment of the Court of Appeals for the Eighth Circuit is affirmed.

It is so ordered.

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[2] See, *e. g.*, Plaintiffs' Brief in Support of Motion for Summary Judgment in No. 4:07–cv–03101 (D Neb.), pp. 31, 38 (defendants cannot "impose an alcohol tax and licensing scheme outside the boundaries of the Omaha Reservation"); Plaintiff Intervenor's Brief in Support of Plaintiffs' Motion for Summary Judgment in No. 4:07–cv–03101 (D Neb.), pp. 1–2; see also *Smith* v. *Parker*, 996 F. Supp. 2d 815, 834 (Neb. 2014) ("In this case, I must decide whether Congress's Act of August 7, 1882 . . . diminished the boundaries of the Omaha Indian Reservation, or whether the Act simply permitted non-Indians to settle within existing Omaha Reservation boundaries"); *Smith* v. *Parker*, 774 F. 3d 1166, 1167 (CA8 2014) ("Appellants challenge the district court's determination that the Omaha Indian Reservation was not diminished by an 1882 act of Congress").

HAWKINS ET AL. *v.* COMMUNITY BANK OF RAYMORE

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

No. 14–520. Argued October 5, 2015—Decided March 22, 2016

761 F. 3d 937, affirmed by an equally divided Court.

John M. Duggan argued the cause for petitioners. With him on the briefs were *Deron A. Anliker* and *Jay T. Shadwick*.

Brian H. Fletcher argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Verrilli*, *Deputy Solicitor General Gershengorn*, *Meredith Fuchs*, and *Nandan M. Joshi*.

Stephen R. McAllister argued the cause for respondent. With him on the brief were *Greer S. Lang*, *Thomas Stahl*, and *Justin Nichols*.*

PER CURIAM.

The judgment is affirmed by an equally divided Court.

**Andrew W. Muller* filed a brief for the American Bankers Association et al. as *amici curiae* urging affirmance.

Reporter's Note

Orders commencing with January 25, 2016, begin with page 1116. The preceding orders in 577 U. S., from October 5, 2015, through January 21, 2016, were reported in Part 1, at 801–1116. 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.

unconstitutional procedures only underscores the need to reconsider the validity of capital punishment under the Eighth Amendment. See *Glossip* v. *Gross*, 576 U. S. 863, 908–909 (2015) (BREYER, J., dissenting). I respectfully dissent.

No. 15–7787 (15A756). BROOKS *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 810 F. 3d 812.

JANUARY 25, 2016

Certiorari Granted—Reversed and Remanded. (See No. 15–493, *ante*, p. 306, and No. 15–278, *ante*, p. 308.)

Certiorari Granted—Vacated and Remanded

No. 14–1061. ELEM ET AL. *v.* AIRTRAN AIRWAYS, INC. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Montanile* v. *Board of Trustees of Nat. Elevator Industry Health Benefit Plan*, *ante*, p. 136. Reported below: 767 F. 3d 1192.

Certiorari Dismissed

No. 15–7023. LEBLANC *v.* ROMANOWSKI, WARDEN. 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. 15–7024. LEBLANC *v.* ROMANOWSKI, WARDEN. 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. 15–7044. LEBLANC *v.* MICHIGAN STATE POLICE. 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. 15–7103. KEARNEY *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d 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 *Mar-*

tin v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion and this petition.

No. 15–7199. 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 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: 627 Fed. Appx. 816.

Miscellaneous Orders

No. 15M76. ERARD *v.* JOHNSON, MICHIGAN SECRETARY OF STATE. C. A. 6th Cir. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 14–614. HUGHES, CHAIRMAN, MARYLAND PUBLIC SERVICE COMMISSION, ET AL. *v.* TALEN ENERGY MARKETING, LLC, FKA PPL ENERGYPLUS, LLC, ET AL.; and

No. 14–623. CPV MARYLAND, LLC *v.* TALEN ENERGY MARKETING, LLC, FKA PPL ENERGYPLUS, LLC, ET AL. C. A. 4th Cir. [Certiorari granted, *ante*, p. 938.] Joint motion of petitioners for divided argument granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 14–1513. HALO ELECTRONICS, INC. *v.* PULSE ELECTRONICS, INC., ET AL.; and

No. 14–1520. STRYKER CORP. ET AL. *v.* ZIMMER, INC., ET AL. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 938.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Joint motion of respondents for divided argument denied.

No. 15–274. WHOLE WOMAN'S HEALTH ET AL. *v.* HELLERSTEDT, COMMISSIONER, TEXAS DEPARTMENT OF STATE HEALTH SERVICES, ET AL. C. A. 5th Cir. [Certiorari granted *sub nom. Whole Woman's Health* v. *Cole*, *ante*, p. 982.] Motion of petitioners to file volume VIII of the joint appendix under seal granted.

No. 15–278. Amgen Inc. et al. *v.* Harris et al., *ante*, p. 308. C. A. 9th Cir. Motions of Washington Legal Foundation, American Benefits Council, and Chamber of Commerce of the United States of America et al. for leave to file briefs as *amici curiae* granted.

No. 15–7043. Hall *v.* E. I. du Pont de Nemours & Co. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 16, 2016, 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. Justice Alito took no part in the consideration or decision of this motion.

No. 15–7097. Young-Smith *v.* United Steelworkers of America, AFL–CIO, CLC, et al. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 16, 2016, 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. 15–7614. In re Hackney. Petition for writ of habeas corpus denied.

No. 15–7603. In re Schotz. 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*). Justice Kagan took no part in the consideration or decision of this motion and this petition.

No. 15–7013. In re Richardson. Petition for writ of mandamus denied.

Certiorari Denied

No. 14–1194. Harvard Drug Group, LLC *v.* Barr. C. A. 11th Cir. Certiorari denied. Reported below: 591 Fed. Appx. 928.

No. 15–84. New Alliance Bank et al. *v.* Tanasi et al. C. A. 2d Cir. Certiorari denied. Reported below: 786 F. 3d 195.

No. 15–491. Pennsylvania *v.* Federal Community Defender Organization of Philadelphia; and

No. 15–494. Pennsylvania *v.* Defender Association of Philadelphia. C. A. 3d Cir. Certiorari denied. Reported below: 790 F. 3d 457.

No. 15–522. Texas *v.* Davis et al. C. A. D. C. Cir. Certiorari denied. Reported below: 798 F. 3d 1108.

No. 15–583. Shelby County, Alabama *v.* Lynch, Attorney General, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 799 F. 3d 1173.

No. 15–627. Stenehjem, Attorney General of North Dakota, et al. *v.* MKB Management Corp., dba Red River Women's Clinic, et al. C. A. 8th Cir. Certiorari denied. Reported below: 795 F. 3d 768.

No. 15–638. PricewaterhouseCoopers LLP et al. *v.* Laurent et al. C. A. 2d Cir. Certiorari denied. Reported below: 794 F. 3d 272.

No. 15–650. Walter *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 632 Pa. 174, 119 A. 3d 255.

No. 15–653. Douglas *v.* President and Fellows of Harvard College. C. A. 1st Cir. Certiorari denied.

No. 15–654. Williams *v.* Mackie, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 461.

No. 15–657. Black *v.* Hathaway et al. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 650.

No. 15–660. New Millennium Sports, S. L. U. *v.* Jack Wolfskin Ausrustung fur Draussen GmbH & Co. KGAA. C. A. Fed. Cir. Certiorari denied. Reported below: 797 F. 3d 1363.

No. 15–662. Petfinders, LLC *v.* Sherman, Chapter 11 Trustee. C. A. 5th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 290.

No. 15–665. Murtagh *v.* Emory University. Ct. App. Ga. Certiorari denied. Reported below: 332 Ga. App. XXIV.

No. 15–668. Marin *v.* Fannie Mae, Federal National Mortgage Association. Sup. Ct. Fla. Certiorari denied. Reported below: 177 So. 3d 1268.

No. 15–672. Joshi *v.* National Transportation Safety Board et al. C. A. D. C. Cir. Certiorari denied. Reported below: 791 F. 3d 8.

No. 15–676. United States ex rel. Gage *v.* Davis S. R. Aviation, L. L. C., dba Challenger Spares and Support, et al. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 622.

No. 15–681. Meisner *v.* South State Bank, fka SCBT, N. A. Ct. App. S. C. Certiorari denied.

No. 15–685. Williams *v.* Kettler Management, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 603 Fed. Appx. 200.

No. 15–686. Gillis *v.* Clark et al. C. A. 1st Cir. Certiorari denied.

No. 15–692. Brown *v.* TD Bank USA, N. A. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 15–711. McCool *v.* Louisiana Attorney Disciplinary Board. Sup. Ct. La. Certiorari denied. Reported below: 2015–0284 (La. 6/30/15), 172 So. 3d 1058.

No. 15–732. Smith *v.* Arizona et al. C. A. 9th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 574.

No. 15–737. Minnick *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 2015 WI App 58, 364 Wis. 2d 527, 868 N. W. 2d 198.

No. 15–748. Swecker et al. *v.* Midland Power Cooperative et al. C. A. 8th Cir. Certiorari denied. Reported below: 807 F. 3d 883.

No. 15–809. Antonaras *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 819.

No. 15–6075. Fletcher *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 168 So. 3d 186.

No. 15–6370. Jackson *v.* White, Illinois Secretary of State, et al. C. A. 7th Cir. Certiorari denied. Reported below: 581 Fed. Appx. 556.

No. 15–6401. Johnson *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 617 Fed. Appx. 293.

No. 15–6430. Smith *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 170 So. 3d 745.

No. 15–6611. Flores *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 794 F. 3d 494.

No. 15–6988. Thomas *v.* Hammer, Warden, et al. C. A. 8th Cir. Certiorari denied.

No. 15–7003. Wildman *v.* California. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 15–7009. Cobas *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 15–7021. E. L. M. *v.* J. E. F. Super. Ct. N. J., App. Div. Certiorari denied.

No. 15–7026. Ellis *v.* Hooks, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–7027. Dupont *v.* Louisiana. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2014–0497 (La. App. 1 Cir. 11/7/14).

No. 15–7030. Coleman *v.* DelBalso, Superintendent, State Correctional Institution at Retreat, et al. C. A. 3d Cir. Certiorari denied. Reported below: 613 Fed. Appx. 138.

No. 15–7032. Padilla *v.* Ducart, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–7038. Hanna *v.* JPMorgan Chase Bank, N. A., et al. C. A. 11th Cir. Certiorari denied.

No. 15–7040. Fitzgerald *v.* United States District Court for the Eastern District of Arkansas. C. A. 8th Cir. Certiorari denied.

No. 15–7049. LACKING *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 15–7050. EPSHTEYN *v.* POLICE DEPARTMENT OF UPPER PROVIDENCE TOWNSHIP ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 615 Fed. Appx. 88.

No. 15–7053. SISTRUNK *v.* PENNSYLVANIA ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 632 Pa. 566, 121 A. 3d 954.

No. 15–7069. JONES *v.* DEXTER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 609 Fed. Appx. 483.

No. 15–7070. RODRIGUEZ *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–7075. SHARPE *v.* ARTUS, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 15–7077. ROBINSON *v.* ALLEN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 15–7079. THOMPSON *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. Ct. App. S. C. Certiorari denied.

No. 15–7082. BALFOUR *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 122325, 30 N. E. 3d 1141.

No. 15–7084. ALBERTA *v.* CAMPBELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7085. ALJA-IZ *v.* VIRGIN ISLANDS DEPARTMENT OF EDUCATION. C. A. 3d Cir. Certiorari denied. Reported below: 626 Fed. Appx. 44.

No. 15–7086. BARTLETT *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 667.

No. 15–7096. ERVIN *v.* SOTO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–7102. ROBERTS *v.* FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 586.

No. 15–7115. Mitchell *v.* Kerestes, Superintendent, State Correctional Institution at Mahanoy. C. A. 3d Cir. Certiorari denied.

No. 15–7116. Norman *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 15–7140. Davis *v.* Ohio. Ct. App. Ohio, 12th App. Dist., Butler County. Certiorari denied. Reported below: 2013-Ohio-3878.

No. 15–7158. Boswell *v.* Texas Christian University et al. C. A. 5th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 291.

No. 15–7166. Armstrong *v.* United States District Court for the Eastern District of California et al. C. A. 9th Cir. Certiorari denied.

No. 15–7177. Cunningham *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 61 Cal. 4th 609, 352 P. 3d 318.

No. 15–7188. Pann *v.* Burt, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–7190. Alexander *v.* United States District Court for the Northern District of Alabama. C. A. 11th Cir. Certiorari denied.

No. 15–7209. Jones *v.* United States;
No. 15–7378. Jones et al. *v.* United States; and
No. 15–7392. Jones *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 204.

No. 15–7242. Newell *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 15–7285. Moore *v.* Hartley, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 714.

No. 15–7394. Brooks *v.* Key, Superintendent, Airway Heights Corrections Center. C. A. 9th Cir. Certiorari denied.

No. 15–7422. Dixon et al. *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 959.

No. 15–7477. Soto *v.* United States et al. C. A. 1st Cir. Certiorari denied. Reported below: 799 F. 3d 68.

No. 15–7485. Meade *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 125 A. 3d 1139.

No. 15–7498. Morant *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 935.

No. 15–7499. Andrews *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 803 F. 3d 823.

No. 15–7502. Jackson, aka Brame *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 619 Fed. Appx. 189.

No. 15–7511. Wilson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 393.

No. 15–421. Jacobs Engineering Group, Inc. *v.* Adkisson et al. C. A. 6th Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 790 F. 3d 641.

No. 15–659. ACT, Inc. *v.* Bais Yaakov of Spring Valley. C. A. 1st Cir. Motion of Anthony Michael Sabino for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 798 F. 3d 46.

No. 15–667. White et al. *v.* Regents of the University of California et al. C. A. 9th Cir. Motions of American Association of Physical Anthropologists et al. and Ohio Archaeological Council et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 765 F. 3d 1010.

Rehearing Denied

No. 14–9708. Begolli *v.* Home Depot U. S. A., Inc., *ante*, p. 1006;

No. 15–5227. Warren *v.* United States, *ante*, p. 889;

No. 15–6076. Krushwitz *v.* University of California, *ante*, p. 978;

No. 15–6101. In re Michaels, *ante*, p. 954;

No. 15–6105. Johnson *v.* United States, *ante*, p. 989;

No. 15–6130. Israni *v.* Crystal Lake 960 Assn., Inc., *ante*, p. 989;

No. 15–6171. Martin *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division, *ante*, p. 1011;

No. 15–6194. Seibert *v.* Georgia, *ante*, p. 1011;

No. 15–6200. Talley *v.* Baker et al., *ante*, p. 1012;

No. 15–6231. Valencia *v.* City of Santa Fe, New Mexico, et al., *ante*, p. 1012;

No. 15–6232. Valencia *v.* De Luca et al., *ante*, p. 1012;

No. 15–6343. Adkins *v.* Wetzel, Secretary, Pennsylvania Department of Corrections, et al., *ante*, p. 990;

No. 15–6572. McCann *v.* Federal Deposit Insurance Corporation, as Receiver for Lakeside Community Bank, *ante*, p. 1016;

No. 15–6622. Taylor *v.* United States, *ante*, p. 1017; and

No. 15–6803. Jackman *v.* United States, *ante*, p. 1038. Petitions for rehearing denied.

No. 14–10470. In re Ben-Ari, *ante*, p. 814. Motion of petitioner for leave to file petition for rehearing under seal with redacted copies for the public record granted. Petition for rehearing denied.

February 1, 2016

Miscellaneous Order

No. 15A724 (14–1504). Wittman et al. *v.* Personhuballah et al. D. C. E. D. Va. [Probable jurisdiction postponed, *ante*, p. 982.] Application for stay, presented to The Chief Justice, and by him referred to the Court, denied.

February 2, 2016

Certiorari Denied

No. 15–7928 (15A800). Jones *v.* Bryson, Commissioner, Georgia Department of Corrections, et al. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to Justice Thomas, and by him referred to the Court, denied. Certiorari denied. Reported below: 811 F. 3d 1288.

No. 15–7929 (15A801). Jones *v.* Chatman, Warden. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to Justice Thomas, and by him referred to the Court, denied. Certiorari denied.

February 3, 2016

Miscellaneous Order

No. 15A795. Gutierrez *v.* United States. Application for stay of surrender and extradition, presented to Justice Scalia, and by him referred to the Court, denied.

February 9, 2016

Dismissal Under Rule 46

No. 15–842. Achates Reference Publishing, Inc. *v.* Apple Inc. et al. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 803 F. 3d 652.

Miscellaneous Orders

No. 15A773. West Virginia et al. *v.* Environmental Protection Agency et al. Application for stay, submitted to The Chief Justice, and by him referred to the Court, granted. The Environmental Protection Agency's "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64662 (Oct. 23, 2015), is stayed pending disposition of applicants' petitions for review in the United States Court of Appeals for the District of Columbia Circuit and disposition of applicants' petition for writ of certiorari, if such writ is sought. If writ of certiorari is sought and the Court denies the petition, this order shall terminate automatically. If the Court grants the petition for writ of certiorari, this order shall terminate when the Court enters its judgment. Justice Ginsburg, Justice Breyer, Justice Sotomayor, and Justice Kagan would deny the application.

No. 15A776. Basin Electric Power Cooperative et al. *v.* Environmental Protection Agency et al. Application for stay, submitted to The Chief Justice, and by him referred to the Court, granted. The Environmental Protection Agency's "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64662 (Oct. 23, 2015), is stayed pending disposition of applicants' petitions for review in the United States Court of Appeals for the District of Columbia Circuit and disposition of applicants' petition for writ of certiorari, if such writ is sought. If writ of certiorari is sought and the Court denies the petition, this order shall termi-

nate automatically. If the Court grants the petition for writ of certiorari, this order shall terminate when the Court enters its judgment. JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would deny the application.

No. 15A778. MURRAY ENERGY CORP. ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. Application for stay, submitted to THE CHIEF JUSTICE, and by him referred to the Court, granted. The Environmental Protection Agency's "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64662 (Oct. 23, 2015), is stayed pending disposition of applicants' petitions for review in the United States Court of Appeals for the District of Columbia Circuit and disposition of applicants' petition for writ of certiorari, if such writ is sought. If writ of certiorari is sought and the Court denies the petition, this order shall terminate automatically. If the Court grants the petition for writ of certiorari, this order shall terminate when the Court enters its judgment. JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would deny the application.

No. 15A787. CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. Application for stay, submitted to THE CHIEF JUSTICE, and by him referred to the Court, granted. The Environmental Protection Agency's "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64662 (Oct. 23, 2015), is stayed pending disposition of applicants' petitions for review in the United States Court of Appeals for the District of Columbia Circuit and disposition of applicants' petition for writ of certiorari, if such writ is sought. If writ of certiorari is sought and the Court denies the petition, this order shall terminate automatically. If the Court grants the petition for writ of certiorari, this order shall terminate when the Court enters its judgment. JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would deny the application.

No. 15A793. NORTH DAKOTA *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. Application for stay, submitted to THE CHIEF JUSTICE, and by him referred to the Court, granted. The Environmental Protection Agency's "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating

Units," 80 Fed. Reg. 64662 (Oct. 23, 2015), is stayed pending disposition of applicants' petitions for review in the United States Court of Appeals for the District of Columbia Circuit and disposition of applicants' petition for writ of certiorari, if such writ is sought. If writ of certiorari is sought and the Court denies the petition, this order shall terminate automatically. If the Court grants the petition for writ of certiorari, this order shall terminate when the Court enters its judgment. JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would deny the application.

FEBRUARY 10, 2016

Rehearing Denied

No. 15–6557 (15A786). GARCIA *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1105. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for rehearing denied.

FEBRUARY 17, 2016

Certiorari Denied

No. 15–8157 (15A857). HITTSON *v.* CHATMAN, WARDEN. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

FEBRUARY 18, 2016

Miscellaneous Orders

No. 14–1373. UTAH *v.* STRIEFF. Sup. Ct. Utah. [Certiorari granted, 576 U. S. 1094.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–145. HUSKY INTERNATIONAL ELECTRONICS, INC. *v.* RITZ. C. A. 5th Cir. [Certiorari granted, *ante*, p. 971.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–274. WHOLE WOMAN'S HEALTH ET AL. *v.* HELLERSTEDT, COMMISSIONER, TEXAS DEPARTMENT OF STATE HEALTH

SERVICES, ET AL. C. A. 5th Cir. [Certiorari granted *sub nom. Whole Woman's Health* v. *Cole*, *ante*, p. 982.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion to allow counsel or guardian ad litem to represent all unborn persons denied. Motion of Indiana Tech Law School *Amicus* Project for leave to file brief as *amicus curiae* out of time granted.

FEBRUARY 19, 2016

Dismissal Under Rule 46

No. 15–361. ROSALES-MARTINEZ *v.* LYNCH, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1.

Miscellaneous Order

No. 15A809. MCCRORY, GOVERNOR OF NORTH CAROLINA, ET AL. *v.* HARRIS ET AL. D. C. M. D. N. C. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

FEBRUARY 25, 2016

Miscellaneous Order. (For Court's order making allotment of Justices, see *ante*, p. III.)

FEBRUARY 29, 2016

Certiorari Granted—Vacated and Remanded

No. 15–316. SCHUMACHER HOMES OF CIRCLEVILLE, INC. *v.* SPENCER ET UX. Sup. Ct. App. W. Va. Motion of Chamber of Commerce of the United States of America for leave to file brief as *amicus curiae* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *DIRECTV, Inc.* v. *Imburgia*, *ante*, p. 47. Reported below: 235 W. Va. 335, 774 S. E. 2d 1.

No. 15–805. BAKER, WARDEN, ET AL. *v.* ELVIK. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Davis* v. *Ayala*, 576 U. S. 257 (2015). Reported below: 612 Fed. Appx. 412.

No. 15–6053. RICHARDSON *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis*

granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Johnson* v. *United States*, 576 U. S. 591 (2015). Reported below: 793 F. 3d 612.

Certiorari Dismissed

No. 15–7307. MOORE *v.* GRIEVANCE COMMITTEE FOR THE SECOND, ELEVENTH, AND THIRTEENTH JUDICIAL DISTRICTS. Ct. App. N. Y. 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: 26 N. Y. 3d 961, 38 N. E. 3d 824.

No. 15–7364. WILLIAMS *v.* JAMES ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. 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. 15–7400. LEBLANC *v.* SCHUETTE. C. A. 6th Cir.;
No. 15–7401. LEBLANC *v.* DUGGAN ET AL. C. A. 6th Cir.;
No. 15–7402. LEBLANC *v.* ROBERT G. COTTON CORRECTIONAL FACILITY. C. A. 6th Cir.;
No. 15–7403. LEBLANC *v.* UNITED PETROLEUM EQUIPMENT. C. A. 6th Cir.;
No. 15–7404. LEBLANC *v.* LIGHTVOET. C. A. 6th Cir.;
No. 15–7481. LEBLANC *v.* FOLEY. C. A. 6th Cir.;
No. 15–7482. LEBLANC *v.* SHAW. C. A. 6th Cir.; and
No. 15–7483. LEBLANC *v.* SPARROW. C. A. 6th Cir. Motions 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*).

No. 15–7461. GREENE *v.* CHAPMAN. 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. 15–7506. WATSON *v.* O'BRIEN, WARDEN. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 610 Fed. Appx. 299.

No. 15–7667. MADURA ET UX. *v.* BAC HOME LOANS SERVICING L. P. ET AL. C. A. 11th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 15A595. SHERBOW *v.* UNITED STATES. Ct. App. D. C. Application for stay, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. 15A650 (15–7501). ROBINSON ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, SANTA CLARA COUNTY, ET AL. Sup. Ct. Cal. Application for stay, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. D–2864. IN RE DISBARMENT OF ROSEN. Disbarment entered. [For earlier order herein, see *ante*, p. 1027.]

No. D–2869. IN RE DISCIPLINE OF O'BRIEN. Christopher W. O'Brien, of Wichita, Kan., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2870. IN RE DISCIPLINE OF DENICOLA. Ronald John Denicola, of Cincinnati, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2871. IN RE DISCIPLINE OF FREDERICKS. Kristi Ann Fredericks, of Downingtown, Pa., is suspended from the practice

of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2872. In re Discipline of Kwasny. Richard J. Kwasny, of Yardley, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2873. In re Discipline of Kaufman. Paul Michael Kaufman, of Cleveland, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2874. In re Discipline of Cohen. David M. Cohen, of Stoughton, Mass., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2875. In re Discipline of Konigsberg. Paul Jay Konigsberg, of Palm Beach Gardens, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2876. In re Discipline of Lavallee. Raymond G. Lavallee, of Hauppauge, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2877. In re Discipline of Schlesinger. Stuart A. Schlesinger, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2878. In re Discipline of Fasciana. John Edward Fasciana, of Bedford Hills, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2879. In re Discipline of Gallimore. Allan G. Gallimore, of Pittsburgh, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2880. In re Discipline of London. Edwin L. London, of Langhorne, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 15M77. Huafeng Xu *v.* Walsh;
No. 15M78. Reade *v.* Galvin et al.;
No. 15M79. Lesnick-Oakes *v.* American Airlines, Inc., et al.;
No. 15M80. Seungjin Kim *v.* Google Inc.;
No. 15M81. Giddens *v.* UPS Supply Chain Solutions;
No. 15M83. Polzer *v.* Allegheny County, Pennsylvania, et al.;
No. 15M84. Watts *v.* California;
No. 15M86. Jones *v.* Morrow, Warden; and
No. 15M87. Moore *v.* Wells Fargo Bank, N. A. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 15M82. Joseph H. *v.* California. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 15M85. Furch *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 14–1278. Peabody Coal Co. *v.* Director, Office of Workers' Compensation Programs, Department of Labor, et al., *ante*, p. 816. The Court approves the parties' agreed upon attorney's fee of $25,000, and expenses of $2,508.34, to be awarded by the Director, Office of Workers' Compensation Programs from the Black Lung Trust Fund to respondent Eva Elizabeth Hill.

No. 14–1468. Birchfield *v.* North Dakota. Sup. Ct. N. D.;

No. 14–1470. BERNARD *v.* MINNESOTA. Sup. Ct. Minn.; and

No. 14–1507. BEYLUND *v.* LEVI, DIRECTOR, NORTH DAKOTA DEPARTMENT OF TRANSPORTATION. Sup. Ct. N. D. [Certiorari granted, *ante*, p. 1045.] Motion of Indiana Tech Law School *Amicus* Project for leave to file brief as *amicus curiae* in support of neither party granted. Motion of petitioners to dispense with printing joint appendix granted.

No. 14–1504. WITTMAN ET AL. *v.* PERSONHUBALLAH ET AL. D. C. E. D. Va. [Probable jurisdiction postponed, *ante*, p. 982.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of state appellees for divided argument and enlargement of time for oral argument granted, and the time is divided as follows: 35 minutes for appellants, 10 minutes for state appellees, 15 minutes for private appellees, and 10 minutes for the Solicitor General.

No. 15–138. RJR NABISCO, INC., ET AL. *v.* EUROPEAN COMMUNITY ET AL. C. A. 2d Cir. [Certiorari granted, 576 U. S. 1095.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 15–423. BOLIVARIAN REPUBLIC OF VENEZUELA ET AL. *v.* HELMERICH & PAYNE INTERNATIONAL DRILLING CO. ET AL.; and

No. 15–698. HELMERICH & PAYNE INTERNATIONAL DRILLING CO. ET AL. *v.* BOLIVARIAN REPUBLIC OF VENEZUELA ET AL. C. A. D. C. Cir.;

No. 15–486. IVY ET AL. *v.* MORATH, TEXAS COMMISSIONER OF EDUCATION. C. A. 5th Cir.; and

No. 15–649. CZYZEWSKI ET AL. *v.* JEVIC HOLDING CORP. ET AL. C. A. 3d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 15–6181. FAISON *v.* UNITED STATES. C. A. 3d Cir. Motion for leave to file an amended petition for writ of certiorari denied.

No. 15–6228. YOUNGBLOOD *v.* SUPERIOR COURT OF CALIFORNIA, BUTTE COUNTY, ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1003] denied.

No. 15–6373. LANCASTER *v.* TEXAS (two judgments). Ct. Crim. App. Tex. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1026] denied.

No. 15–6566. SPENCE *v.* WILLIS. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1059] denied.

No. 15–6567. SPENCE *v.* WILLIS. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1059] denied.

No. 15–6698. IN RE SOLIS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1006] denied.

No. 15–6704. IN RE SOLIS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1006] denied.

No. 15–6932. STOLLER *v.* CONSUMER FINANCIAL PROTECTION BUREAU ET AL. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1057] denied.

No. 15–6957. GREENE *v.* CALIFORNIA ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1099] denied.

No. 15–7133. KINNEY *v.* CLARK. Ct. App. Cal., 2d App. Dist., Div. 1;

No. 15–7149. GONZALES *v.* INDUSTRIAL CLAIM APPEALS OFFICE OF COLORADO ET AL. Ct. App. Colo.;

No. 15–7152. LATKA *v.* MILES ET AL. C. A. 4th Cir.;

No. 15–7182. LUNDAHL *v.* LUNDAHL. Sup. Ct. Wyo.;

No. 15–7411. TANIKUMI, AKA GONZALEZ *v.* WALT DISNEY CO. ET AL.;

No. 15–7468. HOFELICH *v.* LACY ET AL. C. A. 9th Cir.;

No. 15–7546. THOMAS *v.* NORTH CAROLINA. Ct. App. N. C.; and

No. 15–7570. HOLBROOK *v.* RONNIES LLC, DBA RONNY'S RV PARK. Dist. Ct. App. Fla., 4th Dist. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are al-

lowed until March 21, 2016, 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. 15–7352. ADKINS *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1100] denied.

No. 15–7539. WALSH *v.* PNC BANK ET AL. Ct. App. Cal., 3d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 21, 2016, 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. JUSTICE ALITO took no part in the consideration or decision of this motion.

No. 15–7756. IN RE DRAGO;
No. 15–7852. IN RE SUTTON;
No. 15–7886. IN RE SPENCER;
No. 15–7933. IN RE HILLS;
No. 15–8003. IN RE GIDDENS;
No. 15–8018. IN RE BRACKEN;
No. 15–8059. IN RE COATES; and
No. 15–8076. IN RE MOLESKI. Petitions for writs of habeas corpus denied.

No. 15–731. IN RE SHARP;
No. 15–745. IN RE FARR;
No. 15–7164. IN RE ALBRA;
No. 15–7210. IN RE JOSEPH;
No. 15–7275. IN RE VINNIE;
No. 15–7460. IN RE DAVIS; and
No. 15–7757. IN RE RAY. Petitions for writs of mandamus denied.

No. 15–744. IN RE FLORIMONTE;
No. 15–770. IN RE BARTHOLOMEW; and
No. 15–7697. IN RE TUNSTALL. Petitions for writs of mandamus and/or prohibition denied.

No. 15–7391. IN RE MURRAY. Petition for writ of prohibition denied.

Certiorari Denied

No. 14–8112. VIALVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 762 F. 3d 467.

No. 14–10247. BODDIE *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 590 Fed. Appx. 978.

No. 15–195. DOE ET AL. *v.* CHRISTIE, GOVERNOR OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 783 F. 3d 150.

No. 15–222. BARNES ET UX. *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 776 F. 3d 1134.

No. 15–293. BURGOS ET AL. *v.* NEW JERSEY ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 222 N. J. 175, 118 A. 3d 270.

No. 15–371. ESCOBAR *v.* CELEBRATION CRUISE OPERATOR, INC. C. A. 11th Cir. Certiorari denied. Reported below: 805 F. 3d 1279.

No. 15–372. CARVAL UK LTD. *v.* GIDDENS, TRUSTEE FOR THE SIPA LIQUIDATION OF LEHMAN BROTHERS INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 791 F. 3d 277.

No. 15–483. FREW ET AL. *v.* TRAYLOR, COMMISSIONER, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 780 F. 3d 320.

No. 15–507. SENSATIONAL SMILES, LLC, DBA SMILE BRIGHT *v.* MULLEN, COMMISSIONER, CONNECTICUT DEPARTMENT OF PUBLIC HEALTH, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 793 F. 3d 281.

No. 15–511. LAW OFFICE OF JOSEPH ONWUTEAKA, P. C., ET AL. *v.* SERNA. C. A. 5th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 146.

No. 15–533. ISOM *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 31 N. E. 3d 469.

No. 15–541. WESTERN WORLD, INC. *v.* PEREZ, SECRETARY OF LABOR. C. A. 3d Cir. Certiorari denied. Reported below: 604 Fed. Appx. 188.

No. 15–549. Direct Digital, LLC *v.* Mullins. C. A. 7th Cir. Certiorari denied. Reported below: 795 F. 3d 654.

No. 15–553. Kucera et al. *v.* Jefferson County Board of School Commissioners. C. A. 6th Cir. Certiorari denied. Reported below: 788 F. 3d 580.

No. 15–559. Arthrex, Inc. *v.* Smith & Nephew, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 603 Fed. Appx. 981.

No. 15–566. Bolin et al. *v.* Milan. C. A. 7th Cir. Certiorari denied. Reported below: 795 F. 3d 726.

No. 15–569. Kentucky Department of Revenue *v.* Bulk Petroleum Corp. et al. C. A. 7th Cir. Certiorari denied. Reported below: 796 F. 3d 667.

No. 15–571. Spady, Individually and as Administratrix of the Estate of Spady *v.* Rodgers et al. C. A. 3d Cir. Certiorari denied. Reported below: 800 F. 3d 633.

No. 15–573. McCleary-Evans *v.* Maryland Department of Transportation, State Highway Administration. C. A. 4th Cir. Certiorari denied. Reported below: 780 F. 3d 582.

No. 15–574. Mueller *v.* Mueller. Sup. Ct. Ill. Certiorari denied. Reported below: 2015 IL 117876, 34 N. E. 3d 538.

No. 15–592. STC, Inc. *v.* Global Traffic Technologies, LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 620 Fed. Appx. 895.

No. 15–595. Sorensen *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 801 F. 3d 1217.

No. 15–597. Wal-Mart Stores, Inc. *v.* Phipps et al. C. A. 6th Cir. Certiorari denied. Reported below: 792 F. 3d 637.

No. 15–599. American Farm Bureau Federation et al. *v.* Environmental Protection Agency et al. C. A. 3d Cir. Certiorari denied. Reported below: 792 F. 3d 281.

No. 15–608. Olson *v.* Smith et al. C. A. 9th Cir. Certiorari denied. Reported below: 609 Fed. Appx. 370.

No. 15–611. First American Title Insurance Co. *v.* Federal Deposit Insurance Corporation. C. A. 11th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 522.

No. 15–639. ePlus, Inc. *v.* Lawson Software, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 789 F. 3d 1349.

No. 15–645. Marshall et al. *v.* National Football League. C. A. 8th Cir. Certiorari denied. Reported below: 787 F. 3d 502.

No. 15–677. Nobach *v.* Woodland Village Nursing Center, LLC. C. A. 5th Cir. Certiorari denied. Reported below: 799 F. 3d 374.

No. 15–689. Jones, Secretary, Florida Department of Corrections, et al. *v.* Thompson. C. A. 11th Cir. Certiorari denied. Reported below: 606 Fed. Appx. 495.

No. 15–694. Harman International Industries, Inc., et al. *v.* Arkansas Public Employees Retirement System et al. C. A. D. C. Cir. Certiorari denied. Reported below: 791 F. 3d 90.

No. 15–696. Sayman et al. *v.* Goddard & Peterson, PLLC, et al. C. A. 4th Cir. Certiorari denied. Reported below: 606 Fed. Appx. 101.

No. 15–700. Myer-Bennett *v.* Lomont. Sup. Ct. La. Certiorari denied. Reported below: 2014–2483 (La. 6/30/15), 172 So. 3d 620.

No. 15–707. Doe et al. *v.* Drummond Co., Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 782 F. 3d 576.

No. 15–708. California Association of Professional Firefighters et al. *v.* Barboza. C. A. 9th Cir. Certiorari denied. Reported below: 799 F. 3d 1257.

No. 15–710. Jaramillo *v.* Bank of America, N. A. Sup. Ct. Fla. Certiorari denied. Reported below: 173 So. 3d 963.

No. 15–725. Media Rights Technologies, Inc. *v.* Capitol One Financial Corp. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 800 F. 3d 1366.

No. 15–726. D. D., By and Through His Parents, Dabney et al., et al. *v.* Niles, Commissioner, Georgia Department of Juvenile Justice. C. A. 11th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 654.

No. 15–727. City of Springfield, Illinois, et al. *v.* Norton et al. C. A. 7th Cir. Certiorari denied. Reported below: 806 F. 3d 411.

No. 15–728. McCormack, Executor of the Will of Salvati *v.* Fernandez, as Guardian of the Property and Co-Guardian of the Person of Salvati, Deceased. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 127 App. Div. 3d 584, 8 N. Y. S. 3d 108.

No. 15–730. Sawyer *v.* Smith, Superintendent, State Correctional Institution at Muncy, et al. C. A. 3d Cir. Certiorari denied. Reported below: 619 Fed. Appx. 163.

No. 15–736. Alexsam, Inc. *v.* Gap, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 621 Fed. Appx. 983.

No. 15–740. D. Z., by His Next Friend, Thompson *v.* Buell. C. A. 7th Cir. Certiorari denied. Reported below: 796 F. 3d 749.

No. 15–743. Flowers *v.* City of Madison, Wisconsin, et al. Ct. App. Wis. Certiorari denied. Reported below: 2014 WI App 110, 357 Wis. 2d 720, 855 N. W. 2d 903.

No. 15–747. Hausch *v.* Ecklond et al. C. A. 2d Cir. Certiorari denied. Reported below: 604 Fed. Appx. 59.

No. 15–753. Jaye *v.* Oak Knoll Village Condominium Owners Assn. et al. Super. Ct. N. J., App. Div. Certiorari denied.

No. 15–757. Machala *v.* Estate of Nemec. Ct. App. D. C. Certiorari denied. Reported below: 120 A. 3d 88.

No. 15–762. Duggan *v.* Department of the Air Force et al. C. A. 5th Cir. Certiorari denied. Reported below: 617 Fed. Appx. 321.

No. 15–764. Rutherford *v.* Henderson Municipal Court, Nevada, et al. Sup. Ct. Nev. Certiorari denied. Reported below: 131 Nev. 1342.

No. 15–766. Wilson *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 15–767. Michaud *v.* Calderone et al. C. A. 1st Cir. Certiorari denied.

No. 15–768. Angino & Rovner, P. C., et al. *v.* Santander Bank, N. A. Super. Ct. Pa. Certiorari denied. Reported below: 121 A. 3d 1143.

No. 15–769. Angino & Rovner, P. C., et al. *v.* Santander Bank, N. A. Super. Ct. Pa. Certiorari denied. Reported below: 118 A. 3d 457.

No. 15–771. Huete *v.* Bank of New York Mellon. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 177 So. 3d 266.

No. 15–778. Ballai *v.* Kiewit Power Constructors, Co., et al. Ct. App. Kan. Certiorari denied. Reported below: 51 Kan. App. 2d x, 342 P. 3d 2.

No. 15–782. Doane *v.* Choi et al. C. A. 1st Cir. Certiorari denied.

No. 15–788. Margelis *v.* IndyMac Bank et al. C. A. 6th Cir. Certiorari denied.

No. 15–790. Clemens *v.* United States et al. C. A. 1st Cir. Certiorari denied.

No. 15–792. Guttormson *v.* North Dakota. Sup. Ct. N. D. Certiorari denied. Reported below: 2015 ND 235, 869 N. W. 2d 737.

No. 15–793. Gray-Brock *v.* Illinois American Water Co. et al. C. A. 7th Cir. Certiorari denied. Reported below: 609 Fed. Appx. 867.

No. 15–794. Walker *v.* Walker. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 15–796. Odion *v.* Varon et al. Ct. App. Ga. Certiorari denied.

No. 15–799. Burch *v.* Coca-Cola Bottling Company United, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 916.

No. 15–803. SCOTT *v.* FRANKEL ET AL. C. A. D. C. Cir. Certiorari denied.

No. 15–804. SOUTHERN CALIFORNIA INSTITUTE OF LAW *v.* BIGGERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 665.

No. 15–806. MUNNS ET AL. *v.* KERRY, SECRETARY OF STATE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 782 F. 3d 402.

No. 15–807. DANSBERRY *v.* PFISTER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 801 F. 3d 863.

No. 15–810. WHITMAN *v.* LASALLE BANK N. A., TRUSTEE. Super. Ct. Pa. Certiorari denied. Reported below: 116 A. 3d 685.

No. 15–811. ZUTRAU *v.* JANSING ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 123 A. 3d 938.

No. 15–813. MUECKE CO., INC., ET AL. *v.* CVS CAREMARK CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 837.

No. 15–814. OWEN THOMAS, INC. *v.* ATIAPO. Ct. App. N. C. Certiorari denied. Reported below: 240 N. C. App. 1, 770 S. E. 2d 684.

No. 15–815. SQUALLS *v.* BRENNAN, POSTMASTER GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 601 Fed. Appx. 457.

No. 15–817. SCOTT *v.* SAMUEL I. WHITE, P. C., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 191.

No. 15–818. RUIZ *v.* CITY OF NORTH LAS VEGAS, NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 131 Nev. 1264.

No. 15–819. CARTER ET UX. *v.* FIRST SOUTH FARM CREDIT, ACA, ET AL. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 49,531 (La. App. 2 Cir. 1/14/15), 161 So. 3d 928.

No. 15–822. BALDONE *v.* ROGERS, TERREBONNE PARISH REGISTRAR OF VOTERS. Ct. App. La., 1st Cir. Certiorari denied.

Reported below: 2015–1356 (La. App. 1 Cir. 9/21/15), 182 So. 3d 1005.

No. 15–825. Burgis et al. *v.* New York City Department of Sanitation et al. C. A. 2d Cir. Certiorari denied. Reported below: 798 F. 3d 63.

No. 15–828. Billhartz, Executor of the Estate of Billhartz *v.* Commissioner of Internal Revenue. C. A. 7th Cir. Certiorari denied. Reported below: 794 F. 3d 794.

No. 15–832. Goodall-Gaillard *v.* New Jersey Department of Corrections et al. C. A. 3d Cir. Certiorari denied. Reported below: 625 Fed. Appx. 123.

No. 15–836. Livingston County, Michigan, et al. *v.* American Civil Liberties Union Fund of Michigan. C. A. 6th Cir. Certiorari denied. Reported below: 796 F. 3d 636.

No. 15–837. Discount Inn, Inc. *v.* City of Chicago, Illinois. C. A. 7th Cir. Certiorari denied. Reported below: 803 F. 3d 317.

No. 15–839. Holub *v.* Gdowski et al. C. A. 10th Cir. Certiorari denied. Reported below: 802 F. 3d 1149.

No. 15–856. Trust Title Co. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 610 Fed. Appx. 1014.

No. 15–857. Marquez Carrillo *v.* Lynch, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 781 F. 3d 1155.

No. 15–860. Schneider *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 801 F. 3d 186.

No. 15–874. Mire *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 330.

No. 15–875. Clough *v.* Franklin County Children's Services, Ohio, et al. Sup. Ct. Ohio. Certiorari denied. Reported below: 144 Ohio St. 3d 83, 2015-Ohio-3425, 40 N. E. 3d 1132.

No. 15–885. Pablo Gomez *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 400.

No. 15–887. Hentzen *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 427.

No. 15–893. Universal Lighting Technologies, Inc. *v.* Lighting Ballast Control LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 790 F. 3d 1329.

No. 15–897. Alomari *v.* Ohio Department of Public Safety et al. C. A. 6th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 558.

No. 15–904. Aaron *v.* Alabama Alcoholic Beverage Control Board et al. C. A. 11th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 823.

No. 15–908. Hayden *v.* Wal-Mart Stores, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 619 Fed. Appx. 22.

No. 15–915. Southern California Institute of Law *v.* State Bar of California et al. C. A. 9th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 659.

No. 15–936. Multi Time Machine, Inc. *v.* Amazon.com, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 804 F. 3d 930.

No. 15–959. Gagacki *v.* Green Tree Servicing, LLC. C. A. 6th Cir. Certiorari denied.

No. 15–976. Nagle *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 803 F. 3d 167.

No. 15–5613. Moreira *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 605 Fed. Appx. 852.

No. 15–5697. Jones *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 15–5767. Collie *v.* South Carolina Commission on Lawyer Conduct. Sup. Ct. S. C. Certiorari denied.

No. 15–5947. Macedo-Flores *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 788 F. 3d 181.

No. 15–5976. Villery *v.* Sherman, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 607 Fed. Appx. 700.

No. 15–6006. Mathews *v.* Bechtold, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 597 Fed. Appx. 1048.

No. 15–6060. Wood *v.* Florida Atlantic University Board of Trustees. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 162 So. 3d 1028.

No. 15–6099. Fleming *v.* Shore Health System, Inc. Ct. Sp. App. Md. Certiorari denied. Reported below: 221 Md. App. 730 and 739.

No. 15–6206. Clinkscale *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 100 A. 3d 116.

No. 15–6224. Jackson *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 471 Mass. 262, 28 N. E. 3d 437.

No. 15–6258. Cassano *v.* Ohio. Ct. App. Ohio, 5th App. Dist., Richland County. Certiorari denied. Reported below: 2013-Ohio-1783.

No. 15–6408. Duncan *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 599 Fed. Appx. 679.

No. 15–6448. Frierson *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 611 Fed. Appx. 82.

No. 15–6450. Goad *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 788 F. 3d 873.

No. 15–6593. Morris *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 15–6615. Allen *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 280.

No. 15–6657. Busby *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 627.

No. 15–6660. Rivera *v.* Creech. Super. Ct. N. J., App. Div. Certiorari denied.

No. 15–6662. Gibbs *v.* Shannon et al. C. A. 3d Cir. Certiorari denied. Reported below: 618 Fed. Appx. 59.

No. 15–6669. Abdullah *v.* Idaho. Sup. Ct. Idaho. Certiorari denied. Reported below: 158 Idaho 386, 348 P. 3d 1.

No. 15–6761. Machulas *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 621 Fed. Appx. 629.

No. 15–6798. Cunningham *v.* Davis, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 922.

No. 15–6816. Okezie *v.* Leonard et al. C. A. 4th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 788.

No. 15–6821. Mazarego-Salazar *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 234.

No. 15–6827. Emery *v.* Bogle et al. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 171 So. 3d 735.

No. 15–6853. Duerst *v.* Placer County, California, et al. C. A. 9th Cir. Certiorari denied.

No. 15–6863. Fletcher et vir *v.* Park County, Montana. Sup. Ct. Mont. Certiorari denied. Reported below: 379 Mont. 538, 353 P. 3d 508.

No. 15–6880. Andrews *v.* Superior Court of California, Los Angeles County, et al. Ct. App. Cal., 2d App. Dist., Div. 7. Certiorari denied.

No. 15–6896. Kinney *v.* Clark. C. A. 9th Cir. Certiorari denied.

No. 15–6897. Kinney *v.* Chomsky et al. C. A. 9th Cir. Certiorari denied.

No. 15–6916. Kinney *v.* Steele et al. Ct. App. Cal., 1st App. Dist., Div. 4. Certiorari denied.

No. 15–7083. Breakiron *v.* Wetzel, Secretary, Pennsylvania Department of Corrections, et al. C. A. 3d Cir. Certiorari denied.

No. 15–7101. Conner *v.* Humphrey, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 784 F. 3d 752.

No. 15–7107. Holloway *v.* City of Albany, New York, et al. C. A. 2d Cir. Certiorari denied.

No. 15–7119. EUSEBIO GONZALES *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 160 So. 3d 438.

No. 15–7122. MACIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 789 F. 3d 1011.

No. 15–7127. SEEBOTH *v.* AHLIN, DIRECTOR, CALIFORNIA DEPARTMENT OF STATE HOSPITALS. C. A. 9th Cir. Certiorari denied. Reported below: 789 F. 3d 1099.

No. 15–7129. POUYEH *v.* BASCOM PALMER EYE INSTITUTE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 802.

No. 15–7131. LADEAIROUS *v.* GOLDSMITH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 315.

No. 15–7134. LAROCHE *v.* DUNLAP, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 607 Fed. Appx. 323.

No. 15–7136. NOTICE *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 15–7138. NASH *v.* ZATECKY, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 15–7139. SELDEN *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 177 So. 3d 1271.

No. 15–7144. STRAKER ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 800 F. 3d 570.

No. 15–7155. BEESON *v.* PERRITT, SUPERINTENDENT, LUMBERTON CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 606 Fed. Appx. 115.

No. 15–7156. BRADLEY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 15–7157. BACKSTROM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 15–7161. NORTON *v.* MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2015 ME 100, 121 A. 3d 105.

No. 15–7163. Campbell *v.* Illinois. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2014 IL App (4th) 130177–U.

No. 15–7167. Lankford *v.* Lankford. Int. Ct. App. Haw. Certiorari denied. Reported below: 134 Haw. 539, 345 P. 3d 205.

No. 15–7172. Witkin *v.* Frauenheim, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–7174. Giles *v.* Transit Employees Federal Credit Union. C. A. D. C. Cir. Certiorari denied. Reported below: 794 F. 3d 1.

No. 15–7175. Dean *v.* Beckstrom, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–7176. Tyler *v.* Joyner et al. C. A. 4th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 176.

No. 15–7179. Pruitt *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 15–7181. Manning *v.* Alaska Department of Fish and Game et al. Sup. Ct. Alaska. Certiorari denied. Reported below: 355 P. 3d 530.

No. 15–7183. Vasquez *v.* New York. Ct. App. N. Y. Certiorari denied. Reported below: 25 N. Y. 3d 1209, 37 N. E. 3d 1174.

No. 15–7184. Whittker *v.* Kansas. Ct. App. Kan. Certiorari denied. Reported below: 50 Kan. App. 2d xxxvii, 324 P. 3d 1153.

No. 15–7186. Taylor *v.* New York. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 126 App. Div. 3d 1120, 4 N. Y. S. 3d 743.

No. 15–7196. Watkins *v.* Michigan. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 15–7197. Johnson *v.* International Union, UAW, AFL–CIO, et al. C. A. 6th Cir. Certiorari denied.

No. 15–7200. Koenig *v.* Cortez et al. C. A. 4th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 814.

No. 15–7202. Mitchell *v.* United Medical Systems Inc. et al. C. A. 6th Cir. Certiorari denied.

No. 15–7204. Pianka *v.* De La Rosa, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 15–7205. Jordan *v.* Soto, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–7207. Gonzalez De La Cruz *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 466 S. W. 3d 855.

No. 15–7211. Mayfield *v.* Cassady, Superintendent, Jefferson City Correctional Center. Sup. Ct. Mo. Certiorari denied.

No. 15–7215. Lamont *v.* Crews et al. C. A. 4th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 268.

No. 15–7216. LordMaster, fka Goldader *v.* Epps et al. C. A. 8th Cir. Certiorari denied.

No. 15–7217. Mauldin *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 15–7220. Rodriguez *v.* Kernan, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied.

No. 15–7221. Yo, fka Ballard *v.* Ratliffe-Walker, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 678.

No. 15–7224. Cochran *v.* California. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 15–7231. Lindsey *v.* Morgan, Warden. C. A. 5th Cir. Certiorari denied.

No. 15–7232. Jay *v.* Wright et al. C. A. 11th Cir. Certiorari denied.

No. 15–7234. Crudup *v.* Englehart et al. C. A. 4th Cir. Certiorari denied. Reported below: 590 Fed. Appx. 226.

No. 15–7238. Encarnacion *v.* Annucci, Commissioner, New York Department of Corrections and Community Supervision, et al. C. A. 2d Cir. Certiorari denied.

No. 15–7240. Turner *v.* Mahally, Superintendent, State Correctional Institution at Dallas, et al. C. A. 3d Cir. Certiorari denied.

No. 15–7244. Potter *v.* University of Maryland. Ct. Sp. App. Md. Certiorari denied.

No. 15–7245. Lawson *v.* Washington. Ct. App. Wash. Certiorari denied. Reported below: 185 Wash. App. 349, 340 P. 3d 979.

No. 15–7246. Roberson *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 353.

No. 15–7252. Brooks *v.* Diaz et al. C. A. 4th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 254.

No. 15–7256. Cole *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 15–7260. Kosovskiy *v.* E*Trade Bank et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 15–7261. Knott *v.* McLaughlin, Warden. C. A. 11th Cir. Certiorari denied.

No. 15–7263. Matthews *v.* California et al. C. A. 9th Cir. Certiorari denied.

No. 15–7264. Lara *v.* Biter, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–7266. Edmonds *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 603 Fed. Appx. 236.

No. 15–7268. Edwards *v.* Curtin, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–7269. Edwards *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 15–7270. DELARM *v.* WOFFORD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–7273. WALKER *v.* FLORIDA DEPARTMENT OF CORRECTIONS (three judgments). Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 173 So. 3d 891 (first judgment); 171 So. 3d 708 (second judgment); 166 So. 3d 776 (third judgment).

No. 15–7274. WILLIAMS *v.* WINGARD, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–7283. KING *v.* LIVINGSTON ET AL. C. A. 5th Cir. Certiorari denied.

No. 15–7288. MOSS *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE. Sup. Ct. Pa. Certiorari denied. Reported below: 632 Pa. 432, 120 A. 3d 296.

No. 15–7289. POSITANO *v.* PENNSYLVANIA CARDIOTHORACIC SURGERY, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 610 Fed. Appx. 191.

No. 15–7291. OWENS *v.* TRAMMELL, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 792 F. 3d 1234.

No. 15–7292. WOOD *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 304.

No. 15–7293. TORRES, AKA MUHAMMAD *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–7294. TROGLIN *v.* COOK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7295. LIN GAO *v.* ST. LOUIS LANGUAGE IMMERSION SCHOOLS, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 607 Fed. Appx. 621.

No. 15–7297. KINNEY *v.* THREE ARCH BAY COMMUNITY SERVICES DISTRICT ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 15–7298. MARSHALL *v.* CRUTCHFIELD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7302. CHUTE *v.* NIFTY-FIFTIES, INC., ET AL. Sup. Ct. S. D. Certiorari denied.

No. 15–7306. DUHART *v.* FOX, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 647.

No. 15–7308. PETRICK *v.* THORNTON. C. A. 4th Cir. Certiorari denied. Reported below: 606 Fed. Appx. 72.

No. 15–7310. ROSIERE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–7318. GARY *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2015 IL App (5th) 120478–U.

No. 15–7322. SMITH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 207 So. 3d 803.

No. 15–7323. HICKS *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 497 Mich. 952, 858 N. W. 2d 42.

No. 15–7329. JOHNSON *v.* STEWART, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 15–7331. ROUNDTREE *v.* OHIO. Ct. App. Ohio, 6th App. Dist., Lucas County. Certiorari denied. Reported below: 2015-Ohio-2230.

No. 15–7333. WILSON *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–7334. SHOWALTER *v.* LEE ET AL. C. A. 4th Cir. Certiorari denied.

No. 15–7336. ROBERTSON *v.* KANE, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–7339. COLE *v.* JACKSON, ACTING WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7341. DAKER *v.* WARREN, SHERIFF, COBB COUNTY, GEORGIA;

No. 15–7342. DAKER *v.* WARREN, SHERIFF, COBB COUNTY, GEORGIA;

No. 15–7343. DAKER *v.* UNNAMED DEFENDANT;

No. 15–7344. DAKER *v.* WARREN, SHERIFF, COBB COUNTY, GEORGIA; and

No. 15–7345. DAKER *v.* WARREN, SHERIFF, COBB COUNTY, GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 15–7346. SAMUL *v.* UTAH. Ct. App. Utah. Certiorari denied. Reported below: 2015 UT App 23, 343 P. 3d 719.

No. 15–7347. AASE *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 15–7348. BOYKIN *v.* MCMAHON ET AL. C. A. 2d Cir. Certiorari denied.

No. 15–7353. SMITH *v.* 241ST DISTRICT COURT OF SMITH COUNTY, TEXAS, ET AL. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 15–7355. KARNAZES *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 15–7356. SPEAR *v.* KIRKLAND ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–7359. SAUER *v.* HAWKINS, CORRECTIONAL ADMINISTRATOR, NASH CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 167.

No. 15–7365. JACKSON *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 15–7366. STUCKEY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–7367. PERAZA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 467 S. W. 3d 508.

No. 15–7368. MORRIS *v.* NEVEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7370. OMRAN *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied.

No. 15–7375. KELLY *v.* STREETER. Ct. App. Mich. Certiorari denied.

No. 15–7376. FENG LI *v.* PENG ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 610 Fed. Appx. 126.

No. 15–7382. THOMPSON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 183 Wash. App. 1002.

No. 15–7386. JONES *v.* BUTLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 15–7389. PETREY *v.* BARTLETT, JUDGE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–7396. SIDES *v.* TEXAS (two judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 15–7405. WILEY *v.* COOK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7407. LUMENTUT *v.* NDOH, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–7408. THOMAS *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. (two judgments). C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 66 (first judgment) and 89 (second judgment).

No. 15–7409. THOMAS *v.* PATTON, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 382.

No. 15–7412. ALI *v.* MASCARA, SHERIFF, ST. LUCIE COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 15–7413. BROWN *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 332 Ga. App. XXVI.

No. 15–7415. BENSON *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–7416. CROSKEY *v.* ASPHALT CONTRACTORS, INC. Ct. Civ. App. Ala. Certiorari denied. Reported below: 212 So. 3d 193.

No. 15–7417. Boatright *v.* Kelley, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 15–7419. Arrington *v.* Courtyard Citiflats, LLC, et al. Sup. Ct. Ala. Certiorari denied. Reported below: 191 So. 3d 787.

No. 15–7420. Ackerman *v.* Mercy Behavioral Health et al. C. A. 3d Cir. Certiorari denied. Reported below: 617 Fed. Appx. 114.

No. 15–7423. Moore *v.* Fruin. C. A. 9th Cir. Certiorari denied. Reported below: 601 Fed. Appx. 563.

No. 15–7424. Rajkovic *v.* Obama, President of the United States, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 598 Fed. Appx. 791.

No. 15–7425. Rajkovic *v.* Lynch, Attorney General, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 598 Fed. Appx. 791.

No. 15–7427. Lewis *v.* United States et al. C. A. 7th Cir. Certiorari denied.

No. 15–7430. Lempar *v.* Livingston, Executive Director, Texas Department of Criminal Justice, et al. C. A. 5th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 398.

No. 15–7434. Walker *v.* Florida Department of Corrections. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 178 So. 3d 404.

No. 15–7435. Portnoy *v.* Yolo County, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 586.

No. 15–7436. Giraldes *v.* Ramirez-Palmer, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–7437. Hunter *v.* Benton, Sheriff, Highland County, Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 157 So. 3d 1044.

No. 15–7438. Swanson *v.* Neven, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 15–7440. Quintero *v.* Jones, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 962.

No. 15–7442. Keck *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 131 Nev. 1307.

No. 15–7445. Serna *v.* Allen et al. C. A. 10th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 384.

No. 15–7446. Fries *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 796 F. 3d 1112.

No. 15–7447. Holloway *v.* Kelley, Director, Arkansas Department of Correction, et al. C. A. 8th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 860.

No. 15–7448. Constant *v.* United States Citizenship and Immigration Service. C. A. 6th Cir. Certiorari denied.

No. 15–7449. Harnage *v.* Schulman et al. App. Ct. Conn. Certiorari denied. Reported below: 156 Conn. App. 903, 110 A. 3d 549.

No. 15–7453. Dowdy *v.* Curry, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 617 Fed. Appx. 772.

No. 15–7456. Johnston *v.* Legrand, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 15–7457. Patterson *v.* Stewart, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–7458. Simpson *v.* Curtin, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–7464. Fisher *v.* Nelson et al. C. A. 5th Cir. Certiorari denied. Reported below: 606 Fed. Appx. 186.

No. 15–7465. Robinson *v.* New York. Ct. App. N. Y. Certiorari denied. Reported below: 26 N. Y. 3d 1042, 43 N. E. 3d 382.

No. 15–7466. Collington, aka Cave *v.* Owens et al. C. A. D. C. Cir. Certiorari denied. Reported below: 622 Fed. Appx. 1.

No. 15–7467. Gouch-Onassis *v.* California. C. A. 9th Cir. Certiorari denied.

No. 15–7469. Gomez *v.* Texas. Ct. App. Tex., 12th Dist. Certiorari denied. Reported below: 459 S. W. 3d 651.

No. 15–7470. Hamilton *v.* Schloffer. Ct. App. Colo. Certiorari denied.

No. 15–7471. Hood *v.* Woods et al. C. A. 6th Cir. Certiorari denied.

No. 15–7472. Epshteyn *v.* Court of Common Pleas of Pennsylvania, Delaware County, et al. C. A. 3d Cir. Certiorari denied. Reported below: 608 Fed. Appx. 92.

No. 15–7473. Cole *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2014 IL App (1st) 12–2175–U.

No. 15–7474. Davies *v.* United States; and Davies *v.* United States District Court for the Western District of Pennsylvania (Reported below: 616 Fed. Appx. 55). C. A. 3d Cir. Certiorari denied.

No. 15–7478. Rodriguez-Martinez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 161.

No. 15–7480. Litschewski *v.* Dooley, Warden, et al. C. A. 8th Cir. Certiorari denied.

No. 15–7484. Mocco *v.* Arizona. Ct. App. Ariz. Certiorari denied.

No. 15–7487. Meeks *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 335.

No. 15–7488. Blagg *v.* Texas (three judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 15–7489. Abdillahi *v.* Minnesota. Ct. App. Minn. Certiorari denied.

No. 15–7492. Washington *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 15–7493. Barksdale *v.* Mahally, Superintendent, State Correctional Institution at Dallas, et al. C. A. 3d Cir. Certiorari denied.

No. 15–7494. Bailey *v.* Louisiana. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 49,362 (La. App. 2 Cir. 11/19/14), 152 So. 3d 1056.

No. 15–7495. Camarena Hernandez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 795 F. 3d 1195.

No. 15–7497. Lyttle *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 15–7500. Bentley *v.* Colon et al. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 221.

No. 15–7501. Robinson *v.* Superior Court of California, Santa Clara County, et al. Sup. Ct. Cal. Certiorari denied.

No. 15–7504. Sturgis *v.* Willis et al. C. A. 6th Cir. Certiorari denied.

No. 15–7505. Westley *v.* Lazaroff, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–7507. Crockett *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 15–7508. Spaulding *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 802 F. 3d 1110.

No. 15–7509. Johnson *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 61 Cal. 4th 734, 353 P. 3d 266.

No. 15–7510. Vaughan *v.* Nooth, Superintendent, Snake River Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 15–7512. DeVorce *v.* Phillips, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 603 Fed. Appx. 45.

No. 15–7513. Dulcie *v.* Guardian Transfer Storage Co., Inc. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 15–7514. Cox *v.* Stallings. Sup. Ct. Fla. Certiorari denied. Reported below: 177 So. 3d 1264.

No. 15–7515. McQueen *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 338.

No. 15–7516. Tyler *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 291 Neb. 920, 870 N. W. 2d 119.

No. 15–7518. Worku, aka Temanu *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 800 F. 3d 1195.

No. 15–7519. Smith *v.* Neal, Superintendent, Indiana State Prison. C. A. 7th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 798.

No. 15–7520. Downs *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 2015 IL 117934, 69 N. E. 3d 784.

No. 15–7521. Matthews *v.* Illinois. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2015 IL App (2d) 120403–U.

No. 15–7522. Sheley *v.* Illinois. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2015 IL App (3d) 130116–U.

No. 15–7523. Barrett *v.* Kentucky. Sup. Ct. Ky. Certiorari denied. Reported below: 470 S. W. 3d 337.

No. 15–7524. Mundo Velez *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 15–7525. Ball *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 804 F. 3d 1238.

No. 15–7526. Allen *v.* California. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied.

No. 15–7527. Anderson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 665.

No. 15–7529. Chino-Tellez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 216.

No. 15–7530. Alejandro Cardenas *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 441.

No. 15–7531. Cooper *v.* Copeland. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 15–7533. AVERY *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 179 So. 3d 1182.

No. 15–7534. AUSTIN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 173 So. 3d 979.

No. 15–7535. ADAMS-GATES *v.* BUSH ET AL. C. A. 1st Cir. Certiorari denied.

No. 15–7536. DARDEN ET AL. *v.* CROWLEY ET AL. Sup. Ct. Va. Certiorari denied.

No. 15–7537. ALLEN *v.* FALK, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 980.

No. 15–7538. WISMER *v.* SARASOTA HOUSING AUTHORITY. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 207 So. 3d 236.

No. 15–7541. JOHN *v.* TERRITORY OF THE VIRGIN ISLANDS. Sup. Ct. V. I. Certiorari denied. Reported below: 63 V. I. 629.

No. 15–7542. WIGGINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 602.

No. 15–7543. TYERMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–7544. BURNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 754.

No. 15–7545. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 600 Fed. Appx. 175.

No. 15–7547. SMITH *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 15–7548. SCHOFIELD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 802 F. 3d 722.

No. 15–7549. RANKIN *v.* BYRNE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 703.

No. 15–7551. LOLES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 628 Fed. Appx. 7.

No. 15–7555. Friday *v.* North Carolina. Ct. App. N. C. Certiorari denied. Reported below: 239 N. C. App. 467, 770 S. E. 2d 388.

No. 15–7557. Watson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 647.

No. 15–7559. Tate *v.* Illinois. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2015 IL App (2d) 130733–U.

No. 15–7560. Irias *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 216.

No. 15–7562. Gorrell *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 15–7564. Green *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 623 Fed. Appx. 571.

No. 15–7565. Isaac *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 627 Fed. Appx. 160.

No. 15–7567. Cook *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 860.

No. 15–7568. Conant *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 799 F. 3d 1195.

No. 15–7572. Brandwein *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 796 F. 3d 980.

No. 15–7573. Denson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 804 F. 3d 1339.

No. 15–7575. Martinez, aka Garza Martinez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 758.

No. 15–7576. Tyler *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 511.

No. 15–7579. Griffin, aka Jenkins *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 800 F. 3d 198.

No. 15–7580. Brown *v.* Kerestes, Superintendent, State Correctional Institution at Mahanoy, et al. C. A. 3d Cir. Certiorari denied.

No. 15–7582. GRIGSBY *v.* LEMUZ. C. A. 10th Cir. Certiorari denied. Reported below: 609 Fed. Appx. 551.

No. 15–7583. SATTERFIELD *v.* FOREMOST INSURANCE CO. Ct. App. Okla. Certiorari denied.

No. 15–7584. HUGHES *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. Fed. Cir. Certiorari denied. Reported below: 544 Fed. Appx. 970.

No. 15–7586. GRAHAM *v.* PFISTER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 847.

No. 15–7594. KNIEST *v.* CASSADY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 15–7599. ABELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 648.

No. 15–7600. BATCHELOR *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 175 So. 3d 301.

No. 15–7604. GROOMS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 15–7606. MILLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 795 F. 3d 619.

No. 15–7607. MOSES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 599 Fed. Appx. 497.

No. 15–7608. OKUN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 272.

No. 15–7609. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 113.

No. 15–7622. POURYAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 628 Fed. Appx. 18.

No. 15–7623. MOSELEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 399.

No. 15–7625. WILFONG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 15–7629. TAHAH *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 302 Kan. 783, 358 P. 3d 819.

No. 15–7630. Torres-Martinez *v.* United States (Reported below: 617 Fed. Appx. 359); Ayala-Garcia *v.* United States (619 Fed. Appx. 434); and Castorena-Hernandez *v.* United States (619 Fed. Appx. 437). C. A. 5th Cir. Certiorari denied.

No. 15–7633. Rust *v.* Myrick, Superintendent, Two Rivers Correctional Institution. Sup. Ct. Ore. Certiorari denied.

No. 15–7637. Jones *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 15–7640. Brito *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 615 Fed. Appx. 701.

No. 15–7642. Bowald *v.* Illinois. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2015 IL App (4th) 130587–U.

No. 15–7643. Medina-Navejar *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 902.

No. 15–7644. Preacher *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 420.

No. 15–7647. Martinez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 203.

No. 15–7649. Johnson *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 15–7653. Manning *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 404.

No. 15–7654. Santiago *v.* Overmyer, Superintendent, State Correctional Institution at Forest, et al. C. A. 3d Cir. Certiorari denied.

No. 15–7656. De Jesus Ventura *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 805 F. 3d 485.

No. 15–7660. Rhone et al. *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 763.

No. 15–7664. Spruel *v.* Washington Department of Social and Health Services. Ct. App. Wash. Certiorari denied. Reported below: 182 Wash. App. 1028.

No. 15–7668. Jolivette *v.* Colvin, Acting Commissioner of Social Security. C. A. 5th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 201.

No. 15–7670. Parker *v.* Kerestes, Superintendent, State Correctional Institution at Mahanoy, et al. C. A. 3d Cir. Certiorari denied.

No. 15–7672. Reyes *v.* Lynch, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 161.

No. 15–7673. Rivas *v.* Colorado. Ct. App. Colo. Certiorari denied.

No. 15–7674. Rashid *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 607 Fed. Appx. 226.

No. 15–7675. Casas-Gil *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 360.

No. 15–7677. James *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 15–7678. Tobias Matrajt *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 15–7679. Wilson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 959.

No. 15–7680. Brumfield *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 177.

No. 15–7681. Rodriguez *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 395.

No. 15–7682. White *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 889.

No. 15–7684. Fortonel-Ocampo *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 761.

No. 15–7685. Gallegos-Carmona *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 267.

No. 15–7686. Grimaldo *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 214.

No. 15–7690. Paz-Alvarez *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 799 F. 3d 12.

No. 15–7692. Perretta *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 804 F. 3d 53.

No. 15–7696. Snowden *v.* Alaska. Ct. App. Alaska. Certiorari denied. Reported below: 352 P. 3d 439.

No. 15–7699. Taniguchi *v.* Butler, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–7700. Slane *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 15–7701. LeRoy *v.* Premo, Superintendent, Oregon State Penitentiary. C. A. 9th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 468.

No. 15–7702. Leach *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 15–7706. Scott *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 745.

No. 15–7709. Bradley *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 15–7712. Christopher *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 15–7716. Williams *v.* Mahally, Superintendent, State Correctional Institution at Dallas, et al. C. A. 3d Cir. Certiorari denied.

No. 15–7718. Marrero-Marrero *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 799 F. 3d 12.

No. 15–7721. Rafael *v.* Jones, Secretary, Florida Department of Corrections, et al. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 154 So. 3d 505.

No. 15–7722. Paul *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 720.

No. 15–7723. Ortiz-Miranda *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 15–7724. POULIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 15–7726. SPRIGGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 976.

No. 15–7727. STEWART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 179.

No. 15–7728. NORRIS *v.* BROOKS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 794 F. 3d 401.

No. 15–7732. DAUGHTIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 121.

No. 15–7735. WALBEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 767.

No. 15–7740. WING *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 622 Fed. Appx. 107.

No. 15–7751. SWANK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 450.

No. 15–7752. JUAN BALLESTAS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 795 F. 3d 138.

No. 15–7754. GAFFNEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 789 F. 3d 866.

No. 15–7755. GRIGSBY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 838.

No. 15–7758. WHITE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 804 F. 3d 132.

No. 15–7760. LOPEZ-DIAZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 794 F. 3d 106.

No. 15–7763. TOVAR BALLEZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 400.

No. 15–7764. COLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 178.

No. 15–7770. MULLINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 803 F. 3d 858.

No. 15–7771. Martinez et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 803 F. 3d 878.

No. 15–7772. Kowalczyk *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 805 F. 3d 847.

No. 15–7773. Mack *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 808 F. 3d 1074.

No. 15–7783. Robinson *v.* Ohio. Ct. App. Ohio, 1st App. Dist., Hamilton County. Certiorari denied. Reported below: 2015-Ohio-773.

No. 15–7789. Tonsing *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 464.

No. 15–7795. Barrera-Lopez *v.* United States (Reported below: 619 Fed. Appx. 440); Escobar-Rojas *v.* United States (624 Fed. Appx. 250); Gonzalez-Lucas *v.* United States (624 Fed. Appx. 267); Lopez-Ortiz *v.* United States (624 Fed. Appx. 252); and Moreno *v.* United States (624 Fed. Appx. 242). C. A. 5th Cir. Certiorari denied.

No. 15–7797. Al-Din *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 313.

No. 15–7800. Ramirez-Rodriguez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 655.

No. 15–7801. Garcia-De La Cruz *v.* United States (Reported below: 620 Fed. Appx. 341); Godoy-Galan *v.* United States (624 Fed. Appx. 282); Solorzano-Gonzalez *v.* United States (624 Fed. Appx. 310); and Obregon-Gonzalez *v.* United States (624 Fed. Appx. 309). C. A. 5th Cir. Certiorari denied.

No. 15–7809. Butler *v.* Tritt, Superintendent, State Correctional Institution at Frackville, et al. C. A. 3d Cir. Certiorari denied.

No. 15–7819. Jimenez-Ortiz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 432.

No. 15–7821. Conant *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 799 F. 3d 1195.

No. 15–7822. Bobadilla-Chucari *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 391.

No. 15–7823. Bentley *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 795 F. 3d 630.

No. 15–7825. Topete *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 1028.

No. 15–7827. Alejandro Vazquez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 617 Fed. Appx. 369.

No. 15–7829. Hernandez-Amaya *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 617 Fed. Appx. 370.

No. 15–7830. Gibson et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 134.

No. 15–7831. Garcia-Contreras *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 317.

No. 15–7833. Gonzalez-Flores *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 804 F. 3d 920.

No. 15–7835. Maya-Osorio *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 321.

No. 15–7836. Jordan *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 607 Fed. Appx. 301.

No. 15–7838. Campa-Barrera *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 880.

No. 15–7841. Hupp *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 383.

No. 15–7845. Pagan *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 623 Fed. Appx. 35.

No. 15–7847. Mendez-Solis *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 334.

No. 15–7858. Mullins *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 800 F. 3d 866.

No. 15–7863. Davis *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 15–7865. Balboa *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 622 Fed. Appx. 31.

No. 15–7876. Soto-Mateo *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 799 F. 3d 117.

No. 15–7879. Navarrette-Jizcano *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 443.

No. 15–7881. Alfredo Merlos *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 639.

No. 15–7883. Melvin *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 628 Fed. Appx. 774.

No. 15–7889. Valle-Mendivil *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 660.

No. 15–7894. Jackson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 384.

No. 15–7901. Ruiz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 463.

No. 15–7904. Mohssen *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 98.

No. 15–7905. Palmer *v.* United States. Ct. App. D. C. Certiorari denied.

No. 14–10186. Ben-Levi, aka Loren *v.* Brown. C. A. 4th Cir. Certiorari denied. Reported below: 600 Fed. Appx. 899.

Justice Alito, dissenting.

Petitioner Israel Ben-Levi, a North Carolina inmate, filed a *pro se* petition challenging a prison policy that prevented him and other Jewish inmates from praying and studying the Torah together. The North Carolina Department of Public Safety (NCDPS) imposed stringent restrictions on Jewish group meetings that it did not apply to other religious groups. Because Ben-Levi has provided ample evidence that these restrictions substantially burdened his religious exercise, and because respondent has not identified a legitimate penological interest in treating Jewish inmates more strictly than inmates of other religions, I would grant Ben-Levi's petition for certiorari and summarily reverse the judgment below.

I

Petitioner Ben-Levi is a practicing Jew in the custody of NCDPS. Respondent Betty Brown is NCDPS's Director of

Chaplaincy Services. Because this case arises in a summary judgment posture, I view the facts in the light most favorable to Ben-Levi, the nonmoving party. See, *e. g.*, *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, 603 (2015).

In 2012, while housed in NCDPS's Hoke Correctional Institute (Hoke), Ben-Levi requested permission to meet in a quiet room to pray and study the Torah with two other Jewish prisoners. Doc. No. 1–1; Doc. No. 33, pp. 1–2.[1] After Hoke officials denied his request, Ben-Levi sent a letter to respondent asking if she had "the authority to let the superintendent [at Hoke] approve a quiet place . . . to have a Jewish Bible Study." Doc. No. 1–1, at 3–4. Ben-Levi later clarified that he was seeking to meet with his fellow Jewish believers for an hour per week. Doc. No. 29, p. 6.

Respondent denied Ben-Levi's request in a July 10, 2012, letter. See Doc. No. 24–1. The letter asserted that a Jewish study group requires a quorum of 10 adult Jews (also referred to as a minyan). *Ibid.* Ben-Levi's proposed group, however, had only three members. Doc. No. 33, at 1–2. Respondent further explained that the minyan requirement "may be waived in a prison setting only when the service is led by a Rabbi." Doc. No. 24–1. But because "no orthodox Rabbi" was available "to supervise a study group," respondent continued, "no formal authorization can be given even though you say that requirements are relaxed for an orthodox Jewish bible study." *Ibid.* Respondent warned Ben-Levi that his proposed study group was prohibited and stated that "[n]o further action will be taken on this issue." *Ibid.*

Respondent based her denial of Ben-Levi's request on established NCDPS policy, which requires either a minyan or the presence of a qualified leader (such as a rabbi) in order for a Jewish study group to take place. Brief in Opposition 11; see Doc. No. 42–2, pp. 5–7. NCDPS instituted this policy after "Respondent Brown personally exchanged emails" with a rabbi and "he advised her regarding the 'requirements for Torah and Talmud study sessions.'" Brief in Opposition 10 (citing Doc. No. 42–2, at 9). "Based on the information provided by [the rabbi], Respondent Brown was of the opinion at all relevant times that NCDPS's requirement of a quorum, Rabbi, or other qualified community

[1] Documents filed with the District Court are designated by their docket entry number, denoted as "Doc. No. __."

volunteer to lead Jewish bible study was in conformity with the 'requirements, practices and tenets of Judaism.'" Brief in Opposition 11 (citing Doc. No. 42–2, at 9).

Because NCDPS's policy rests on its understanding of Jewish doctrine, the policy does not apply to other religions. In fact, NCDPS intentionally treats different religions differently based on its perception of the importance of their various tenets. Doc. No. 42–2, at 5. As explained by respondent, "[s]ome faith practices are required of an adherent, while others are not, such that different accommodations are made for dissimilar groups." *Ibid.* Thus, although other religious groups were allowed to meet without a quorum or an outside volunteer, Jewish groups were not. See Doc. No. 29, at 1; Doc. No. 32, p. 3; Doc. No. 49, p. 2; Doc. No. 54, p. 2.[2]

The hurdles imposed on Jewish group meetings are heightened by the paucity of Jews at Hoke and in the surrounding community. "[B]ecause the numbe[r] of declared Judaism followers is small," Doc. No. 42–2, at 10, Ben-Levi could not assemble a quorum of 10 Jews. And because respondent was unable to find a rabbi or other qualified leader to serve the Jewish prisoners at Hoke, see 2014 WL 7239858, *3, n. 2 (EDNC, Dec. 18, 2014), Ben-Levi could not take advantage of the exception to the minyan requirement. As a result, Ben-Levi was completely deprived of the ability to pray or study with other Jewish inmates. Doc. No. 32, at 3.

After respondent denied the request for group Torah study, Ben-Levi filed a *pro se* complaint under Rev. Stat. § 1979, 42 U. S. C. § 1983, in the United States District Court for the Eastern District of North Carolina. Ben-Levi alleged that the denial of his request violated his free exercise rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 114 Stat. 803, 42 U. S. C. § 2000cc *et seq.*

On March 19, 2014, the District Court granted respondent's motion for summary judgment as to Ben-Levi's RLUIPA claim and his requests for declaratory and injunctive relief, finding them

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[2] Respondent does not dispute this conclusion. See, *e. g.*, Brief in Opposition 20 ("While Petitioner argues that other faith groups have been allowed to participate in study groups, Petitioner has not presented any evidence that members of his faith group or similar faith groups (i. e., where the tenets of the faith require a minyan or the presence of a qualified teacher) were allowed to meet without a quorum or qualified community volunteer").

mooted by Ben-Levi's transfer from Hoke to another facility. Doc. No. 33. After further filings, the court granted respondent summary judgment on Ben-Levi's remaining free exercise claim for monetary damages. 2014 WL 7239858, *1. The court first concluded that respondent had not substantially burdened Ben-Levi's religious exercise. *Id.*, at *4. Pursuant to NCDPS policy, the court noted, "a Jewish Bible Study generally requires a quorum of ten adult Jews," although "[t]his requirement may be waived when the study is led by a volunteer Rabbi." *Id.*, at *3. Because respondent was merely enforcing this policy, the court reasoned, and because Ben-Levi was allowed to engage in private worship, his religious exercise was not substantially burdened. *Id.*, at *4.

The court further held that, even if Ben-Levi had demonstrated a burden on his religious exercise, summary judgment was appropriate because respondent's actions were reasonably related to legitimate penological interests in (1) maintaining order, security, and safety; (2) balancing inmate relationships; and (3) conserving personnel resources. *Id.*, at *3–*4. The court observed that extremist groups in the past have used religious gatherings to "mask their gang activity." *Ibid.*

Ben-Levi appealed, and the Fourth Circuit summarily affirmed "for the reasons stated by the district court." 600 Fed. Appx. 899, 900 (2015) (*per curiam*). Ben-Levi then filed a *pro se* petition for a writ of certiorari.[3]

II

Petitioner argues that NCDPS's refusal to allow him to meet with other Jewish inmates to study the Torah violated his rights under the Free Exercise Clause of the First Amendment.[4] "[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner* v. *Safley*, 482 U. S. 78, 89 (1987); see *O'Lone* v. *Estate of Shabazz*, 482 U. S. 342, 349–350 (1987). When this test is applied to the current record, it is

[3] Ben-Levi subsequently obtained counsel, who—more than eight months after Ben-Levi filed his *pro se* petition—submitted a reply brief.

[4] Because I would reverse the decision below on free exercise grounds, I have no occasion to consider whether Ben-Levi, proceeding *pro se*, adequately preserved an objection based on RLUIPA, which provides broader protection than the First Amendment. I would leave it to the lower courts on remand to address that question, if necessary.

clear that summary judgment on Ben-Levi's free exercise claim was improper.

A

First, the courts below erred in concluding as a matter of law that respondent did not substantially burden Ben-Levi's religious exercise. The record clearly shows that Ben-Levi, like many religious people, views group prayer and study as an important part of his "religious observance." Doc. No. 32, at 2. And Ben-Levi repeatedly asserts that NCDPS's policy denied him "a reasonable opportunity of pursuing his faith." Doc. No. 29, at 2; see Doc. No. 32, at 5.

Respondent and the District Court have "not question[ed] the sincerity of Petitioner's beliefs." Brief in Opposition 16, n. 5; see 2014 WL 7239858, *2, *4. Instead, their primary argument is that Ben-Levi's religious exercise was not burdened because respondent was merely enforcing NCDPS's requirements for Torah studies. See, *e. g.*, Brief in Opposition 17–18; 2014 WL 7239858, *4 ("Defendant did not forbid Plaintiff from participating in a Jewish Bible Study. Rather, she enforced DPS policy requiring that a study with fewer than ten participants be led by a Rabbi").

"Petitioner's request for a Jewish bible study was not denied per se," respondent explains. Brief in Opposition 17. "Instead, based upon research by Respondent Brown and the Religious Practices Committee, Petitioner was informed that a quorum (minyan) or presence of a qualified clergy volunteer was required before the group could meet." *Ibid.* "NCDPS's position was based upon its understanding of the basic tenets of the Jewish faith which it obtained through consultations with an established leader of that faith who confirmed that a minyan or qualified Rabbi is required for 'Torah and Talmud study.'" *Ibid.* Respondent faults Ben-Levi for failing to provide "documentation from reliable sources or authorities on the Jewish faith disputing NCDPS's understanding that the Jewish religion itself, and not just institutional concerns, requires a quorum or the presence of a qualified teacher for worship or religious study." *Id.*, at 18. As a result of this failure, respondent argues, "the Record establishes as a matter of law that Respondent Brown's denial of Petitioner's request did not substantially burden his ability to practice the Jewish faith but, rather, was in line with the tenets of that faith." *Ibid.*

In essence, respondent's argument—which was accepted by the courts below—is that Ben-Levi's religious exercise was not burdened because he misunderstands his own religion.[5] If Ben-Levi truly understood Judaism, respondent implies, he would recognize that his proposed study group was not consistent with Jewish practice and that respondent's refusal to authorize the group "was in line with the tenets of that faith." *Ibid.*; see also 2014 WL 7239858, *4 (noting that "the requirement of a quorum of ten adult Jews or the presence of a Rabbi" "'ensures the purity of the doctrinal message and teaching'").

The argument that a plaintiff's own interpretation of his or her religion must yield to the government's interpretation is foreclosed by our precedents. This Court has consistently refused to "'question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds.'" *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, 887 (1990). "Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim." *Ibid.*; see also *Presbyterian Church in U. S.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 450 (1969) (holding that "the First Amendment forbids civil courts from" interpreting "particular church doctrines" and determining "the importance of those doctrines to the religion").

Just last Term, we emphasized that the government cannot define the scope of personal religious beliefs. See *Holt* v. *Hobbs*, 574 U. S. 352 (2015). In *Holt*, we held that a prison policy preventing a Sunni Muslim inmate from growing a ½-inch beard substantially burdened his religious exercise. *Id.*, at 357. In so holding, we explicitly rejected the argument that there was no burden because "not all Muslims believe that men must grow

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[5] See, *e. g.*, Brief in Opposition 17–18 ("Petitioner attempts to create an issue of fact by arguing that there is a difference between worship and study. According to [the rabbi that respondent consulted], however, the minyan or qualified teacher requirements apply to Torah and Talmud *study*"); Doc. No. 42–2, p. 6 ("It should be noted that, the language (Jewish Bible Study) the Plaintiff uses in his complaint exhibits that he is not knowledgeable to teach or guide others in the Jewish faith. What Plaintiff incorrectly identifies as a Jewish Bible study is really called the Torah/or Talmud study").

beards," reaffirming that "the guarantee of the Free Exercise Clause . . . is 'not limited to beliefs which are shared by all of the members of a religious sect.'" *Id.*, at 362 (quoting *Thomas* v. *Review Bd. of Indiana Employment Security Div.*, 450 U. S. 707, 715–716 (1981)).

As this discussion makes clear, respondent's focus on the correctness of Ben-Levi's understanding of Judaism is inconsistent with our case law. Even assuming that respondent accurately identified the requirements for a group Torah study under Jewish doctrine—and that is not at all clear—federal courts have no warrant to evaluate "'the validity of [Ben-Levi's] interpretations.'" *Smith*, *supra*, at 887. Instead, the courts below should have considered whether the NCDPS policy imposed a substantial burden on Ben-Levi's ability to exercise *his* religious beliefs, as *he* understands them. Ben-Levi believes that relaxing the minyan requirement promotes his faith more than sacrificing group Torah study altogether.[6] By ignoring Ben-Levi's actual beliefs and focusing solely on NCDPS's understanding of Judaism, respondent and the courts below considered the wrong question.

Perhaps Ben-Levi—who proceeded *pro se* below and in filing this petition—could have more clearly explained why he believes group study is more important than adherence to the minyan requirement. See Brief in Opposition 17–18. But "[c]ourts should not undertake to dissect religious beliefs . . . because [the] beliefs are not articulated with the clarity and precision that a more sophisticated person might employ." *Thomas*, 450 U. S., at 715. Ben-Levi has unmistakably indicated that he prefers group study without a minyan to no group study at all, and "it is not for us to say that the line he drew was an unreasonable one." *Ibid.*

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[6] Respondent notes that "in one of the few documents filed by Petitioner in this case, the author states that '[i]t is best to pray in a synagogue with a Minyan (a congregation of at least ten adult men).'" Brief in Opposition 18. Even assuming that Ben-Levi agrees with that statement, respondent is not permitted to dictate the appropriate religious response to Ben-Levi's inability to muster a minyan. The prisoner in *Holt* believed that "his faith requires him not to trim his beard at all," but he preferred a ½-inch beard to no beard. *Holt* v. *Hobbs*, 574 U. S. 352, 359 (2015). Likewise, Ben-Levi believes that a study group with fewer than 10 Jewish participants is preferable to no study group at all. Respondent has no business questioning the validity of this belief.

Nor can I conclude that Ben-Levi's ability to engage in "private worship" shows that his religious exercise was not burdened. See 2014 WL 7239858, *3–*4; Brief in Opposition 9. If the opportunity to pray and study privately were sufficient to satisfy the First Amendment, then prisons could justify any restriction on religious exercise short of depriving an inmate of his religious texts. Many prisoners, Ben-Levi included, consider it important to congregate with other practitioners of their faith for prayer and discussion. Preventing them from doing so burdens their religious exercise, even if they are allowed to study and pray alone in a cell. Ben-Levi has presented ample evidence that group study, even absent a minyan, is important to his faith. The courts below thus erred in holding that his religious exercise was not substantially burdened as a matter of law.[7]

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[7] Respondent argues that Ben-Levi's claims are "moot" because "the NCDPS Policy at issue in this case was amended and now allows approved inmates to lead worship and religious study groups when outside clergy volunteers are not available." Brief in Opposition 13. This argument provides no basis for denying certiorari here. "The voluntary cessation of challenged conduct does not ordinarily render a case moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed." *Knox* v. *Service Employees*, 567 U. S. 298, 307 (2012).

Even if respondent could overcome that obstacle, the new policy does nothing to alleviate the burden on Ben-Levi's religious exercise. The "amended" policy allows an inmate to lead a study group only if a "community volunteer is not available . . . and there is sufficient offender interest (10 or more designated faith group members)." App. to Brief in Opposition, Exh. A, p. 6. Jewish prisoners thus need either a qualified volunteer or a quorum of 10 Jews in order to hold a study group—just as they did under the previous policy.

If anything, this change aggravates the religious liberty problem. There are strong reasons to believe that NCDPS made this change for the specific purpose of defeating Jewish prisoners' claims. (Where else did the 10-inmate requirement come from?) In other words, there is strong reason to believe that Jewish inmates but not Christian inmates would have trouble satisfying this requirement. And if NCDPS previously did not think that penological concerns necessitated such a requirement for non-Jewish groups, what justification is there for imposing such a categorical rule now?

Finally, even if NCDPS had meaningfully changed its policy, such a change could not moot Ben-Levi's backward-looking damages claim. "Untold numbers of cases illustrate the rule that a claim for money damages is not moot, no matter how clear it is that the claim arises from events that have completely concluded without any prospect of recurrence." 13C C. Wright,

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Moreover, contrary to the conclusions of the courts below, respondent has not demonstrated that the burden on Ben-Levi's religious exercise was reasonably related to legitimate penological interests. Respondent contends that several government interests justify NCDPS's policy, including (1) maintaining order, security, and safety; (2) balancing inmate relationships; and (3) conserving personnel resources. 2014 WL 7239858, *3–*4; Brief in Opposition 18–19. I do not question the importance of these interests. See, *e. g.*, *Holt*, 574 U. S., at 364 ("Prison officials are experts in running prisons and evaluating the likely effects of altering prison rules, and courts should respect that expertise"). But respondent's invocation of these interests is insufficient to justify NCDPS's policy toward Jewish inmates. The problem with these asserted justifications is that they seem to apply equally to inmates of other religions, who were nevertheless allowed to meet in groups of fewer than 10 without an outside leader. For instance, respondent has given no reason to believe that Jewish prisoners are more inclined than prisoners of other religions to "'us[e] faith practice to mask their gang activity.'" 2014 WL 7239858, *4. Nor is there any indication that a Jewish study group is more likely than a Christian or Muslim group to impede order, compromise inmate relationships, or absorb personnel resources. The State has no apparent reason for discriminating against Jewish inmates in this way. The District Court erred in holding otherwise, and the Fourth Circuit erred in affirming.[8] I would thus grant certiorari, summarily reverse the judgment below, and remand for further proceedings.

Needless to say, the Court's refusal to grant review in this case does not signify approval of the decision below. But the Court's

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A. Miller, & E. Cooper, Federal Practice and Procedure § 3533.3, p. 6 (3d ed. 2008); see, *e. g.*, *Board of Pardons* v. *Allen*, 482 U. S. 369, 370–371, n. 1 (1987).

[8] The courts below also erred in concluding as a matter of law that respondent did not intentionally violate Ben-Levi's free exercise rights. See 2014 WL 7239858, *4 (EDNC, Dec. 18, 2014). Respondent explicitly rejected Ben-Levi's request for a group Torah study, knowing full well that this decision would completely prevent him from praying or studying with other Jewish inmates. See Doc. No. 32, p. 3; Doc. No. 42–2, at 5–6. There is thus a genuine issue of material fact as to whether respondent acted intentionally.

indifference to this discriminatory infringement of religious liberty is disappointing.

No. 15–169. TAYLOR ET AL. *v.* YEE, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS STATE CONTROLLER OF THE STATE OF CALIFORNIA, ET AL. C. A. 9th Cir. Motions of Unclaimed Property Professionals Organization and Shareholder Services Association et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 780 F. 3d 928.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring.

California's Unclaimed Property Law, Cal. Civ. Proc. Code Ann. § 1510 *et seq.* (West 2007 and Cum. Supp. 2016), permits the State to confiscate forgotten security deposits, uncashed money orders, unused insurance benefits, idle shares of stock, and even the undisturbed contents of safe-deposit boxes and bank accounts if those assets lie dormant for the statutorily required time period (in this case, three years). Unless the forgotten property's rightful owner can be located, the State uses the funds in these accounts for its own benefit.

The petition in this case asks us to decide whether the California law provides property owners with constitutionally sufficient notice before escheating their financial assets. The Due Process Clause requires States to give adequate notice before seizing private property. *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313 (1950) (Although "[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause," that provision undoubtedly requires that, before seizing private property, the government must give "notice and opportunity for hearing appropriate to the nature of the case"). When a State is required to give notice, it must do so through processes "reasonably calculated" to reach the interested party—here, the property owner. See *id.*, at 318. Because the seizure of private property is no small thing, notification procedures may not be empty rituals: "[P]rocess which is a mere gesture is not due process." *Id.*, at 315. Whether the means and methods employed by a State to notify owners of a pending escheat meet the constitutional floor is an important question.

In recent years, States have shortened the periods during which property must lie dormant before being labeled abandoned and subject to seizure. See Bower, Note, Inequitable Escheat?: Reflecting on Unclaimed Property Law and the Supreme Court's

Interstate Escheat Framework, 74 Ohio St. L. J. 515, 529, n. 81 (2013) (noting that New York, Michigan, Indiana, New Jersey, and Arizona all recently shortened their dormancy periods from as long as 15 years to merely 3). And some States still rely on decidedly old-fashioned methods that are unlikely to be effective. See, *e. g.*, Del. Code, Tit. 12, § 1172 (2007 and Cum. Supp. 2014) (relying only on blanket newspaper notification).

This trend—combining shortened escheat periods with minimal notification procedures—raises important due process concerns. As advances in technology make it easier and easier to identify and locate property owners, many States appear to be doing less and less to meet their constitutional obligation to provide adequate notice before escheating private property. Cash-strapped States undoubtedly have a real interest in taking advantage of truly abandoned property to shore up state budgets. But they also have an obligation to return property when its owner can be located. To do that, States must employ notification procedures designed to provide the pre-escheat notice the Constitution requires.

The convoluted history of this case makes it a poor vehicle for reviewing the important question it presents, and therefore I concur in the denial of review. But the constitutionality of current state escheat laws is a question that may merit review in a future case.

No. 15–302. New Jersey Education Assn. et al. *v.* New Jersey et al. Sup. Ct. N. J. Motion of New Jersey Public Employees' Retirement System et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 222 N. J. 175, 118 A. 3d 270.

No. 15–324. Gentry, Warden, et al. *v.* Rudin. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 781 F. 3d 1043.

No. 15–330. California Building Industry Assn. *v.* City of San Jose, California, et al. Sup. Ct. Cal. Certiorari denied. Reported below: 61 Cal. 4th 435, 351 P. 3d 974.

Justice Thomas, concurring.

This case implicates an important and unsettled issue under the Takings Clause. The city of San Jose, California, enacted a hous-

ing ordinance that compels all developers of new residential development projects with 20 or more units to reserve a minimum of 15 percent of for-sale units for low-income buyers. See San Jose Municipal Ordinance No. 28689, §§ 5.08.250(A), 5.08.400(A)(a) (2010). Those units, moreover, must be sold to these buyers at an "affordable housing cost"—a below-market price that cannot exceed 30 percent of these buyers' median income. §§ 5.08.105, 5.08.400(A)(a); see Cal. Health & Safety Code Ann. §§ 50052.5(b)(1)–(4) (West 2014). The ordinance requires these restrictions to remain in effect for 45 years. San Jose Municipal Ordinance No. 28689, § 5.08.600(B); Cal. Health & Safety Code Ann. § 33413(C). Petitioner, the California Building Industry Association, sued to enjoin the ordinance. A California state trial court enjoined the ordinance, but the Court of Appeal reversed, and the Supreme Court of California affirmed that decision. 61 Cal. 4th 435, 351 P. 3d 974 (2015).

Our precedents in *Nollan* v. *California Coastal Comm'n*, 483 U. S. 825 (1987), and *Dolan* v. *City of Tigard*, 512 U. S. 374 (1994), would have governed San Jose's actions had it imposed those conditions through administrative action. In those cases, which both involved challenges to administrative conditions on land use, we recognized that governments "may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use." *Koontz* v. *St. Johns River Water Management Dist.*, 570 U. S. 595, 599 (2013) (describing *Nollan/Dolan* framework).

For at least two decades, however, lower courts have divided over whether the *Nollan/Dolan* test applies in cases where the alleged taking arises from a legislatively imposed condition rather than an administrative one. See *Parking Assn. of Georgia, Inc.* v. *Atlanta*, 515 U. S. 1116, 1117 (1995) (THOMAS, J., dissenting from denial of certiorari). That division shows no signs of abating. The decision below, for example, reiterated the California Supreme Court's position that a legislative land-use measure is not a taking and survives a constitutional challenge so long as the measure bears "a reasonable relationship to the public welfare." 61 Cal. 4th, at 456–459, and n. 11, 351 P. 3d, at 987–990, and n. 11; compare *ibid.* with, *e. g.*, *Home Builders Assn. of Dayton and Miami Valley* v. *Beavercreek*, 89 Ohio St. 3d 121, 128,

729 N. E. 2d 349, 356 (2000) (applying the *Nollan/Dolan* test to legislative exaction).

I continue to doubt that "the existence of a taking should turn on the type of governmental entity responsible for the taking." *Parking Assn. of Georgia*, *supra*, at 1117–1118. Until we decide this issue, property owners and local governments are left uncertain about what legal standard governs legislative ordinances and whether cities can legislatively impose exactions that would not pass muster if done administratively. These factors present compelling reasons for resolving this conflict at the earliest practicable opportunity.

Yet this case does not present an opportunity to resolve the conflict. The city raises threshold questions about the timeliness of the petition for certiorari that might preclude us from reaching the Takings Clause question. Moreover, petitioner disclaimed any reliance on *Nollan* and *Dolan* in the proceedings below. Nor did the California Supreme Court's decision rest on the distinction (if any) between takings effectuated through administrative versus legislative action. See 61 Cal. 4th, at 461–462, 351 P. 3d, at 991–992. Given these considerations, I concur in the Court's denial of certiorari.

No. 15–547. NEAL, SUPERINTENDENT, INDIANA STATE PRISON *v.* PRUITT. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 788 F. 3d 248.

No. 15–588. JOHNSON ET AL. *v.* UNITED STATES; and

No. 15–6755. CAROZZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 608 Fed. Appx. 532.

No. 15–622. HOTZE ET AL. *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 5th Cir. Motion of Foundation for Moral Law for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 784 F. 3d 984.

No. 15–666. BELL *v.* ITAWAMBA COUNTY SCHOOL BOARD ET AL. C. A. 5th Cir. Motions of Student Press Law Center et al. and Massachusetts Citizens for Children for leave to file

briefs as *amici curiae* granted. Certiorari denied. Reported below: 799 F. 3d 379.

No. 15–693. PNC Bank, N. A. *v.* Brian W. et al. C. A. 3d Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 795 F. 3d 380.

No. 15–704. Girardi Keese Law Firm *v.* Plaintiffs' Advisory Committee et al. C. A. 3d Cir. Motion of Vicente Ruiz et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 617 Fed. Appx. 136.

No. 15–722. Davis, Warden *v.* Bemore. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 788 F. 3d 1151.

No. 15–754. Adkins *v.* Adkins. Ct. App. Mich. Motion of Safe Kids International et al. for leave to file brief as *amici curiae* granted. Certiorari denied.

No. 15–772. New Jersey *v.* Maltese. Sup. Ct. N. J. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 222 N. J. 525, 120 A. 3d 197.

No. 15–773. Breadiy et al. *v.* PNC Mortgage Co. C. A. 6th Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 620 Fed. Appx. 382.

No. 15–801. Griffith, Warden *v.* Gabaree. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 792 F. 3d 991.

No. 15–820. GGNSC Gettysburg LP, dba Golden Living Center-Gettysburg, et al. *v.* Wert, Executrix of the Estate of Kepner, Deceased. Sup. Ct. Pa. Motion of American Health Care Association et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 633 Pa. 260, 124 A. 3d 1248.

No. 15–912. Szafranski *v.* Dunston. App. Ct. Ill., 1st Dist. Motion of American Association of Pro-Life Obstetricians and Gynecologists for leave to file brief as *amicus curiae* granted. Cer-

tiorari denied. Reported below: 2015 IL App (1st) 122975–B, 34 N. E. 3d 1132.

No. 15–6330. VINSON *v.* MAIORANA, COMPLEX WARDEN. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 604 Fed. Appx. 349.

No. 15–6679. MITCHELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 625 Fed. Appx. 113.

No. 15–7143. FONTANEZ *v.* TIME WARNER CABLE ET AL. C. A. 7th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 618 Fed. Appx. 288.

No. 15–7558. WEAVER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 793 F. 3d 857.

No. 15–7601. KARKENNY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 15–7707. RODRIGUEZ-ZAMO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 15–7778. BOLDS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 620 Fed. Appx. 592.

No. 15–7824. BARIAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 14–5566. CLARK *v.* COMMISSIONER, HUMAN RESOURCE ADMINISTRATION, 574 U. S. 905;

No. 14–5568. CLARK *v.* HUMAN RESOURCES ADMINISTRATION, 574 U. S. 905;

No. 14–5858. Clark *v.* City of New York Human Resources Administration, 574 U. S. 915;

No. 14–9299. Marshall *v.* Federal Bureau of Prisons, *ante*, p. 1029;

No. 14–9686. Robinson *v.* Valdamudi et al., *ante*, p. 834;

No. 14–9794. Ferry *v.* Virginia, *ante*, p. 837;

No. 14–9962. Burnett *v.* Burnett, *ante*, p. 1061;

No. 15–464. Groeber *v.* Friedman & Schuman, P. C., *ante*, p. 1049;

No. 15–498. In re Wolf et al., *ante*, p. 1060;

No. 15–504. D'Antignac *v.* Deere & Co., dba John Deere Commercial Products, Inc., *ante*, p. 1064;

No. 15–516. Loan Phuong *v.* Thompson et al., *ante*, p. 1064;

No. 15–531. Doal *v.* Central Intelligence Agency et al., *ante*, p. 1065;

No. 15–535. Koffley *v.* Fogel, *ante*, p. 1065;

No. 15–582. Dinh Ton That *v.* Alders Maintenance Assn., *ante*, p. 1066;

No. 15–603. Menchu *v.* Lynch, Attorney General, *ante*, p. 1066;

No. 15–643. Arpaio, Sheriff, Maricopa County, Arizona *v.* Obama, President of the United States, et al., *ante*, p. 1103;

No. 15–5222. Norris *v.* Foxx, Secretary of Transportation, et al., *ante*, p. 1009;

No. 15–5756. Tuomi *v.* United States, *ante*, p. 1010;

No. 15–6068. Salahuddin *v.* Zoning Hearing Board of West Chester et al., *ante*, p. 1069;

No. 15–6141. Dillon *v.* Dooley, Warden, et al., *ante*, p. 1010;

No. 15–6183. Garvin *v.* Wright et al., *ante*, p. 947;

No. 15–6238. In re Bluemel, *ante*, p. 937;

No. 15–6263. Nurse *v.* Sheraton Atlanta Hotel et al., *ante*, p. 1013;

No. 15–6329. Washington *v.* William Morris Endeavor Entertainment, LLC, et al., *ante*, p. 1014;

No. 15–6395. Davis *v.* Thomas et al., *ante*, p. 1034;

No. 15–6426. Thomas *v.* Outlaw, Warden, *ante*, p. 1050;

No. 15–6427. Laschkewitsch *v.* ReliaStar Life Insurance Co., *ante*, p. 1034;

No. 15–6432. Miller *v.* Kashani et al., *ante*, p. 1050;

No. 15–6449. GACHE *v.* HILL REALTY ASSOCIATES, LLC, ET AL., *ante*, p. 1051;

No. 15–6493. LAN *v.* COMCAST CORP., LLC, *ante*, p. 1070;

No. 15–6511. CLUM *v.* UNITED STATES, *ante*, p. 1016;

No. 15–6518. RANTEESI *v.* ARNOLD, WARDEN, *ante*, p. 1070;

No. 15–6579. ZAVALIDROGA ET AL. *v.* ONEIDA COUNTY SHERIFF'S DEPARTMENT ET AL., *ante*, p. 1071;

No. 15–6589. TAYLOR *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, *ante*, p. 993;

No. 15–6683. JOHNSON *v.* MARYLAND, *ante*, p. 1052;

No. 15–6898. RAMIREZ *v.* PARKER ET AL., *ante*, p. 1080;

No. 15–6930. POUYEH *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA ET AL., *ante*, p. 1081;

No. 15–7011. IN RE WELLS, *ante*, p. 1047;

No. 15–7078. IN RE WILLIAMS, *ante*, p. 1061;

No. 15–7148. WILSON *v.* NORTH CAROLINA, *ante*, p. 1108;

No. 15–7171. WEBB *v.* UNITED STATES, *ante*, p. 1089;

No. 15–7267. IN RE DELRIO, *ante*, p. 1061; and

No. 15–7327. IN RE SPANGLER, *ante*, p. 1060. Petitions for rehearing denied.

No. 15–6055. DOUGLAS, AKA HOUSTON *v.* WRIGHT ET AL., *ante*, p. 988. Motion for leave to file petition for rehearing denied.

MARCH 1, 2016

Dismissal Under Rule 46

No. 15–851. WOODFOX *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1.

MARCH 4, 2016

Miscellaneous Order

No. 15A880. JUNE MEDICAL SERVICES, L. L. C., ET AL. *v.* GEE, SECRETARY, LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS. Consistent with the Court's action granting a stay in No. 14A1288, *Whole Woman's Health* v. *Cole* [576 U. S. 1050], the application to vacate the stay entered by the United States Court of Appeals for the Fifth Circuit on February 24, 2016, presented to JUSTICE THOMAS, and by him referred to the Court, granted, and the Fifth Circuit's stay of the District Court's injunction is vacated. JUSTICE THOMAS would deny the application.

MARCH 7, 2016

Certiorari Granted—Reversed and Remanded. (See No. 14–10008, *ante*, p. 385, and No. 15–648, *ante*, p. 404.)

Certiorari Granted—Vacated and Remanded

No. 14–741. SELF-INSURANCE INSTITUTE OF AMERICA, INC. *v.* SNYDER, GOVERNOR OF MICHIGAN, ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gobeille* v. *Liberty Mut. Ins. Co.*, *ante*, p. 312. Reported below: 761 F. 3d 631.

No. 14–824. CARP *v.* MICHIGAN; and

No. 14–8106. DAVIS *v.* MICHIGAN. Sup. Ct. Mich. Motion of petitioner in No. 14–8106 for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *Montgomery* v. *Louisiana*, *ante*, p. 190. Reported below: 496 Mich. 440, 852 N. W. 2d 801.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, concurring.

The Court has held the petitions in these and many other cases pending the decision in *Montgomery* v. *Louisiana*, *ante*, p. 190. In holding these petitions and now vacating and remanding the judgment below, the Court has not assessed whether petitioners' asserted entitlement to retroactive relief "is properly presented in the case." *Ante*, at 205. On remand, courts should understand that the Court's disposition of these petitions does not reflect any view regarding petitioners' entitlement to relief. The Court's disposition does not, for example, address whether an adequate and independent state ground bars relief, whether petitioners forfeited or waived any entitlement to relief (by, for example, entering into a plea agreement waiving any entitlement to relief), or whether petitioners' sentences actually qualify as mandatory life without parole sentences.

No. 14–1068. TYLER *v.* LOUISIANA. 29th Jud. Dist. Ct. La., St. Charles Parish;

No. 14–1196. LEWIS *v.* MICHIGAN. Sup. Ct. Mich. Reported below: 497 Mich. 946, 857 N. W. 2d 24;

No. 14–1248. JONES *v.* VIRGINIA. Sup. Ct. Va. Reported below: 288 Va. 475, 763 S. E. 2d 823; and

No. 14–1478. SANCHEZ *v.* PIXLEY, WARDEN. C. A. 4th Cir. Reported below: 597 Fed. Appx. 201. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Montgomery* v. *Louisiana*, *ante*, p. 190.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, concurring.

The Court has held the petitions in these and many other cases pending the decision in *Montgomery* v. *Louisiana*, *ante*, p. 190. In holding these petitions and now vacating and remanding the judgments below, the Court has not assessed whether petitioners' asserted entitlement to retroactive relief "is properly presented in the case." *Ante*, at 205. On remand, courts should understand that the Court's disposition of these petitions does not reflect any view regarding petitioners' entitlement to relief. The Court's disposition does not, for example, address whether an adequate and independent state ground bars relief, whether petitioners forfeited or waived any entitlement to relief (by, for example, entering into a plea agreement waiving any entitlement to relief), or whether petitioners' sentences actually qualify as mandatory life without parole sentences.

No. 14–6673. TOLLIVER *v.* LOUISIANA. Sup. Ct. La. Reported below: 2013–2893 (La. 7/31/14), 147 So. 3d 176;

No. 14–8047. TAPP *v.* LOUISIANA. Ct. App. La., 4th Cir.;

No. 14–9077. BURGOS *v.* MICHIGAN. Cir. Ct. Wayne County, Mich.;

No. 14–9521. COOK *v.* MICHIGAN. Ct. App. Mich.;

No. 14–9712. RILEY *v.* LOUISIANA. Ct. App. La., 1st Cir.;

No. 14–9941. YOUNG *v.* LOUISIANA. Ct. App. La., 3d Cir.;

No. 14–9998. GIBSON *v.* LOUISIANA. Sup. Ct. La. Reported below: 2014–0379 (La. 1/9/15), 157 So. 3d 589;

No. 14–10142. WILLIAMS *v.* LOUISIANA. Sup. Ct. La. Reported below: 2014–1139 (La. 3/6/15), 161 So. 3d 10;

No. 15–5004. JACOBS *v.* LOUISIANA. Sup. Ct. La. Reported below: 2014–1622 (La. 4/17/15), 165 So. 3d 69;

No. 15–5278. LIVAS *v.* LOUISIANA. Ct. App. La., 4th Cir.;

No. 15–5310. CONTRERAS *v.* DAVIS, WARDEN. C. A. 4th Cir. Reported below: 597 Fed. Appx. 175;

No. 15–5749. CLICK *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 464;

No. 15–6030. MARTIN *v.* SMITH, WARDEN. C. A. 8th Cir. Reported below: 782 F. 3d 939;

No. 15–6251. WILLIAMS *v.* ALABAMA. Sup. Ct. Ala. Reported below: 183 So. 3d 220;

No. 15–6278. WILSON *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 468;

No. 15–6283. MATTHEWS *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 466;

No. 15–6287. DUNLAP *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 470;

No. 15–6288. BLACK *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 467;

No. 15–6297. PRATT *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 467;

No. 15–6299. STUBBS *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 190 So. 3d 585;

No. 15–6303. REEVES *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 470;

No. 15–6304. GARDNER *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 467;

No. 15–6305. HOGAN *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 190 So. 3d 585;

No. 15–6307. IIAMS *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 467;

No. 15–6308. FOSTER *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 466;

No. 15–6309. FLYNN *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 466;

No. 15–6310. INGRAM *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 468;

No. 15–6317. FORMAN *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 467;

No. 15–6319. MCWILLIAMS *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 467;

No. 15–6326. STOREY *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 184 So. 3d 466;

No. 15–6584. THOMPSON *v.* ROY, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Reported below: 793 F. 3d 843;

No. 15–7255. BAKER *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 213 So. 3d 617;

No. 15–7441. DUKE *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 207 So. 3d 832; and

No. 15–7550. PRESLEY *v.* ALABAMA. Ct. Crim. App. Ala. Reported below: 213 So. 3d 623. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Montgomery* v. *Louisiana*, *ante*, p. 190.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, concurring.

The Court has held the petitions in these and many other cases pending the decision in *Montgomery* v. *Louisiana*, *ante*, p. 190. In holding these petitions and now vacating and remanding the judgments below, the Court has not assessed whether petitioners' asserted entitlement to retroactive relief "is properly presented in the case." *Ante*, at 205. On remand, courts should understand that the Court's disposition of these petitions does not reflect any view regarding petitioners' entitlement to relief. The Court's disposition does not, for example, address whether an adequate and independent state ground bars relief, whether petitioners forfeited or waived any entitlement to relief (by, for example, entering into a plea agreement waiving any entitlement to relief), or whether petitioners' sentences actually qualify as mandatory life without parole sentences.

Certiorari Dismissed

No. 15–7612. LEBLANC *v.* CORPORATE MARATHON. 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. 15–7615. FOSTER *v.* WILLIAMS, 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. 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. 15–7631. WEBB *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH. C. A. 10th 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. D–2837. In re Disbarment of Wyman. Disbarment entered. [For earlier order herein, see *ante*, p. 950.]

No. D–2838. In re Disbarment of Beck. Disbarment entered. [For earlier order herein, see *ante*, p. 951.]

No. D–2839. In re Disbarment of Allenbaugh. Disbarment entered. [For earlier order herein, see *ante*, p. 951.]

No. D–2840. In re Disbarment of Broida. Disbarment entered. [For earlier order herein, see *ante*, p. 951.]

No. D–2841. In re Disbarment of Starr. Disbarment entered. [For earlier order herein, see *ante*, p. 951.]

No. D–2842. In re Disbarment of Tracia. Disbarment entered. [For earlier order herein, see *ante*, p. 951.]

No. D–2843. In re Disbarment of Hanlon. Disbarment entered. [For earlier order herein, see *ante*, p. 951.]

No. D–2844. In re Disbarment of Armstrong. Disbarment entered. [For earlier order herein, see *ante*, p. 951.]

No. D–2845. In re Disbarment of Doran. Disbarment entered. [For earlier order herein, see *ante*, p. 952.]

No. D–2846. In re Disbarment of Purcell. Disbarment entered. [For earlier order herein, see *ante*, p. 952.]

No. D–2847. In re Disbarment of Kormanik. Disbarment entered. [For earlier order herein, see *ante*, p. 952.]

No. D–2849. In re Disbarment of Williams. Disbarment entered. [For earlier order herein, see *ante*, p. 952.]

No. D–2850. In re Disbarment of Anderson. Disbarment entered. [For earlier order herein, see *ante*, p. 952.]

No. D–2853. In re Disbarment of Biddle. Disbarment entered. [For earlier order herein, see *ante*, p. 953.]

No. D–2855. In re Disbarment of Halloran. Disbarment entered. [For earlier order herein, see *ante*, p. 953.]

No. D–2856. In re Disbarment of Weber. Disbarment entered. [For earlier order herein, see *ante*, p. 953.]

No. 15M88. Vehicle Intelligence & Safety LLC *v.* Mercedes-Benz USA, LLC, et al. Motion of Kevin Roe, *pro se*, to direct the Clerk to file petition for writ of certiorari on behalf of Vehicle Intelligence and Safety denied.

No. 14–1091. Dow Chemical Co. *v.* Industrial Polymers, Inc., et al. C. A. 10th Cir. Joint motion to hold petition in abeyance granted.

No. 14–1457. Betterman *v.* Montana. Sup. Ct. Mont. [Certiorari granted, *ante*, p. 1025.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 14–9496. Manuel *v.* City of Joliet, Illinois, et al. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1098.] Motion of petitioner for appointment of counsel granted, and Stanley B. Eisenhammer, Esq., of Arlington Heights, Ill., is appointed to serve as counsel for petitioner in this case.

No. 15–446. Cuozzo Speed Technologies, LLC *v.* Lee, Under Secretary of Commerce for Intellectual Property and Director, Patent and Trademark Office. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 1098.] Motion of petitioner to dispense with printing joint appendix granted.

No. 15–474. McDonnell *v.* United States. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1099.] Motion of petitioner to deem the Court of Appeals joint appendix and supplemental appendix as the joint appendix in this Court granted.

No. 15–7091. Johnson *v.* Alabama, *ante*, p. 1087. Respondent is requested to file a response to the petition for rehearing within 30 days.

No. 15–7304. Rauso *v.* United States. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1101] denied.

No. 15–7406. Williams *v.* United States. Ct. App. D. C. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1101] denied.

No. 15–7431. Liebeskind *v.* Rutgers University et al. Super. Ct. N. J., App. Div.;

No. 15–7602. Reade *v.* Galvin, Secretary of the Commonwealth of Massachusetts, et al. Sup. Jud. Ct. Mass.;

No. 15–7610. Johnsson *v.* Rittmanic. App. Ct. Ill., 1st Dist.;

No. 15–7645. Muathe *v.* Fifth Third Bank et al. C. A. Fed. Cir.; and

No. 15–7840. Hansen *v.* Department of the Army. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 28, 2016, 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. 15–8155. In re Shiver;

No. 15–8182. In re Ortiz;

No. 15–8193. In re Getz; and

No. 15–8198. In re Smaage. Petitions for writs of habeas corpus denied.

No. 15–8143. In re Rodriguez. 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. 15–7517. In re White;

No. 15–7659. In re Ray;

No. 15–7843. In re Viola; and

No. 15–7956. In re Hedrick. Petitions for writs of mandamus denied.

No. 15–7591. In re Koch. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition 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. 15–8052. In re Boyd. Petition for writ of prohibition denied.

Certiorari Denied

No. 15–276. Kansas *v.* Dull. Sup. Ct. Kan. Certiorari denied. Reported below: 302 Kan. 32, 351 P. 3d 641.

No. 15–380. Salem Financial, Inc. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 786 F. 3d 932.

No. 15–438. Alliance of Automobile Manufacturers, Inc. *v.* Currey, Commissioner, Connecticut Department of Motor Vehicles, et al. C. A. 2d Cir. Certiorari denied. Reported below: 610 Fed. Appx. 10.

No. 15–460. One Beacon Insurance Co. et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 783 F. 3d 607.

No. 15–478. American International Group, Inc. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 801 F. 3d 104.

No. 15–517. Lopez *v.* United States; and
No. 15–6608. Kuhrt *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 788 F. 3d 403.

No. 15–551. Eason *v.* Huntington Ingalls Industries, Inc., fka Northrup Grumman Shipbuilding, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 788 F. 3d 118.

No. 15–563. Shammas *v.* Hirshfeld, Commissioner for Patents. C. A. 4th Cir. Certiorari denied. Reported below: 784 F. 3d 219.

No. 15–565. Apple, Inc. *v.* United States et al. C. A. 2d Cir. Certiorari denied. Reported below: 791 F. 3d 290.

No. 15–572. Bank of New York Mellon Corp., as Successor in Interest to Bank of New York Co., Inc. *v.* Commissioner of Internal Revenue. C. A. 2d Cir. Certiorari denied. Reported below: 801 F. 3d 104.

No. 15–715. Adar 980 Realty, LLC *v.* Sofer et al. C. A. 2d Cir. Certiorari denied. Reported below: 613 Fed. Appx. 92.

No. 15–720. Bill et al. *v.* Brewer et al. C. A. 9th Cir. Certiorari denied. Reported below: 799 F. 3d 1295.

No. 15–735. BNSF Railway Co. *v.* Fair. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 238 Cal. App. 4th 269, 189 Cal. Rptr. 3d 150.

No. 15–741. Kelley, Director, Arkansas Department of Correction *v.* Gordon. Sup. Ct. Ark. Certiorari denied. Reported below: 2015 Ark. 277, 465 S. W. 3d 842.

No. 15–841. Dixon *v.* Columbia Assn., Inc. Ct. Sp. App. Md. Certiorari denied. Reported below: 222 Md. App. 708 and 710.

No. 15–844. Ewing Industries Corp. *v.* Bob Wines Nursery, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 795 F. 3d 1324.

No. 15–845. Dahms *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 133301–U.

No. 15–852. Cleland et al. *v.* Baynes. C. A. 6th Cir. Certiorari denied. Reported below: 799 F. 3d 600.

No. 15–854. Padula-Wilson *v.* Wilson. Sup. Ct. Va. Certiorari denied.

No. 15–878. Chinweze *v.* Bank of America, N. A. Sup. Ct. Fla. Certiorari denied. Reported below: 182 So. 3d 631.

No. 15–883. Alberto Ruiz-Vidal *v.* Lynch, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 803 F. 3d 1049.

No. 15–890. Kentucky *v.* Rouse. Ct. App. Ky. Certiorari denied.

No. 15–902. Nanic et ux. *v.* Lynch, Attorney General. C. A. 8th Cir. Certiorari denied. Reported below: 793 F. 3d 945.

No. 15–920. Wahab *v.* Estee Lauder Cos., Inc. C. A. 2d Cir. Certiorari denied. Reported below: 615 Fed. Appx. 50.

No. 15–943. Towle *v.* DC Comics. C. A. 9th Cir. Certiorari denied. Reported below: 802 F. 3d 1012.

No. 15–970. Baldeo *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 615 Fed. Appx. 26.

No. 15–972. Delacruz *v.* Committee of Bar Examiners of the State Bar of California. Sup. Ct. Cal. Certiorari denied.

No. 15–5810. Crowe *v.* United States; and
No. 15–5979. Wingate *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 303.

No. 15–6479. Kelly *v.* Swarthout, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 599 Fed. Appx. 267.

No. 15–6520. Wilson *v.* Wisconsin. Sup. Ct. Wis. Certiorari denied. Reported below: 2015 WI 48, 362 Wis. 2d 193, 864 N. W. 2d 52.

No. 15–6568. Malik *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 911.

No. 15–6691. Little *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 950.

No. 15–6768. Hodges *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 961.

No. 15–7153. Suteerachanon *v.* McDonald's Restaurants of Maryland, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 607 Fed. Appx. 339.

No. 15–7222. Hong Lee Wong *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 580.

No. 15–7554. Hartley *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 175 So. 3d 757.

No. 15–7556. Henderson *v.* Artus, Superintendent, Attica Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 15–7566. Dreibelbis *v.* Wenerowicz, Superintendent, State Correctional Institution at Graterford. C. A. 3d Cir. Certiorari denied.

No. 15–7569. Harris *v.* Biter, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 609 Fed. Appx. 516.

No. 15–7574. WHITT *v.* SLEEPY HOLLOW GOLF CLUB, INC. Sup. Ct. App. W. Va. Certiorari denied.

No. 15–7577. BRANTLEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2014 IL App (1st) 112633 and 131431–U.

No. 15–7578. RUSS *v.* WITHROW, ACTING EXECUTIVE DIRECTOR, COALINGA STATE HOSPITAL. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 302.

No. 15–7585. GILES *v.* HAAS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7587. LAWSON *v.* CAMPBELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7588. JOHNSON *v.* CAMPBELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7589. LAMBERT *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–7590. LISENBY *v.* COHEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 247.

No. 15–7592. POTVIN *v.* POWERS, CHIEF PROBATION OFFICER, LOS ANGELES COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–7593. OTYANG *v.* CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 541.

No. 15–7595. NELSON ET AL. *v.* LOUISE, MAYOR OF CITY OF PORT ALLEN, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied.

No. 15–7596. PITTS *v.* QUILTER ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–7597. GREEN *v.* HILL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–7598. STRAND *v.* NUPETCO ASSOCIATES, LLC. Ct. App. Utah. Certiorari denied. Reported below: 2013 UT App 188, 309 P. 3d 251.

No. 15–7605. MUBITA *v.* BLADES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–7613. ENRIQUEZ SANCHEZ *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–7616. HOLLAND *v.* RIVARD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 800 F. 3d 224.

No. 15–7617. GUERRERO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2014 IL App (1st) 122314–U.

No. 15–7618. HOLMES *v.* STEPPIG MANAGEMENT. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 15–7619. SPENCER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 148 So. 3d 128.

No. 15–7620. CALDERON-LOPEZ *v.* GUMUSHYAN ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–7621. MIMS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 15–7627. WINFIELD *v.* UNIVERSITY OF CHICAGO MEDICAL CENTER. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 142100–U.

No. 15–7628. VALENTINE-MORALES *v.* MOONEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–7636. LONG *v.* QUALLS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 492.

No. 15–7638. LORDMASTER, FKA GOLDADER *v.* EPPS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 206.

No. 15–7641. MIGUEL AGUIRRE *v.* MONTGOMERY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 607 Fed. Appx. 686.

No. 15–7646. SPENCER *v.* OLIN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 401.

No. 15–7648. Mammen *v.* Chapman, Judge, Supreme Court of Missouri. Sup. Ct. Mo. Certiorari denied. Reported below: 464 S. W. 3d 513.

No. 15–7650. Suero *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 120 A. 3d 388.

No. 15–7651. Romero *v.* Colorado. Ct. App. Colo. Certiorari denied.

No. 15–7652. James *v.* Phillips, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 708.

No. 15–7655. Troglin *v.* Cook, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–7657. McDonald *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 140097–U.

No. 15–7658. Sacks *v.* ShopRite Supermarkets. C. A. 2d Cir. Certiorari denied.

No. 15–7665. Blake *v.* Wrigley, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 640.

No. 15–7711. Dixon *v.* Ayers, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 598.

No. 15–7747. Visith Ny *v.* Lind et al. C. A. 10th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 760.

No. 15–7782. Wright *v.* Bank of America, N. A., et al. C. A. 11th Cir. Certiorari denied.

No. 15–7785. Szabo *v.* Goldfarb. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 130 App. Div. 3d 728, 13 N. Y. S. 3d 247.

No. 15–7791. James *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 628 Fed. Appx. 812.

No. 15–7826. Boney *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 634 Fed. Appx. 894.

No. 15–7837. Brown *v.* Mansukhani, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 200.

No. 15–7853. Saint-Surin *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 15–7862. Collins *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 842.

No. 15–7864. Barnett *v.* Fox, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 496.

No. 15–7867. Butler *v.* United States District Court for the Eastern District of Michigan. C. A. 6th Cir. Certiorari denied.

No. 15–7870. Kiefer *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 760 F. 3d 926.

No. 15–7873. Daniels, aka Robinson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 366.

No. 15–7874. Chafin *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 3d 1263.

No. 15–7877. Simmons *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 365.

No. 15–7884. Spencer *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 15–7890. Woodward *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 15–7895. Maynor *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 234.

No. 15–7898. Avila-Correa *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 653.

No. 15–7899. Andrews *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 808 F. 3d 964.

No. 15–7906. Nicholson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 473.

No. 15–7908. Torres Guzman *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 499.

No. 15–7916. BUMAGIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–7917. WARREN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 973.

No. 15–7922. ALFREDO DELGADO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 673.

No. 15–7924. NAUGHTON, AKA BLACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 170.

No. 15–7925. MYERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 804 F. 3d 1246.

No. 15–7930. DUDLEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 804 F. 3d 506.

No. 15–7947. FRANCIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 171.

No. 15–7951. RONDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–7961. JEAN-PIERRE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 15–7962. MADSEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 809 F. 3d 712.

No. 15–7963. MARRERO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 15–7966. MCDONALD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 804 F. 3d 497.

No. 15–7975. CLAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 377.

No. 15–7976. SILER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 990.

No. 15–7979. SHOUMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–7983. Harley *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 15–7986. Harrell *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 603.

No. 15–7990. Kennedy *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 15–7992. Chapman *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 804 F. 3d 895.

No. 15–7996. Womack *v.* United States District Court for the Eastern District of Pennsylvania. C. A. 3d Cir. Certiorari denied. Reported below: 634 Fed. Appx. 851.

No. 15–7997. Taskov *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 347.

No. 15–8011. Arnold *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 432.

No. 15–8016. Barrera-Estrada *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 371.

No. 15–8021. Hedrick *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 583 Fed. Appx. 364.

No. 15–8035. Gutierrez-Jaramillo *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 15–8046. Raghunathan et al. *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 15–8053. Leonel Accituno *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 292.

No. 15–8064. Medina *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 682.

No. 15–8070. Ramos *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 15–8072. Broxson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 738.

No. 15–8073. TIPPINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 501.

No. 15–8075. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 734.

No. 15–8115. DAVIS *v.* COMCAST CORP., INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 156.

No. 14–639. NEW HAMPSHIRE *v.* SOTO ET AL. Sup. Ct. N. H. Motion of respondents Robert Dingman and Eduardo Lopez, Jr., for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 166 N. H. 659, 103 A. 3d 227.

No. 14–1472. CONNECTICUT *v.* RILEY. Sup. Ct. Conn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 315 Conn. 637, 110 A. 3d 1205.

No. 15–238. SEMPLE, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION *v.* CASIANO. Sup. Ct. Conn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 317 Conn. 52, 115 A. 3d 1031.

No. 15–584. AMERICAN FREEDOM DEFENSE INITIATIVE ET AL. *v.* KING COUNTY, WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 796 F. 3d 1165.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting.

The First Amendment prohibits the government from "abridging the freedom of speech." But the Court has struggled with how that guarantee applies when private speech occurs on government property. We have afforded private speech different levels of protection depending on the forum in which it occurs. See *Pleasant Grove City* v. *Summum*, 555 U. S. 460, 469–470 (2009). In a "traditional public forum"—namely, public streets or parks—speech restrictions must be "narrowly tailored to serve a compelling government interest." *Id.*, at 469. That same standard governs speech restrictions within a "'designated public forum,'" which exists "if government property that has not traditionally been regarded as a public forum is intentionally opened up for that purpose." *Ibid.* But if the government creates a limited public forum (also called a nonpublic forum)—namely, "a forum that is limited to use by certain groups or dedicated solely

to the discussion of certain subjects"—then speech restrictions need only be "reasonable and viewpoint neutral." *Id.*, at 470.

Distinguishing between designated and limited public forums has proved difficult. We have said that whether the government created a designated public forum depends on its intent—as evidenced by its "policy and practice" and "the nature of the [government] property and its compatibility with expressive activity." *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 802 (1985). But what this guidance means has bedeviled federal courts.

This case involves a type of forum that has prompted especially stark divisions among federal courts of appeals: advertising in public transit spaces. A plurality of this Court has concluded that a public transit authority that categorically prohibits advertising involving political speech does not create a designated public forum. *Lehman* v. *Shaker Heights*, 418 U. S. 298, 300–302 (1974). But many transit authorities have instead opened their advertising spaces to a wide array of political speech, and courts of appeals are divided on what type of forum this creates. Transit authorities in Chicago, Detroit, New York City, and Washington, D. C., are bound by rulings that classify their ad spaces as designated public forums and, thus, prohibit content-based restrictions on advertising. Transit authorities in Boston—and, in this case, Seattle—are similarly open to political speech, yet can freely restrict speech based on its content. Whether public transit advertising spaces are designated or limited public forums determines what speech millions of Americans will—or will not—encounter during their commutes.

This case offers an ideal opportunity to bring clarity to an important area of First Amendment law. In the decision below, the U. S. Court of Appeals for the Ninth Circuit held that Seattle public transit advertising space is a limited public forum. The court then allowed the transit authority to exclude ads submitted by the American Freedom Defense Initiative (AFDI)—petitioner here—by applying content-based advertising restrictions. I would have granted certiorari.

I

King County, Washington, operates a public transit system that provides transportation to hundreds of thousands of riders in and around Seattle. Like many transit authorities, King County's

transit system funds itself in part by selling advertising space on its buses and other property. And, like many transit authorities, King County subjects proposed ads to a preapproval process. Its policy for evaluating ads prohibits political campaign advertising, but allows other political messages. Political messages, however, cannot be displayed if the county deems them "false or misleading," "demeaning and disparaging," or a risk to the orderly operation of the transit system. 2014 WL 345245, *4 (WD Wash., Jan. 30, 2014).

King County has approved many controversial political ads. Transit bus exteriors have proclaimed "Save Gaza! Justice for all." Riders have encountered ads urging women to visit a pro-life crisis pregnancy center to discuss abortion alternatives. Ads have championed "Equal Rights for Palestinians[:] The Way to Peace," and announced, "The Palestinian Authority Is Calling For A Jew-Free State[:] Equal Rights for Jews." King County even initially accepted an ad that would have emblazoned "Israeli War Crimes[,] Your Tax Dollars At Work" on buses—before withdrawing that acceptance based on threats of violence. See *Seattle Mideast Awareness Campaign* v. *King County*, 781 F. 3d 489, 494 (CA9 2015) (*SeaMAC*).

In 2013, the State Department and the Federal Bureau of Investigation (FBI) launched a campaign to encourage anyone in Seattle—an international travel hub—to report information about wanted terrorists. To that end, the State Department submitted ads for King County's approval to run on bus exteriors.

Consistent with a campaign aimed at soliciting information about wanted terrorists, one ad displayed the names and faces of 16 wanted terrorists beneath the words "Faces of Global Terrorism." Appendix, *infra*. The bottom of this ad announced: "Stop a Terrorist. Save Lives. Up to $25 Million Reward." *Ibid.* The ad included contact information for the Rewards for Justice Program, which offers substantial monetary rewards for information helping to locate wanted terrorists. See *ibid.* King County's Transit Advertising Program Project Manager interpreted the ad as a conventional " 'wanted poster' " and approved it. Record in No. 2:13–CV–01804 (WD Wash.) (Record), Doc. 14, pp. 5–6 (Shinbo decl.). The ad started appearing on buses in June 2013. *Ibid.*

King County then received a "small" number of complaints. *Id.*, at 6. Faultfinders complained that juxtaposing the words "Faces of Global Terrorism" next to "pictures of persons of color

with Muslim-sounding names . . . suggested that all similar persons were dangerous terrorists," and that "just to depict men of certain races is . . . incendiary itself." *Ibid.* (internal quotation marks omitted). A Seattle-area U. S. Congressman echoed these objections. The State Department voluntarily withdrew the ad.

Weeks later, petitioner AFDI—an advocacy group that seeks to convey its views on terrorism by buying public transit ad space—submitted a proposed ad. See Appendix, *infra*. Like the State Department ad, AFDI's ad was captioned "Faces of Global Terrorism." *Ibid.* And like the State Department ad, AFDI's ad displayed the same 16 photos of wanted terrorists, with their names beneath. At the bottom of the ad, AFDI included slightly different text. Whereas the State Department ad concluded "Stop a Terrorist. Save Lives. Up to $25 Million Reward," AFDI's ad concluded: "AFDI Wants You to Stop a Terrorist. The FBI Is Offering Up To $25 Million Reward If You Help Capture One Of These Jihadis." *Ibid.*

King County rejected AFDI's ad as inconsistent with its policy. First, King County deemed the ad "false or misleading," because the Government was not offering a $25 million reward for any depicted terrorist, and because the State Department, not the FBI, offers the rewards. Record, Doc. 13, pp. 7–8 (Desmond decl.). Second, King County considered the ad "demeaning and disparaging" to minorities "by equating their dress and skin color with terrorists" and by misusing the term "jihadi." *Id.*, at 8. Third, King County believed that the ad could "interfere with operation of the Metro transit system" because the ad could alienate riders and discomfort staff. *Id.*, at 9.

AFDI sued, but the District Court rejected AFDI's First Amendment challenge. It reasoned that the transit system's advertising space was a limited public forum, and that King County's restrictions were reasonable and viewpoint neutral. 2014 WL 345245, *4–*7. The Ninth Circuit affirmed. It agreed that King County's transit ad space was a limited public forum, and considered the rejection of AFDI's ad as "false or misleading" to be reasonable and viewpoint neutral. 796 F. 3d 1165, 1168–1172 (2015). It did not reach King County's other rationales. *Ibid.*

II

In the large portions of this country encompassed by the Second, Sixth, Seventh, and D. C. Circuits, AFDI's ad would likely have met a different fate. In those Circuits, accepting a wide

array of political and issue-related ads demonstrates that the government intended to create a designated (rather than limited) public forum because "political advertisements . . . [are] the hallmark of a public forum." *AFDI* v. *Suburban Mobility Auth. for Regional Transp.*, 698 F. 3d 885, 890 (CA6 2012).* In those Circuits, transit authorities that open their ad spaces to political messages must provide compelling justifications for restricting ads, and must narrowly tailor any restrictions to those justifications.

In the First and Ninth Circuits, however, transit authorities have far more leeway to restrict speech. There, "a transit agency's decision to allow the display of controversial advertising does not in and of itself establish a designated public forum." *AFDI* v. *Massachusetts Bay Transp. Auth.*, 781 F. 3d 571, 580 (CA1 2015); see *SeaMAC*, 781 F. 3d, at 498–499 (similar); see also 796 F. 3d, at 1168 (decision below, relying on *SeaMAC*). As the Ninth Circuit acknowledged, this approach conflicts with the approaches of "other courts [that] have held that similar transit advertising programs constitute designated public forums." *SeaMAC*, *supra*, at 498–499. Materially similar public transit advertising programs should not face such different First Amendment constraints based on geographical happenstance.

This case would allow us to resolve that division. King County's advertising restrictions cannot pass muster if the transit advertising space is a designated public forum. King County bans ads that it deems "false or misleading," but this Court considers broad, content-based restrictions on false statements in political messages to be generally impermissible. See *United States* v. *Alvarez*, 567 U. S. 709, 718 (2012) (plurality opinion); see *id.*, at 737–739 (BREYER, J., concurring in judgment). King County's

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*Accord, *New York Magazine* v. *Metropolitan Transp. Auth.*, 136 F. 3d 123, 130 (CA2 1998) ("[T]he advertising space on the outside of [transit] buses is a designated public forum, because the [authority] accepts both political and commercial advertising"); *Lebron* v. *Washington Metropolitan Area Transit Auth.*, 749 F. 2d 893, 896, and n. 6 (CADC 1984) ("[T]he Authority here, by accepting political advertising, has made its subway stations into public fora"); *Air Line Pilots Assn. Int'l* v. *Department of Aviation of Chicago*, 45 F. 3d 1144, 1152–1154, and n. 7 (CA7 1995) (focusing on "whether or to what extent 'political' advertisements have been permitted in the past"); *Planned Parenthood Assn./Chicago Area* v. *Chicago Transit Auth.*, 767 F. 2d 1225, 1232 (CA7 1985) (similar).

prohibitions on "demeaning and disparaging" ads, or ads that could disrupt the transit system by alienating riders, are also problematic content-based restrictions. King County may wish to protect captive riders' sensibilities, but "'we are often "captives" outside the sanctuary of the home and subject to objectionable speech.'" *Cohen* v. *California*, 403 U. S. 15, 21 (1971). The government cannot automatically "shut off discourse solely to protect others from hearing it." *Ibid.*

To be sure, this case involves speech that some may consider offensive, on a politically charged subject. That is all the more reason to grant review. "[A] principal function of free speech . . . is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." *Texas* v. *Johnson*, 491 U. S. 397, 408–409 (1989) (internal quotation marks omitted).

Many of the Court's landmark First Amendment decisions have involved contentious speech in times of national turmoil. When some States branded the civil rights movement a threat to public order, the Court decided whether protesters against segregation could be punished for purportedly disrupting the peace. *E. g.*, *Cox* v. *Louisiana*, 379 U. S. 536, 537–538 (1965). When the Nation was divided over the Vietnam War, the Court decided whether the First Amendment prohibits the Government from prosecuting a man for wearing a "'"F*** the Draft"'" jacket in a courthouse, *Cohen*, *supra*, at 16, and whether a public school could punish students who wear black armbands as symbols of antiwar protest, *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 504 (1969). More recently, we have decided whether protesters can brandish signs proclaiming "'God Hates Fags'" and "'God Hates the USA/Thank God for 9/11'" outside a soldier's funeral, *Snyder* v. *Phelps*, 562 U. S. 443, 447–448 (2011); whether the First Amendment protects videos that depict women crushing small animals to death to satisfy viewers' sexual fetishes, *United States* v. *Stevens*, 559 U. S. 460, 464–466 (2010); and whether States can reject Confederate-flag license plates, *Walker* v. *Texas Div., Sons of Confederate Veterans, Inc.*, 576 U. S. 200, 235 (2015).

I see no sound reason to shy away from this First Amendment case. It raises an important constitutional question on which there is an acknowledged and well-developed division among the

Courts of Appeals. One of this Court's most basic functions is to resolve this kind of question. I respectfully dissent from the denial of certiorari.

APPENDIX

The top image is the State Department's "Faces of Global Terrorism" advertisement, which King County approved and allowed to run on its buses. The bottom image is AFDI's "Faces of Global Terrorism" advertisement, which King County rejected.

No. 15–870. FLORIDA *v.* GRIDINE. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 175 So. 3d 672.

No. 15–5798. SCHWAGER *v.* SCHWAGER. Super. Ct. N. J., App. Div. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 15–7571. HAMILTON *v.* BIRD ET AL. C. A. 10th Cir. Certiorari before judgment denied.

No. 15–8054. BLANCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 632 Fed. Appx. 549.

Rehearing Denied

No. 15–593. TESLER *v.* CACACE ET AL., *ante*, p. 1066;
No. 15–633. DUFF ET AL. *v.* LEWIS ET AL., *ante*, p. 1103;

No. 15–663. KRATZ *v.* CITIMORTGAGE, INC., *ante*, p. 1104;

No. 15–691. ARUNACHALAM *v.* JPMORGAN CHASE & CO., *ante*, p. 1068;

No. 15–6075. FLETCHER *v.* FLORIDA, *ante*, p. 1120;

No. 15–6211. WHITE *v.* DETROIT EAST COMMUNITY MENTAL HEALTH ET AL., *ante*, p. 1069;

No. 15–6633. BARNETT *v.* CROCKETT ET AL., *ante*, p. 1072;

No. 15–6696. HOSKINS *v.* FAYRAM, WARDEN, *ante*, p. 1074;

No. 15–6718. RODRIGUEZ *v.* BEARD, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, *ante*, p. 1075;

No. 15–6787. RASHID *v.* ORTIZ, WARDEN, *ante*, p. 1037;

No. 15–6876. L. B. *v.* S. T. ET AL., *ante*, p. 1080;

No. 15–7104. LEVITAN *v.* MORGAN, SHERIFF, ESCAMBIA COUNTY, FLORIDA, *ante*, p. 1108; and

No. 15–7235. ADAMS *v.* UNITED STATES, *ante*, p. 1091. Petitions for rehearing denied.

No. 15–5579. FLORES-PEREZ *v.* UNITED STATES, *ante*, p. 917. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

MARCH 10, 2016

Dismissal Under Rule 46

No. 15–6517. PONGO ET AL. *v.* BANK OF AMERICA ET AL. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 612 Fed. Appx. 698.

MARCH 14, 2016

Dismissal Under Rule 46

No. 15–6670. BRICE *v.* UNITED STATES. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 593 Fed. Appx. 709.

MARCH 18, 2016

Miscellaneous Orders

No. 15–338. SHERIFF ET AL. *v.* GILLIE ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1045.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–339. Ross *v.* Blake. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1045.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–6418. Welch *v.* United States. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1056.] Motion of respondent United States for divided argument granted.

March 21, 2016

Certiorari Granted—Vacated and Remanded. (See No. 14–10078, *ante*, p. 411.)

Miscellaneous Orders. (See also No. 137, Orig., *ante*, p. 423.)

No. D–2881. In re Discipline of McMeen. Herbert Edgar McMeen, of Carbondale, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2882. In re Discipline of Brush. Michael A. Brush, of Sylmar, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2883. In re Discipline of Castle. Leroy Russell Castle, of Durham, N. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2884. In re Discipline of Zuganelis. George Mark Zuganelis, of Harwood Heights, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2885. In re Discipline of Davies. David Harrison Davies, of Willoughby, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2886. In re Discipline of Carter. Stephen E. Carter, of Beaufort, S. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 15M89. Konover *v.* Wells Fargo Bank, N. A. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 15M90. Taylor *v.* United States; and

No. 15M91. Hall *v.* Brennan, Postmaster General. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

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 $41,564.31 for the period September 1, 2015, through January 31, 2016, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, *ante*, p. 921.]

No. 144, Orig. Nebraska et al. *v.* Colorado. Motion for leave to file bill of complaint denied. [For earlier order herein, see 575 U. S. 994.]

Justice Thomas, with whom Justice Alito joins, dissenting.

Federal law does not, on its face, give this Court discretion to decline to decide cases within its original jurisdiction. Yet the Court has long exercised such discretion, and does so again today in denying, without explanation, Nebraska and Oklahoma's motion for leave to file a complaint against Colorado. I would not dispose of the complaint so hastily. Because our discretionary approach to exercising our original jurisdiction is questionable, and because the plaintiff States have made a reasonable case that this dispute falls within our original and exclusive jurisdiction, I would grant the plaintiff States leave to file their complaint.

I

The Constitution provides that "[i]n all Cases . . . in which a State shall be [a] Party, the supreme Court shall have original Jurisdiction." Art. III, § 2, cl. 2. In accordance with Article III, Congress has long provided by statute that this Court "shall have

original and exclusive jurisdiction of all controversies between two or more States." 28 U. S. C. § 1251(a).

Federal law is unambiguous: If there is a controversy between two States, this Court—and only this Court—has jurisdiction over it. Nothing in § 1251(a) suggests that the Court can opt to decline jurisdiction over such a controversy. Context confirms that § 1251(a) confers no such discretion. When Congress has chosen to give this Court discretion over its merits docket, it has done so clearly. Compare § 1251(a) (the Court "shall have" jurisdiction over controversies between States) with § 1254(1) (cases in the courts of appeals "may be reviewed" by this Court by writ of certiorari) and § 1257(a) (final judgments of state courts "may be reviewed" by this Court by writ of certiorari).

The Court's lack of discretion is confirmed by the fact that, unlike other matters within our original jurisdiction, our jurisdiction over controversies between States is exclusive. Compare § 1251(a) with § 1251(b) (the Court "shall have original but not exclusive jurisdiction" of other cases over which Article III gives this Court original jurisdiction). If this Court does not exercise jurisdiction over a controversy between two States, then the complaining State has no judicial forum in which to seek relief. When presented with such a controversy, "[w]e have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens* v. *Virginia*, 6 Wheat. 264, 404 (1821) (Marshall, C. J.).

Nonetheless, the Court has exercised discretion and declined to hear cases that fall within the terms of its original jurisdiction. See, *e. g.*, *United States* v. *Nevada*, 412 U. S. 534, 537–540 (1973) (*per curiam*) (controversy between United States and individual States); *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U. S. 493, 500–505 (1971) (action by a State against citizens of other States). The Court has even exercised this discretion to decline cases where, as here, the dispute is between two States and thus falls within our *exclusive* jurisdiction. See, *e. g.*, *Arizona* v. *New Mexico*, 425 U. S. 794, 796–798 (1976) (*per curiam*). The Court has concluded that its original jurisdiction is "obligatory only in appropriate cases" and has favored a "sparing use" of that jurisdiction. *Illinois* v. *Milwaukee*, 406 U. S. 91, 93–94 (1972). The Court's reasons for transforming its mandatory, original jurisdiction into discretionary jurisdiction have been rooted in policy considerations. The Court has, for example, cited its purported lack

of "special competence in dealing with" many interstate disputes and emphasized its modern role "as an appellate tribunal." *Wyandotte Chemicals Corp.*, 401 U. S., at 498; see *id.*, at 497–499.

I have previously applied the Court's precedents taking this discretionary approach to our original jurisdiction. See *Wyoming* v. *Oklahoma*, 502 U. S. 437, 474–475, n. (1992) (dissenting opinion) (acknowledging precedents, noting that they "have not been challenged here," and arguing against exercising jurisdiction). I have also acknowledged that "sound reasons" support that approach. *Id.*, at 475.

Because our discretionary approach appears to be at odds with the statutory text, it bears reconsideration. Moreover, the "reasons" we have given to support the discretionary approach are policy judgments that are in conflict with the policy choices that Congress made in the statutory text specifying the Court's original jurisdiction.

II

This case involves a suit brought by two States against another State, and thus presents an opportunity for us to reevaluate our discretionary approach to our original jurisdiction.

Federal law generally prohibits the manufacture, distribution, dispensing, and possession of marijuana. See Controlled Substances Act (CSA), 84 Stat. 1242, as amended, 21 U. S. C. §§ 812(c), Schedule I(c)(10), 841–846 (2012 ed. and Supp. II). Emphasizing the breadth of the CSA, this Court has stated that the statute establishes "a comprehensive regime to combat the international and interstate traffic in illicit drugs." *Gonzales* v. *Raich*, 545 U. S. 1, 12 (2005). Despite the CSA's broad prohibitions, in 2012 the State of Colorado adopted Amendment 64, which amends the State Constitution to legalize, regulate, and facilitate the recreational use of marijuana. See Colo. Const., Art. XVIII, § 16. Amendment 64 exempts from Colorado's criminal prohibitions certain uses of marijuana. §§ 16(3)(a), (c), (d); see Colo. Rev. Stat. § 18–18–433 (2015). Amendment 64 directs the Colorado Department of Revenue to promulgate licensing procedures for marijuana establishments. Art. XVIII, § 16(5)(a). And the amendment requires the Colorado General Assembly to enact an excise tax for sales of marijuana from cultivation facilities to manufacturing facilities and retail stores. § 16(5)(d).

In December 2014, Nebraska and Oklahoma filed in this Court a motion seeking leave to file a complaint against Colorado. The

plaintiff States—which share borders with Colorado—allege that Amendment 64 affirmatively facilitates the violation and frustration of federal drug laws. See Complaint ¶¶54–65. They claim that Amendment 64 has "increased trafficking and transportation of Colorado-sourced marijuana" into their territories, requiring them to expend significant "law enforcement, judicial system, and penal system resources" to combat the increased trafficking and transportation of marijuana. *Id.*, ¶58; Brief [for Nebraska and Oklahoma] in Support of Motion for Leave To File Complaint 11–16. The plaintiff States seek a declaratory judgment that the CSA pre-empts certain of Amendment 64's licensing, regulation, and taxation provisions and an injunction barring their implementation. Complaint 28–29.

The complaint, on its face, presents a "controvers[y] between two or more States" that this Court alone has authority to adjudicate. 28 U. S. C. § 1251(a). The plaintiff States have alleged significant harms to their sovereign interests caused by another State. Whatever the merit of the plaintiff States' claims, we should let this complaint proceed further rather than denying leave without so much as a word of explanation.

* * *

I respectfully dissent from the denial of the motion for leave to file a complaint.

No. 15–7. Universal Health Services, Inc. *v.* United States et al. ex rel. Escobar et al. C. A. 1st Cir. [Certiorari granted, *ante*, p. 1025.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–610. Midland Funding, LLC, et al. *v.* Madden. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 15–6565. Long *v.* Minton, Chief Justice, Supreme Court of Kentucky, et al. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1056] denied.

No. 15–6878. In re Campbell. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1060] denied.

No. 15–7603. In re Schotz. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1118] denied. Justice Kagan took no part in the consideration or decision of this motion.

No. 15–7713. Yan Ping Xu *v.* City of New York, New York, et al. C. A. 2d Cir.;

No. 15–7719. Laslie *v.* Chicago Transit Authority. C. A. 7th Cir.;

No. 15–7910. Doak *v.* Johnson, Secretary of Homeland Security. C. A. D. C. Cir.;

No. 15–8013. Burse *v.* Gottlieb et al. C. A. 7th Cir.; and

No. 15–8187. Slocum *v.* United States Postal Service. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until April 11, 2016, 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. 15–8244. In re Debrow;

No. 15–8288. In re McCormick; and

No. 15–8359. In re Deroven. Petitions for writs of habeas corpus denied.

No. 15–907. In re Houston et al.; and

No. 15–8006. In re Joseph. Petitions for writs of mandamus denied.

Certiorari Granted

No. 15–777. Samsung Electronics Co., Ltd., et al. *v.* Apple Inc. C. A. Fed. Cir. Certiorari granted limited to Question 2 presented by the petition. Reported below: 786 F. 3d 983.

Certiorari Denied

No. 15–168. Rynearson *v.* Lands, Border Patrol Agent, et al. C. A. 5th Cir. Certiorari denied. Reported below: 601 Fed. Appx. 302.

No. 15–424. Electronic Arts Inc. *v.* Davis et al. C. A. 9th Cir. Certiorari denied. Reported below: 775 F. 3d 1172.

No. 15–439. Aetna Life Insurance Co. et al. *v.* LeGras. C. A. 9th Cir. Certiorari denied. Reported below: 786 F. 3d 1233.

No. 15–527. Mebo International, Inc. *v.* Yamanaka. C. A. 9th Cir. Certiorari denied. Reported below: 607 Fed. Appx. 768.

No. 15–580. Cook, Warden *v.* Barton. C. A. 6th Cir. Certiorari denied. Reported below: 786 F. 3d 450.

No. 15–585. Rosemond *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 480.

No. 15–590. Florez, aka Flores *v.* Lynch, Attorney General. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 3d 207.

No. 15–607. Biogen MA, Inc. *v.* Japanese Foundation for Cancer Research et al. C. A. Fed. Cir. Certiorari denied. Reported below: 785 F. 3d 648.

No. 15–641. Uintah County, Utah, et al. *v.* Ute Indian Tribe of the Uintah and Ouray Reservation. C. A. 10th Cir. Certiorari denied. Reported below: 790 F. 3d 1000.

No. 15–706. McWane, Inc. *v.* Federal Trade Commission. C. A. 11th Cir. Certiorari denied. Reported below: 783 F. 3d 814.

No. 15–709. Cressman *v.* Thompson et al. C. A. 10th Cir. Certiorari denied. Reported below: 798 F. 3d 938.

No. 15–746. Bonidy et al. *v.* United States Postal Service et al. C. A. 10th Cir. Certiorari denied. Reported below: 790 F. 3d 1121.

No. 15–749. United Veterans Memorial and Patriotic Association of the City of New Rochelle et al. *v.* City of New Rochelle, New York, et al. C. A. 2d Cir. Certiorari denied. Reported below: 615 Fed. Appx. 693.

No. 15–750. Wan Hai Lines, Ltd., et al. *v.* Elite Logistics Corp. et al. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 15–755. Board of Trustees of the Carpenters Health and Welfare Trust Fund for California et al. *v.* Bos. C. A. 9th Cir. Certiorari denied. Reported below: 795 F. 3d 1006.

No. 15–763. Ostenson et ux. *v.* Holzman et al. Sup. Ct. Wash. Certiorari denied. Reported below: 184 Wash. 2d 176, 357 P. 3d 650.

No. 15–784. Beacon Resources, Inc. *v.* West Virginia Department of Transportation, Division of Highways. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 236 W. Va. 50, 777 S. E. 2d 619.

No. 15–864. Chambers *v.* HSBC Bank USA, N. A., et al. C. A. 6th Cir. Certiorari denied. Reported below: 796 F. 3d 560.

No. 15–865. Thomas *v.* Hanger. Ct. App. Ga. Certiorari denied.

No. 15–867. Fromal *v.* Sink. Sup. Ct. Va. Certiorari denied.

No. 15–869. Flynn *v.* Yellowstone Mountain Club, LLC, et al. C. A. 9th Cir. Certiorari denied. Reported below: 796 F. 3d 1004.

No. 15–871. Florida *v.* Henry. Sup. Ct. Fla. Certiorari denied. Reported below: 175 So. 3d 675.

No. 15–876. Dodge of Naperville, Inc., et al. *v.* National Labor Relations Board. C. A. D. C. Cir. Certiorari denied. Reported below: 796 F. 3d 31.

No. 15–877. Columbia Venture, LLC *v.* Richland County, South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 413 S. C. 423, 776 S. E. 2d 900.

No. 15–879. Batton *v.* Communication Workers of America, AFL–CIO, et al. C. A. 4th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 175.

No. 15–894. Douds *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 472 S. W. 3d 670.

No. 15–895. Meisner *v.* ZymoGenetics, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 182.

No. 15–896. Morales *v.* Square, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 621 Fed. Appx. 660.

No. 15–903. J. B., a Minor, by Benjamin et al., Parents and Natural Guardians *v.* Fassnacht et al. C. A. 3d Cir. Certiorari denied. Reported below: 801 F. 3d 336.

No. 15–909. Ellis *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 2014–1511 (La. 10/14/15), 179 So. 3d 586.

No. 15–913. Luo Zheng *v.* Jianyi Zhang. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 15–916. Coven *v.* Arizona. Ct. App. Ariz. Certiorari denied. Reported below: 236 Ariz. 393, 340 P. 3d 1101.

No. 15–919. Singh, aka Sinch *v.* Lynch, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 614.

No. 15–934. Maldonado et al. *v.* DeLong et al. C. A. 8th Cir. Certiorari denied. Reported below: 607 Fed. Appx. 612.

No. 15–935. Lempert *v.* Power et al. C. A. D. C. Cir. Certiorari denied. Reported below: 618 Fed. Appx. 3.

No. 15–941. City of Oakland, California *v.* Lynch, Attorney General, et al. C. A. 9th Cir. Certiorari denied. Reported below: 798 F. 3d 1159.

No. 15–953. Shanklin *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 187 So. 3d 734.

No. 15–956. Campbell *v.* American International Group, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 74.

No. 15–957. Dwyer *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 69.

No. 15–967. Rechtzigel *v.* Mohrman & Kaardal, P. A. Ct. App. Minn. Certiorari denied.

No. 15–974. Joao Bock Transaction Systems, LLC *v.* Jack Henry & Associates, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 803 F. 3d 667.

No. 15–975. Purifoy *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 219 So. 3d 698.

No. 15–986. Werner *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 15–1012. Blackington *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 15–1015. Martin *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 807 F. 3d 842.

No. 15–1025. BriarTek IP, Inc. *v.* DeLorme Publishing Co., Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 622 Fed. Appx. 912.

No. 15–6063. Powell *v.* Tompkins, Sheriff, Suffolk County, Massachusetts. C. A. 1st Cir. Certiorari denied. Reported below: 783 F. 3d 332.

No. 15–6341. Randolph-Kennedy *v.* Verizon Services Corp. Sup. Ct. App. W. Va. Certiorari denied.

No. 15–6356. Shine *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 15–6490. Johnson *v.* Just Energy. C. A. 2d Cir. Certiorari denied.

No. 15–6549. Bautista-Avelino *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 644.

No. 15–6703. Brooks *v.* Jones, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 15–6840. Thomas et ux. *v.* Chattahoochee Judicial Circuit et al. C. A. 11th Cir. Certiorari denied.

No. 15–6874. Williams *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 796 F. 3d 951.

No. 15–6918. Williams *v.* Wisconsin. Sup. Ct. Wis. Certiorari denied. Reported below: 2015 WI 75, 364 Wis. 2d 126, 867 N. W. 2d 736.

No. 15–6990. Kosmes *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 792 F. 3d 973.

No. 15–6992. Saiz *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 797 F. 3d 853.

No. 15–7072. Williams *v.* Montgomery, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–7094. Mobley *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 803 F. 3d 1105.

No. 15–7349. Young *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 795 F. 3d 484.

No. 15–7380. Ward *v.* Kelley, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 15–7476. Hobart *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 175 So. 3d 191.

No. 15–7624. Crawford *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 2015–0784 (La. 10/2/15), 176 So. 3d 394.

No. 15–7661. Scullark *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 120962–U.

No. 15–7666. Barney *v.* ASARCO, L. L. C., et al. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 178.

No. 15–7671. Nathan *v.* California. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 15–7683. West *v.* Westbrooks, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 790 F. 3d 693.

No. 15–7687. Hamilton-Rivers *v.* City of Greeley, Colorado. Dist. Ct. Colo., Weld County. Certiorari denied.

No. 15–7688. Grason *v.* HSBC Bank USA. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2015 IL App (4th) 140776–U.

No. 15–7689. Seumanu *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 61 Cal. 4th 1293, 355 P. 3d 384.

No. 15–7691. McGregory *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2014 IL App (1st) 122900–U.

No. 15–7693. Rivers *v.* City of Greeley, Colorado. Dist. Ct. Colo., Weld County. Certiorari denied.

No. 15–7694. Dozier *v.* California. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 15–7698. Tobias *v.* Bowersox, Warden. C. A. 8th Cir. Certiorari denied.

No. 15–7703. Self *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 62 Cal. 4th 1, 354 P. 3d 983.

No. 15–7704. Reedman *v.* Bryson, Commissioner, Georgia Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 15–7705. Ricco *v.* Annucci, Acting Commissioner, New York Department of Corrections and Community Supervision. C. A. 2d Cir. Certiorari denied.

No. 15–7708. Brown *v.* Lazaroff, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–7710. Boyer *v.* Jones, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 15–7714. Turner *v.* Maryland. Ct. App. Md. Certiorari denied. Reported below: 445 Md. 7, 122 A. 3d 976.

No. 15–7715. Thomas *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 15–7717. Keels *v.* Texas. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 15–7720. Jones *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 15–7725. O'Keefe *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 15–7729. Peck *v.* Washoe County, Nevada, et al. Ct. App. Nev. Certiorari denied. Reported below: 131 Nev. 1332.

No. 15–7730. SCHMITT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 15–7731. RATCHFORD *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2015 Ark. 309, 468 S. W. 3d 274.

No. 15–7734. WILSON *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 26 N. Y. 3d 1093, 44 N. E. 3d 948.

No. 15–7736. TAYLOR *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 26 N. Y. 3d 1112, 47 N. E. 3d 101.

No. 15–7737. WILLIAMSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2015 Ark. 373, 471 S. W. 3d 633.

No. 15–7738. SMITH *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2015 IL App (4th) 130205, 29 N. E. 3d 674.

No. 15–7739. SPRATT *v.* WALL, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS, ET AL. C. A. 1st Cir. Certiorari denied.

No. 15–7741. WILHELM *v.* WOODFORD. C. A. 9th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 462.

No. 15–7743. DECAPRIO *v.* ROCKRIDGE PROPERTIES, LLC. Ct. App. Cal., 1st App. Dist., Div. 2. Certiorari denied.

No. 15–7744. LAWS *v.* HUGHES, JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 200.

No. 15–7745. KITCHEN *v.* KLEE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 743.

No. 15–7746. PETROVIC *v.* ENTERPRISE LEASING COMPANY OF CHICAGO, LLC, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 855.

No. 15–7748. STURGIS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–7749. TAYLOR *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 15–7750. Roane *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 15–7753. Smith *v.* Missouri et al. C. A. 8th Cir. Certiorari denied.

No. 15–7759. Swinson *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 79.

No. 15–7761. Murphy *v.* United States District Court for the District of Columbia. C. A. D. C. Cir. Certiorari denied.

No. 15–7765. Pope *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 15–7766. Brown *v.* Superior Court of California, Los Angeles County, et al. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 15–7774. Smith *v.* Clark, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 418.

No. 15–7775. Reilly *v.* Herrera et al. C. A. 11th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 832.

No. 15–7779. Arellano *v.* Pfeiffer, Acting Warden. C. A. 9th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 617.

No. 15–7780. Taylor *v.* San Diego County, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 800 F. 3d 1164.

No. 15–7781. Wood *v.* Pierce, Warden, et al. C. A. 3d Cir. Certiorari denied.

No. 15–7784. Nichols *v.* Kelley, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 15–7788. Stewart *v.* Murphy et al. C. A. 8th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 872.

No. 15–7794. Burnside *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 131 Nev. 371, 352 P. 3d 627.

No. 15–7802. Davis *v.* Carpenter, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 798 F. 3d 468.

No. 15–7805. Castro *v.* California. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 15–7806. Morris *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 15–7807. Nayak *v.* CGA Law Firm et al. C. A. 3d Cir. Certiorari denied. Reported below: 620 Fed. Appx. 90.

No. 15–7808. Smith *v.* Kentucky. Ct. App. Ky. Certiorari denied.

No. 15–7810. Alja-Iz *v.* Virgin Islands Board of Education. C. A. 3d Cir. Certiorari denied. Reported below: 625 Fed. Appx. 591.

No. 15–7861. Stewart *v.* United States. C. A. D. C. Cir. Certiorari denied.

No. 15–7869. Johnson *v.* Crutchfield, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–7914. LordMaster, fka Goldader *v.* Davis, Magistrate Judge, United States District Court for the Eastern District of Virginia, et al. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 207.

No. 15–7920. Ware *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 292 Neb. 24, 870 N. W. 2d 637.

No. 15–7934. Garber *v.* City of Los Angeles, California. Ct. App. Cal., 2d App. Dist., Div. 4. Certiorari denied.

No. 15–7936. Hall *v.* Kirby, Warden, et al. C. A. 3d Cir. Certiorari denied. Reported below: 609 Fed. Appx. 51.

No. 15–7941. Woodward *v.* Coakley et al. C. A. 6th Cir. Certiorari denied.

No. 15–7943. Hill *v.* McDaniel et al. C. A. 8th Cir. Certiorari denied.

No. 15–7944. Harvey *v.* Alabama. Sup. Ct. Ala. Certiorari denied.

No. 15–7959. Du Ju *v.* Washington. Ct. App. Wash. Certiorari denied.

No. 15–7970. Estrada *v.* Gooden et al. C. A. 11th Cir. Certiorari denied.

No. 15–7973. Marshall *v.* Payne et al. C. A. 4th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 604.

No. 15–7981. Melgoza *v.* Kirkland, Associate Warden. C. A. 9th Cir. Certiorari denied.

No. 15–7985. Sanchez-Llamas *v.* Persson, Superintendent, Oregon State Correctional Institution. C. A. 9th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 498.

No. 15–7989. Hughes *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 15–8014. Bamdad *v.* Drug Enforcement Administration et al. C. A. D. C. Cir. Certiorari denied. Reported below: 617 Fed. Appx. 7.

No. 15–8042. Hall *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 354.

No. 15–8044. Vore *v.* Bradshaw, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–8055. Bour *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 804 F. 3d 880.

No. 15–8058. Dixon *v.* Ballard, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 250.

No. 15–8065. Pittman *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 368 N. C. 424, 778 S. E. 2d 276.

No. 15–8067. Peterson *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 664.

No. 15–8081. Moody *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 531.

No. 15–8082. SIMMONS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 606 Fed. Appx. 848.

No. 15–8083. KENNEDY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 955.

No. 15–8084. LASSEQUE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 806 F. 3d 618.

No. 15–8092. RAFFERTY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–8094. DOUGHERTY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 993.

No. 15–8095. FRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 823.

No. 15–8097. SPEROW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 15–8100. MENDOZA-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 301.

No. 15–8101. JEFFERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 791 F. 3d 1013.

No. 15–8102. OJO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 630 Fed. Appx. 83.

No. 15–8103. PAULINO-GUZMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 807 F. 3d 447.

No. 15–8104. MORRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 820.

No. 15–8106. VONDETTE *v.* IVES, COMPLEX WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 445.

No. 15–8107. WALKER *v.* BRENNAN, POSTMASTER GENERAL, ET AL. C. A. 7th Cir. Certiorari denied.

No. 15–8110. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 15–8111. MARTINEZ-IBARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 199.

No. 15–8116. Larsen *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 495.

No. 15–8118. Brown *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 574.

No. 15–8122. Rivera-Paredes *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 889.

No. 15–8125. Hernandez-Rodriguez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 373.

No. 15–8131. Eccleston *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 767.

No. 15–8136. Jones *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 666.

No. 15–8137. Gilmore *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 711.

No. 15–8139. McDonald *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 177.

No. 15–8140. Myles *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 178.

No. 15–8146. Bigelow *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 152.

No. 15–8148. Garcia *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 125 A. 3d 1139.

No. 15–8171. Hunt et al. *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 801 F. 3d 606.

No. 15–8176. Aubrey *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 800 F. 3d 1115.

No. 15–8183. Montiel *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 456.

No. 15–8184. Moreno-Padilla *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 287.

No. 15–8188. Croft *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 15–8189. HUFF *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 471.

No. 15–8190. GARCIA-PILLADO, AKA MARTINEZ-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 435.

No. 15–8191. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 803 F. 3d 1341.

No. 15–8192. GAGNON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 332.

No. 15–8196. ROJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 362.

No. 15–8200. RIVERA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 201.

No. 15–8201. HORTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 609 Fed. Appx. 617.

No. 15–8202. HUGGINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–8203. MARTINEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 205.

No. 15–8210. AGUILAR-OSORTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 197.

No. 15–8211. ALVARADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 271.

No. 15–8212. BEAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 482.

No. 15–8217. URIBES-GUARDIOLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 195.

No. 15–8218. YOUNG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 630 Fed. Appx. 52.

No. 15–8222. HIMMELREICH *v.* BAIRD, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied.

No. 15–8223. HARPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–8231. GONZALEZ-MENDEZ *v.* UNITED STATES (two judgments). C. A. 1st Cir. Certiorari denied.

No. 15–8233. STEWART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 554.

No. 15–8235. RANGEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 15–8237. CORBIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 607 Fed. Appx. 134.

No. 15–8238. ANGEL CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 804 F. 3d 361.

No. 15–8239. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–8242. BOGOMOL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 219.

No. 15–8247. GALLOWAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 75.

No. 15–8248. GOMEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–8264. ODEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 181.

No. 15–8275. MARLOWE *v.* THOMAS, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 15–8296. FORTSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 120 A. 3d 88.

No. 15–630. BAKER, WARDEN *v.* RILEY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 786 F. 3d 719.

No. 15–640. WASATCH COUNTY, UTAH, ET AL. *v.* UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION. C. A. 10th Cir. Motion of Myton City for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 790 F. 3d 1000.

No. 15–765. Frank *v.* Poertner et al. C. A. 11th Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 618 Fed. Appx. 624.

No. 15–858. Clements, Warden *v.* Thomas. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 789 F. 3d 760.

No. 15–891. Aurelius Capital Management, L. P. *v.* Tribune Media Co., fka Tribune Co., fka Times Mirror Corp., et al. C. A. 3d Cir. Motions of Bankruptcy Law Professors and former Federal Judges for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 799 F. 3d 272.

No. 15–914. Creech *v.* Muniz, Warden. C. A. 9th Cir. Certiorari denied. Justice Breyer took no part in the consideration or decision of this petition. Reported below: 800 F. 3d 1005.

No. 15–1016. Springer *v.* Chapa, Warden. C. A. 5th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition. Reported below: 608 Fed. Appx. 258.

No. 15–6560. Basham *v.* United States. C. A. 4th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition. Reported below: 789 F. 3d 358.

No. 15–7676. Quintana *v.* Gipson, Warden. C. A. 9th Cir. Certiorari denied. Justice Breyer took no part in the consideration or decision of this petition. Reported below: 621 Fed. Appx. 475.

No. 15–7742. Runnels *v.* McDowell, Warden. C. A. 9th Cir. Certiorari before judgment denied.

No. 15–7799. Romero *v.* California. Sup. Ct. Cal. Motion of Survivors of Murder Victims and Counselors of Such Survivors for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 62 Cal. 4th 1, 354 P. 3d 983.

No. 15–8194. Gunter *v.* United States. C. A. 3d Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 15–8234. MABRY *v.* SHARTEL, WARDEN. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 632 Fed. Appx. 707.

No. 15–8251. SANTIAGO-LUGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 15–348. ALEXOPOULOS ET VIR *v.* GORDON HARGROVE AND JAMES, P. A., ET AL., *ante*, p. 1062;

No. 15–440. DIAZ *v.* CITIMORTGAGE, INC., *ante*, p. 1049;

No. 15–447. SCHOEPS ET AL. *v.* FREE STATE OF BAVARIA, FEDERAL REPUBLIC OF GERMANY, *ante*, p. 1102;

No. 15–520. HAAGENSEN, PERSONAL REPRESENTATIVE OF THE ESTATE OF HAAGENSEN *v.* WHERRY, VISITING JUDGE, LAWRENCE COUNTY COURT OF COMMON PLEAS, PENNSYLVANIA, ET AL., *ante*, p. 1064;

No. 15–613. RODRIGUEZ *v.* AMERICAN HOME MORTGAGE SERVICING, *ante*, p. 1103;

No. 15–5707. PHILLIPS *v.* TEXAS DEPARTMENT OF PUBLIC SAFETY, *ante*, p. 929;

No. 15–6430. SMITH *v.* FLORIDA, *ante*, p. 1121;

No. 15–6474. GOUCH-ONASSIS *v.* UNITED STATES, *ante*, p. 1035;

No. 15–6597. JOHNSON *v.* SANTA CLARA COUNTY, CALIFORNIA, *ante*, p. 1071;

No. 15–6630. COOPER *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL., *ante*, p. 1072;

No. 15–6646. HAMILTON ET AL. *v.* UNITED STATES, *ante*, p. 1072;

No. 15–6717. KRONENBERG *v.* OHIO, *ante*, p. 1075;

No. 15–6722. GATES *v.* NORTH DAKOTA, *ante*, p. 1075;

No. 15–6812. MCFADDEN *v.* BUSH, WARDEN, *ante*, p. 1077;

No. 15–6817. VIERS *v.* SHEPARD, WARDEN, *ante*, p. 1078;

No. 15–6823. BARNEY *v.* CONGOLEUM CORP. ET AL., *ante*, p. 1078;

No. 15–6857. IN RE RUPPERT, *ante*, p. 1060;

No. 15–6906. CARDELLE *v.* WILMINGTON TRUST, N. A., *ante*, p. 1105;

No. 15–6914. RICHARD *v.* MOHR ET AL., *ante*, p. 1106;

No. 15–6941. CLARK *v.* CALIFORNIA, *ante*, p. 1082;
No. 15–6954. COPPOLA *v.* O'BRIEN, WARDEN, *ante*, p. 1082;
No. 15–7312. HANSON MOSTELLER *v.* UNITED STATES, *ante*, p. 1109;
No. 15–7428. MALOUFF *v.* UNITED STATES, *ante*, p. 1112; and
No. 15–7455. JACKSON *v.* UNITED STATES, *ante*, p. 1112. Petitions for rehearing denied.

No. 15–6805. DAVIS *v.* DISTRICT OF COLUMBIA, *ante*, p. 1052. Motion for leave to file petition for rehearing denied.

MARCH 22, 2016

Miscellaneous Order

No. 15–8590 (15A965). IN RE WARD. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 15–8589 (15A964). WARD *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

MARCH 23, 2016

Miscellaneous Order

No. 15A911. RAVALLI COUNTY REPUBLICAN CENTRAL COMMITTEE ET AL. *v.* MCCULLOCH, MONTANA SECRETARY OF STATE, ET AL. C. A. 9th Cir. Application for injunctive relief pending appeal, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

MARCH 24, 2016

Dismissal Under Rule 46

No. 15–1079. LAND *v.* UNITED STATES. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 616 Fed. Appx. 196.

MARCH 28, 2016

Certiorari Granted—Vacated and Remanded

No. 15–7189. MOON, AKA JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Reported below: 625 Fed. Appx. 136; and

No. 15–7300. JEFFRIES *v.* UNITED STATES. C. A. 5th Cir. Reported below: 616 Fed. Appx. 763. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Johnson* v. *United States*, 576 U. S. 591 (2015).

Certiorari Dismissed

No. 15–7814. LEBLANC *v.* MALONEY. 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. 15–7815. LEBLANC *v.* RIVARD. 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. 15–7816. LEBLANC *v.* BELLAMY CREEK CORRECTIONAL FACILITY. 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. 15–7817. LEBLANC *v.* ARWOOD. 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. 15–7818. LEBLANC *v.* MICHIGAN. 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.

Miscellaneous Orders

No. 15M92. ROBERTSON *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 15M93. DIXON *v.* PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW; and

No. 15M94. DIAZ *v.* MACOMBER, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 15M95. KAIGHN ET AL. *v.* UNITED STATES ET AL. Motion for leave to file bill of complaint denied.

No. 15–830. GOVERNMENT OF BELIZE *v.* BELIZE SOCIAL DEVELOPMENT LTD. C. A. D. C. Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 15–7812. Ullah *v.* Wells Fargo Bank, N. A. C. A. 2d Cir.;

No. 15–8254. DiLeo *v.* United States. C. A. 11th Cir.;

No. 15–8259. Wakefield *v.* West Virginia. Sup. Ct. App. W. Va.;

No. 15–8276. Reed *v.* United States. C. A. 4th Cir.;

No. 15–8277. Williams *v.* Webb Law Firm, P. C. C. A. 3d Cir.; and

No. 15–8283. Michael *v.* United States. C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until April 18, 2016, 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. 15–8480. In re Baublitz. Petition for writ of habeas corpus denied.

No. 15–8464. In re Bui Phu Xuan. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 15–926. In re Griskie. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 15–537. Bravo-Fernandez et al. *v.* United States. C. A. 1st Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 790 F. 3d 41.

Certiorari Denied

No. 15–467. Alaska *v.* Organized Village of Kake, Alaska, et al. C. A. 9th Cir. Certiorari denied. Reported below: 795 F. 3d 956.

No. 15–652. Daiichi Sankyo Co., Ltd. *v.* Lee, Director, United States Patent and Trademark Office. C. A. Fed. Cir. Certiorari denied. Reported below: 791 F. 3d 1373.

No. 15–664. Blagojevich *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 794 F. 3d 729.

No. 15–684. Ohio *v.* Sierra Club et al. C. A. 6th Cir. Certiorari denied. Reported below: 793 F. 3d 656.

No. 15–781. Koch et al. *v.* Securities and Exchange Commission. C. A. D. C. Cir. Certiorari denied. Reported below: 793 F. 3d 147.

No. 15–783. RBS Securities Inc. et al. *v.* Federal Deposit Insurance Corporation, Receiver for Guaranty Bank. C. A. 5th Cir. Certiorari denied. Reported below: 798 F. 3d 244.

No. 15–787. Kramer *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 797 F. 3d 493.

No. 15–829. BNSF Railway Co. *v.* Anderson. Sup. Ct. Mont. Certiorari denied. Reported below: 380 Mont. 319, 354 P. 3d 1248.

No. 15–918. Sutton *v.* Westbrooks, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 617 Fed. Appx. 434.

No. 15–921. Konowaloff *v.* Yale University et al. C. A. 2d Cir. Certiorari denied. Reported below: 620 Fed. Appx. 60.

No. 15–923. Kirschmann *v.* Kirschmann. Sup. Ct. Va. Certiorari denied.

No. 15–924. Winward *v.* Utah. Sup. Ct. Utah. Certiorari denied. Reported below: 2015 UT 61, 355 P. 3d 1022.

No. 15–928. Mezu *v.* Morgan State University. C. A. 4th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 796.

No. 15–929. Oregon Teamster Employers Trust *v.* Hillsboro Garbage Disposal, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 800 F. 3d 1151.

No. 15–930. Odion *v.* Google, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 635.

No. 15–932. Cornish *v.* City of Baltimore, Maryland, et al. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 185.

No. 15–937. St. Paul Fire & Marine Insurance Co. *v.* Abhe & Svoboda, Inc. C. A. 8th Cir. Certiorari denied. Reported below: 798 F. 3d 715.

No. 15–938. Hospitality Franchise Service, Inc., dba Galleria Motel *v.* City of Montclair, California. C. A. 9th Cir. Certiorari denied. Reported below: 798 F. 3d 895.

No. 15–939. McWhorter *v.* Neal, Superintendent, Indiana State Prison. C. A. 7th Cir. Certiorari denied.

No. 15–994. Robinson et al. *v.* Jewell, Secretary of the Interior, et al. C. A. 9th Cir. Certiorari denied. Reported below: 790 F. 3d 910.

No. 15–996. Miller *v.* Merit Systems Protection Board. C. A. Fed. Cir. Certiorari denied. Reported below: 626 Fed. Appx. 261.

No. 15–997. Bebo *v.* Securities and Exchange Commission. C. A. 7th Cir. Certiorari denied. Reported below: 799 F. 3d 765.

No. 15–1001. Corrigan *v.* Washington. Sup. Ct. Wash. Certiorari denied.

No. 15–1011. Shafei et al. *v.* Ohio. Ct. App. Ohio, 12th App. Dist., Butler County. Certiorari denied. Reported below: 2015-Ohio-645, 27 N. E. 3d 593.

No. 15–1050. Harrison *v.* Ocean Bank et al. C. A. 11th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 429.

No. 15–1056. Cooper *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 819.

No. 15–1060. Dane *v.* Geico General Insurance Co. Sup. Ct. Nev. Certiorari denied. Reported below: 131 Nev. 1269 and 1270.

No. 15–1092. ParkerVision, Inc. *v.* Qualcomm Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 621 Fed. Appx. 1009.

No. 15–6602. Ford *v.* California. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari denied. Reported below: 235 Cal. App. 4th 987, 185 Cal. Rptr. 3d 898.

No. 15–7151. Hyder *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 609 Fed. Appx. 227.

No. 15–7503. CORCORAN *v.* NEAL, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 783 F. 3d 676.

No. 15–7626. VILLANUEVA *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 269.

No. 15–7762. SARANCHAK *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 802 F. 3d 579.

No. 15–7792. LLOYD *v.* MOHR, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–7793. LANG *v.* STEWART, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7803. CARTER *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 3d 552.

No. 15–7811. CHRISTIAN *v.* HOFFNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–7820. MOREIRA DA SILVA *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 75 So. 3d 289.

No. 15–7839. FAULTRY *v.* ALLISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 315.

No. 15–7842. GALLARDO *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 15–7844. TORNE *v.* STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–7851. BRIAN K. *v.* JENISE B. Ct. App. Ohio, 2d App. Dist., Champaign County. Certiorari denied. Reported below: 2015-Ohio-29.

No. 15–7854. Jezowski et al. *v.* Arenac County Department of Health and Human Services. Ct. App. Mich. Certiorari denied.

No. 15–7856. Harrison *v.* Owens et al. C. A. 4th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 151.

No. 15–7857. Oakman *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 122 A. 3d 1145.

No. 15–7885. Wren *v.* Mississippi. Sup. Ct. Miss. Certiorari denied.

No. 15–7913. Lara *v.* Neven, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 790.

No. 15–7921. Walker *v.* Fisher, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 617 Fed. Appx. 794.

No. 15–7953. Huebner *v.* Jones, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 15–7958. Clay *v.* Chappius, Superintendent, Elmira Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 15–8001. Britt *v.* Muniz, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 336.

No. 15–8004. Harper *v.* Miller, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–8017. Baham *v.* Louisiana. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 2014–00571 (La. App. 3 Cir. 11/5/14), 155 So. 3d 727.

No. 15–8029. Gordy *v.* Hedgpeth, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 322.

No. 15–8096. Davenport *v.* Hooks, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–8099. Murphy *v.* Missouri Board of Probation and Parole et al. C. A. 8th Cir. Certiorari denied.

No. 15–8128. Murray *v.* Dolce, Superintendent, Orleans Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 15–8142. MELOT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 398.

No. 15–8154. DHALIWAL *v.* COUNTY OF IMPERIAL, CALIFORNIA, ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 15–8197. SIMMONS *v.* CLARK, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 90.

No. 15–8220. KAMMERER *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 15–8249. HAMPTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–8253. LIRIANO-DE-LA-CRUZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 809 F. 3d 686.

No. 15–8262. WESTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 544.

No. 15–8269. COOPER *v.* SELY. C. A. 9th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 548.

No. 15–8272. COOK *v.* LINDAMOOD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–8278. YANNAI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 791 F. 3d 226.

No. 15–8286. STRENG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 323.

No. 15–8289. MUNERA-CADAVID *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 943.

No. 15–8290. PETERSEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 884.

No. 15–8291. MONTEROLA-MATA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 583.

No. 15–8293. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 803 F. 3d 279.

No. 15–8298. JIMENEZ-ECHEVARRIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 15–8305. LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 313.

No. 15–8313. CASTILLO-GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 353.

No. 15–8321. LISYANSKY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 806 F. 3d 706.

No. 15–8327. PORTILLO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 594.

No. 15–8328. PEELE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–8329. HECTOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 632.

No. 15–8332. MAGDALENA ROCHA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 353.

No. 15–8333. SYED *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 973.

No. 15–8334. SPANGLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 617 Fed. Appx. 764.

No. 15–8343. ADKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 464.

No. 15–8344. APONTE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–8345. BRITTON-HARR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 15–8363. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–8371. SCOTT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–8372. MANN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 15–8375. ANDERSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 113 A. 3d 535.

No. 15–835. PROCTER & GAMBLE CO. *v.* RIKOS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 799 F. 3d 497.

No. 15–855. OAKLAND *v.* BELL STATE BANK & TRUST. Sup. Ct. N. D. Motion of Professor Jona Goldschmidt et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 2015 ND 188, 867 N. W. 2d 325.

No. 15–922. LAM LUONG *v.* ALABAMA. Ct. Crim. App. Ala. Motion of National Association of Criminal Defense Lawyers for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 199 So. 3d 173.

No. 15–7581. FRANKLIN *v.* LAZAROFF, WARDEN. C. A. 6th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 14–8986. SHABAZZ *v.* RICHARDS, ACTING JUDGE, FRANKLIN COUNTY COURT OF NEW YORK, ET AL., 575 U. S. 1030;

No. 15–636. CARRILLO ET AL. *v.* DEUTSCHE BANK NATIONAL TRUST CO., AS TRUSTEE, *ante*, p. 1103;

No. 15–6682. LEWIS *v.* SOTO, WARDEN, *ante*, p. 1073;

No. 15–6694. PRESTON *v.* ATTEBURY, *ante*, p. 1074;

No. 15–6943. COWDER *v.* THOMPSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MERCER, *ante*, p. 1106;

No. 15–6998. MATIAS-TORRES *v.* UNITED STATES, *ante*, p. 1084;

No. 15–7111. FISHMAN *v.* UNITED STATES, *ante*, p. 1087;

No. 15–7123. MANGARELLA *v.* UNITED STATES, *ante*, p. 1088; and

No. 15–7470. HAMILTON *v.* SCHLOFFER, *ante*, p. 1157. Petitions for rehearing denied.